



OFFICE OF
INSPECTOR GENERAL

BR 02--054

FEDERAL TRADE COMMISSION
WASHINGTON, D.C. 20580

September 24, 2002

MEMORANDUM

TO: Stephen Warren
Chief Information Officer

FROM: *Frederick J. Zinkel*
Frederick J. Zinkel
Inspector General

SUBJECT: Completion of Contract Administration Audit

As you were briefed on September 24, 2002, the Office of Inspector General (OIG) recently completed an audit of contract administration in the Federal Trade Commission's (FTC's) Information and Technology Management Office (see attachment I). The audit's objective was to determine compliance with selected aspects of the Federal Acquisition Regulations (FAR) and FTC contract administration requirements for information technology support contracts. Two large contracts with software development firms were selected for review: Computer Associates, Inc. and InterImage. From fiscal year 2000 to July 2002, FTC expended about \$4.9 million on its contract with Computer Associates and about \$800,000 on its contract with InterImage. The review focused on whether or not the contracts provide for personal services, whether the work performed was within the scope of the contracts, and the adequacy of the technical monitoring and oversight. The OIG did not examine other aspects of the contracts, such as the effectiveness or efficiency of the work performed.

The OIG carried out the review by obtaining information on the two contracts and how they were being monitored. The information obtained was tested and supplemented by examining documents and administering a questionnaire to Software Development Branch staff, including both government and contractor employees (see attachment II). Additional interviews were conducted with contracting officials in FTC's Financial Management Office and an attorney in the Office of General Counsel to better understand how the agency views various FAR provisions as they relate to personal services.

Examinations of documents provided and tests of those documents indicated that contract monitoring mechanisms are in place to provide adequate technical monitoring and oversight over the progress of the work and the contractors' performance. Documents examined and interview responses indicated that work performed by contractor employees was within the scope of work of their respective contracts.

On the other hand, when 13 of 18 contractor employees responded that they were being supervised by a government employee, concerns arose about the possible issuance of a personal services contract.

Personal services, which is prohibited by the FAR, would result if continuous supervision and control over the contractor employees were being exercised by a government officer or employee.

Based on our review of relevant contract provisions and discussions with the agency's contracting officer and General Counsel staff, neither contract was found to contain provisions indicative of personal services, e.g., the government did not reserve the right to (i) assign tasks to contractor staff or prepare work schedules, (ii) control the method by which the contractor performs the service, the number of people employed, and the specific duties of individual employees, (iii) provide for a performance review of individual employees, or (iv) have contractor employees removed from the job for reasons other than misconduct or security.

While the OIG did not follow up with employees regarding their responses, we did note that contractor managers are not on site full time in the SDB. This often necessitates contractor staff seeking assistance in terms of guidance, assignments and feedback from government supervisors. However contract managers maintain ultimate control over assignments and employee ratings. Consequently, the OIG concludes that the contracts themselves were not personal services contracts.

The review was conducted from June 19, 2002, through August 12, 2002, in accordance with generally accepted government auditing standards.

The OIG appreciates the excellent cooperation and assistance provided during the review by ITM management and the Software Development Branch staff.

Attachments - 2

cc. Henry Hoffman
Jean Sefchick

Contract Administration Audit

Briefing of Mr. Stephen Warren,
Ms. Judy Burnam, and Ms. Jean
Sefchick

September 24, 2002

Federal Trade Commission,
Office of Inspector General

Audit Objective

- **To determine compliance with selected aspects of the Federal Acquisition Regulations and FTC contract administration requirements for information technology support contracts.**

Audit Scope

- Two large software development contracts selected
 - ◆ *Computer Associates, Inc.*
 - ◆ *InterImage*
- We focused on the adequacy of the contract monitoring and oversight, whether the work performed was within the scope of the contracts, and whether or not the contracts provide for personal services.
- We did not examine other aspects of the contracts, such as the effectiveness or efficiency of the work performed.

Methodology

- Our overall approach was to obtain information on the two contracts and how they are being monitored.
- We then tested and supplemented the information provided by examining documents and administering a structured interview to Software Development Branch contractor and government employees.

Principal observations

- Our review of documents demonstrating how the Contracting Officer's Technical Representative (COTR) carried out the required contract monitoring activities, including tracking the progress of the work performed, and assuring that billed amounts were for work performed did not disclose any discrepancies.
- Contractor employees generally worked on tasks related to the contracts' statements of work.

