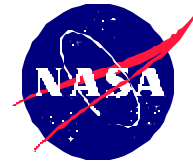


National Aeronautics and  
Space Administration

**Office of Inspector General**  
Headquarters  
Washington, D.C. 20546-0001



Reply to Attn of: **W**

May 5, 2000

**TO:** H/Associate Administrator for Procurement

**FROM:** W/Assistant Inspector General for Inspections, Administrative  
Investigations, and Assessments

W/Assistant Inspector General for Investigations

**SUBJECT:** Progress Payments under Fixed-Price Construction Contracts, G-00-014

## **I. BACKGROUND**

The NASA Office of Inspector General (OIG) became aware that contracting activities at various NASA installations have failed to follow proper procedures for processing contractor requests for progress payments under fixed-price construction contracts.<sup>1</sup> These problems surfaced during recent investigative activities conducted by the OIG Office of Criminal Investigations (OCI), and through recent assessment activities conducted by the OIG Office of Inspections, Administrative Investigations, and Assessments (IAIA).

## **II. PROGRESS PAYMENT DOCUMENTATION IS DEFICIENT**

In certain instances, Contracting Officers (CO) have failed to ensure that prime contractors submit requests for progress payments in accordance with the requirements of Federal Acquisition Regulation (FAR) clause 52.232-5, "Payments under Fixed-Price Construction Contracts." FAR 32.111(a)(5) prescribes the use of clause 52.232-5 for all fixed-price construction contracts. More importantly, NASA is not being provided with information pertaining to amounts paid by the prime contractor to its subcontractors. Specifically, subparagraph (b)(1) of this clause states that the contractor's request for progress payments shall include:

---

<sup>1</sup> Although the OIG's review was limited to construction contracts, these issues may also affect other fixed-price contracts under which NASA is providing progress payments.

- i. An itemization of the amounts requested, related to the various elements of work required by the contract covered by the payment requested;
- ii. A listing of the amount included for work performed by each subcontractor under the contract;
- iii. A listing of the total amount of each subcontract under the contract;
- iv. A listing of amounts previously paid to each subcontractor under the contract; and
- v. Additional supporting data in a form and detail required by the CO.

Our review indicated that CO's at various NASA installations are accepting and processing deficient progress payment requests that do not include this required information. One CO indicated that he routinely includes the required FAR 52.232-5 clause in his fixed-price construction contracts, but was unaware that the clause language had changed since the April 1989 version.<sup>2</sup>

In certain instances, CO's have failed to ensure that prime contractors submit Standard Form (SF) 1443, "Contractor's Request for Progress Payment," as required by Federal and NASA procurement regulations.<sup>3</sup> Instead, CO's have accepted contractors' substitute invoice formats in lieu of the required SF1443. This condition results in a lack of visibility into contractors' cost reporting since contractors' invoices typically do not provide information pertaining to amounts paid to subcontractors.<sup>4</sup> Thus, NASA CO's lack important cost information regarding the prime contractors' payments to subcontractors. Timely and accurate cost information is critical to effective contract oversight.

### **III. PROPER PROCESSING KEY TO FRAUD PREVENTION AND DETECTION**

It is essential for NASA to obtain the detailed progress payment information, as required by the FAR and NASA FAR Supplement (NFS), in processing contractor requests for progress payments. This information is critical for effective contract administration and for audit and investigative purposes. For example, the NASA OIG recently investigated a prime contractor's unlawfully withholding monies due its subcontractors under multiple NASA construction contracts. The criminal investigation and Government prosecution was hampered due to the lack of visibility into the prime's reported payments to its subcontractors. Processing such payments in accordance with the governing regulations facilitates effective contract administration and enhances the Government's ability to detect and eliminate contract waste, fraud, and abuse.

---

<sup>2</sup> The April 1989 version was superceded by a May 1997 revision to the clause. The outdated April 1989 version of this clause did not require the detailed information pertaining to payments to subcontractors that is required by subparagraph (b)(1) of the current May 1997 version.

<sup>3</sup> FAR 32.503-1 and NASA FAR Supplement (NFS) clause 1852.232-82, "Submission of Requests for Progress Payments" (when included), require that each contractor request for progress payment be submitted on an SF 1443. This requirement is applicable to all fixed-price contracts with progress payments that are based on costs.

<sup>4</sup> Section 14(a)-(e) of SF 1443 provides subcontractor payment information.

#### IV. RECOMMENDATIONS

**Recommendation 1**: The NASA Office of Procurement should immediately issue guidance to CO's at all NASA installations reminding them of the FAR and NFS requirements pertaining to progress payments under fixed-price construction contracts, and alerting them to the vital fraud detection and prevention elements of the requirements.

**Recommendation 2**: The Office of Procurement should include this issue as a primary focus in future reviews and self-assessments of NASA installation procurement operations.

#### V. SUMMARY AND EVALUATION OF NASA MANAGEMENT RESPONSE

The Office of procurement concurred with our two recommendations and specified plans to take appropriate action (See Appendix A).

#### VI. CONCLUSION

Our recommendations to apply appropriate progress payment guidelines and review NASA installation performance in applying the guidelines will improve NASA contract oversight, and assist in the prevention and detection of fraud against the U.S. Government. We extend our thanks to your staff for its responsive and expedited reply. If you need any additional information or assistance, please contact Mr. Joseph Kroener at (301) 286-9269 or Mr. Dana Mellerio at (202) 358-0271.

[original signed by]  
David M. Cushing

[original signed by]  
Samuel Maxey

2 Enclosures  
Appendix A: NASA Management Response  
Appendix B: Report Distribution

cc:  
ARC/241-1/C. Duff  
DFRC/MS 1422/R. Davis  
GRC/500-313/B. Baker  
GSFC/200/M. Ladomirak  
JPL/180-801/R. Svarcas  
JSC/BA/R. Gish  
KSC/OP/J. Hattaway  
LRC/134/K. Stone  
MSFC/GP01/S. Beale  
SSC/DA00/R. Dubuisson

**MAJOR CONTRIBUTORS TO THIS REPORT**

Joseph Kroener, Procurement Analyst

Michael Sonntag, Resident Agent-in-Charge, Langley Research Center

## **Appendix A**

### **NASA Management Response**

National Aeronautics and  
Space Administration

**Headquarters**

Washington, DC 20546-0001



10/7/95 Alt 1.01

HK

APR 26 2000

TO: W/Assistant Inspector General for Inspections, Administrative  
Investigations, and Assessments

W/Assistant Inspector General for Investigations

FROM: HK/Director, Contract Management Division

SUBJECT: Progress Payments under Fixed-Price Construction Contracts, G-00-014,  
Draft Report

Enclosed is our response to the subject draft report dated April 24, 2000.

Please call Rich Kall at (202) 358-0459, or Jack Horvath at (202) 358-0456, if you have  
any questions or need further coordination on this matter.

  
Scott Thompson

Enclosure

**HEADQUARTERS  
OFFICE OF PROCUREMENT**

**RESPONSE TO**

**OFFICE OF INSPECTOR GENERAL (OIG)  
Draft Report, Assignment No. G-00-014  
Dated April 24, 2000**

**PROGRESS PAYMENTS UNDER FIXED-PRICE  
CONSTRUCTION CONTRACTS**

**DATE:** APR 26 2000

**Enclosure**

Code H's narrative response is provided as follows:

OIG RECOMMENDATION 1:

The NASA Office of Procurement should immediately issue guidance to CO's at all NASA installations reminding them of the FAR and NFS requirements pertaining to progress payments under fixed-price construction contracts, and alerting them to the vital fraud detection and prevention elements of the requirements.

OIG RECOMMENDATION 2:

The Office of Procurement should include this issue as a primary focus in future review and self-assessments of NASA installation procurement operations.

CODE H RESPONSE TO RECOMMENDATION No. 1: CONCUR

Code H concurs with this recommendation and plans to take action immediately. Each Center Procurement Office will be provided guidance on the use of FAR clause 52.232-5 and NFS clause 1852.232-82 when fixed-price construction contracts are awarded.

CORRECTIVE ACTION OFFICIAL:	Code HK/R. Kall
CORRECTIVE ACTION CLOSURE OFFICIAL:	Code HK/S. Thompson
PROJECTED CORRECTIVE ACTION CLOSURE DATE:	September 1, 2000

CODE H RESPONSE TO RECOMMENDATION No. 2: CONCUR

The procurement survey teams, during the next round of surveys, will be asked to verify the proper use and compliance with the requirements of these clauses. The next survey is scheduled with LaRC during August 2000. A full cycle of procurement surveys will be completed within approximately 3 years.



# **Appendix B**

## **Report Distribution**

## **Distribution**

### **National Aeronautics and Space Administration (NASA) Officials:**

A/Administrator  
AI/Associate Deputy Administrator  
B/Chief Financial Officer  
B/Comptroller  
C/Associate Administrator  
G/General Counsel  
J/Associate Administrator for Management Systems  
L/Associate Administrator for Legislative Affairs  
M/Associate Administrator for Space Flight  
P/Associate Administrator for Public Affairs  
R/Associate Administrator for Aero-Space Technology  
S/Associate Administrator for Space Science  
SJ/Director, NASA Management Office, Jet Propulsion Laboratory  
Y/Associate Administrator for Earth Science  
Director/Ames Research Center  
Director/Dryden Flight Research Center  
Director/Glenn Research Center  
Director/Goddard Space Flight Center  
Director/Johnson Space Center  
Director/Langley Research Center  
Director/Marshall Space Flight Center  
Director/Stennis Space Center

### **NASA Advisory Officials:**

Chairman, NASA Advisory Committee

### **Non-NASA Federal Organizations and Individuals:**

Assistant to the President for Science and Technology Policy  
Deputy Associate Director, Energy and Science Division, Office of Management and Budget  
Budget Examiner, Energy and Science Division, Office of Management and Budget  
Associate Director, National Security and International Affairs Division,  
General Accounting Office  
Professional Assistant, Senate Subcommittee on Science, Technology, and Space

**Chairman and Ranking Minority Member of each of the following Congressional Committees and Subcommittees:**

Senate Committee on Appropriations  
Senate Subcommittee on VA-HUD-Independent Agencies  
Senate Committee on Commerce, Science and Transportation  
Senate Subcommittee on Science, Technology and Space  
Senate Committee on Governmental Affairs  
House Committee on Appropriations  
House Subcommittee on VA-HUD-Independent Agencies  
House Committee on Government Reform and Oversight  
House Subcommittee on National Security, International Affairs, and Criminal Justice  
House Committee on Science  
House Subcommittee on Space and Aeronautics

**Congressional Member:**

Honorable Pete Sessions, U.S. House of Representatives

**Public Distribution:**

NASA Office of Inspector General Internet Site:  
<http://www.hq.nasa.gov/office/ooig/hq/inspections/closed>