Principal observations

- Nearly all employees responded that their work tasks related to the development and maintenance of software systems.
- All responded that they were generally assigned tasks normally associated with their positions.
- About half of the contractor and government respondents indicated that contractor and government employees work tasks are similar.

Principal observations

- Few contractor employees are involved in the administration, planning, or management of the Software Development Branch.
- Fifteen of the 18 contractor employees responded that more than half or almost all of their tasks were directly assigned to them by a government employee.

Principal observations

- Contractor employees identified their tasks with projects included in their respective contract's statements of work.
- For all tasks assigned, contractor respondents indicated they had received guidance.

Principal observations

- Thirteen of the 18 contractor respondents identified a government employee as their supervisor at least some of the time.
- Nine contractor employees responded that a government employee authorizes their vacation time, five their sick leave, and three that their job assessment ratings were provided by a government employee.

Conclusions

- The Software Development Branch appeared to have contract monitoring mechanisms in place to provide adequate technical monitoring and oversight over the progress of the work and the contractor's performance.

Conclusions

- Work tasks performed by contractor employees appeared to be related to their respective contract's statements of work.

Conclusions

- The fact that most of the contractor employees responded that they were being supervised by a government employee raised a concern because government supervision of contractor employees is a key element of personal services contracts.

Conclusions

- However, the contracts do not provide supervisory control because they *do not* have clauses that:
 - ◆ reserve the right to assign tasks to and prepare work schedules for contractor employees;
 - ◆ retain the right to supervise the work of the contractor's employees;
 - ◆ reserve the right to supervise or control the method by which the contractor performs the service, the number of people employed, and the specific duties of individual employees;
 - ◆ provide for a performance review of each individual contractor employee; nor,
 - ◆ retain the right to have contractor employees removed from the job for reasons other than misconduct or security.

Conclusions

- Further, contractors' employees were not routinely used interchangeably with government personnel to perform the same functions nor integrated into the government's organizational structure. For the most part, the contractors' managers were aware or kept informed of the tasks carried out by their employees and assessed their employees' performances.

Conclusion

- Although contractor employees responded that they were supervised by government employees, in our view the government does not have the contractual authority or control needed to provide supervision that would result in personal services because the ultimate control over the employees resides with the contractors' management.

Conclusions

- In summary, we concluded that the work performed under the software development contracts were being adequately monitored, were within the scope of the contracts, and do not provide personal services. Therefore, our review showed that FTC's contract administration of the software development contracts complied with selected aspects of the FAR and the FTC's contract administration requirements.

**OFFICE OF THE INSPECTOR GENERAL
 CONTRACT ADMINISTRATION AUDIT
Analysis of Responses to
 QUESTIONS FOR SOFTWARE DEVELOPMENT BRANCH
 CONTRACTOR EMPLOYEES AND GOVERNMENT STAFF**

Dates July 18-29, 2002

Introduction

The Office of Inspector General (OIG) is auditing contract administration at the FTC. The audit's objective is to determine compliance with the Federal Acquisition Regulations (FAR) and FTC contract administration procedures for information technology contracts. To perform this evaluation, the OIG has selected two ITM contracts: Computer Associates, Inc. (formerly Applied Management Systems) BPA #2900A0038 and InterImage, BPA #2900A0039. We are examining how these contracts are administered, including how key contract tasks are assigned and monitored. Your responses are important to our gaining an understanding of how work tasks carried out by Government staff and contractor employees contribute to the Software Development Branch's mission to develop and support FTC applications.

We realize that some individuals interviewed may consider this information to be sensitive. We will keep your name confidential. Our results will generally be provided in summary form. Further, if we discuss individual answers in our report, we will not include any information that would identify individual respondents. We have asked that you include contact information should it be necessary for us to clarify or follow-up on your responses. We will destroy the link between individual respondents and their responses once our analysis of the responses is complete.

Organization

Computer Associates	13
InterImage	5
Government employee, Software Development Branch (SDB)	11
Total Respondents	29

WORK ASSIGNMENTS

1. Are you familiar with the contracts' statements of work? Yes No

If yes, proceed to question 2, if no skip to question 4.

Computer Associates	9	69%	4	31%
InterImage	5	100%	0	0%
Total contract employees	14	78%	4	22%
Government	4	36%	7	64%
Total	18	62%	11	38%

2. Since October 1, 2001, to what extent have you worked on tasks specified in the contracts' statements of work? (Please check one)

	None or almost none	Less than half	About half	More than half	All or almost all	Totals		
Computer Associates	2	22%	1	11%	1	11%	4	44%
InterImage	1	20%	0	0%	0	0%	3	60%
Total contract employees	3	21%	1	7%	1	7%	7	50%
Government	2	50%	1	25%	0	0%	4	0%
Total	5	28%	3	17%	2	11%	7	39%

3. Since October 1, 2001, to what extent have you worked on tasks (technical or otherwise) not related to the contracts' statements of work? (Please check one)

	None or almost none	Less than half	About half	More than half	All or almost all	Totals		
Computer Associates	9	100%	0	0%	0	0%	9	0%
InterImage	5	100%	0	0%	0	0%	5	0%
Total contract employees	14	100%	0	0%	0	0%	14	0%
Government	0	0%	1	25%	1	25%	4	25%
Total	14	78%	1	6%	1	6%	18	6%

4. Since October 1, 2001, to what extent have you worked on tasks related to the planning, oversight, and administration of the Software Development Branch? (Please check one)

	None or almost none	Less than half	About half	More than half	All or almost all	Totals
Computer Associates	10	2	0	0	1	13
InterImage	4	1	0	0	0	5
Total contract employees	14	3	0	0	1	18
Government	6	1	0	3	1	11
Total	20	4	0	3	2	29
	77%	15%	0%	0%	0%	8%
	80%	20%	0%	0%	0%	0%
	78%	17%	0%	0%	0%	6%
	55%	9%	0%	27%	1%	9%
	69%	14%	0%	10%	7%	7%

5. Since October 1, 2001, to what extent have you worked on tasks that were directly assigned to you by a Contractor Project Manager or another contract employee? (Please check one)

	None or almost none	Less than half	About half	More than half	All or almost all	Totals
Computer Associates	8	0	0	0	5	13
InterImage	5	0	0	0	0	5
Total contract employees	13	0	0	0	5	18
Government	11	0	0	0	0	11
Total	24	0	0	0	5	29
	62%	0%	0%	0%	0%	38%
	100%	0%	0%	0%	0%	0%
	72%	0%	0%	0%	0%	28%
	100%	0%	0%	0%	0%	0%
	83%	0%	0%	0%	0%	17%

6. Since October 1, 2001, to what extent have you worked on tasks that were directly assigned to you by the head of the Software Development Branch or an SDB Project Director? (Please check one)

	None or almost none	Less than half	About half	More than half	All or almost all	Totals
Computer Associates	3	0	0	2	8	13
InterImage	1	0	0	0	4	5
Total contract employees	4	0	0	2	12	18
Government	1	0	1	2	7	11
Total	5	0	1	4	19	29
	23%	0%	0%	0%	15%	62%
	20%	0%	0%	0%	0%	80%
	22%	0%	0%	11%	67%	67%
	9%	0%	1%	18%	74%	64%
	17%	0%	0%	14%	69%	66%

7. Since October 1, 2001, to what extent have you worked on tasks that were directly assigned to you by a SDB Government employee other than the head of the Software Development Branch or an SDB Project Director? (Please check one)

	None or almost none	Less than half	About half	More than half	All or almost all	Totals
Computer Associates	13	0	0	0	0	13
InterImage	5	0	0	0	0	5
Total contract employees	18	0	0	0	0	18
Government	9	2	0	0	0	11
Total	27	2	0	0	0	29
		100%	0%	0%	0%	0%
		100%	0%	0%	0%	0%
		82%	18%	0%	0%	0%
		93%	7%	0%	0%	0%

8. Since October 1, 2001, to what extent have you worked on tasks that were directly assigned to you by a Government employee in an FTC Office other than the Software Development Branch? (Please check one)

	None or almost none	Less than half	About half	More than half	All or almost all	Totals
Computer Associates	13	0	0	0	0	13
InterImage	4	0	0	0	1	5
Total contract employees	17	0	0	0	1	18
Government	5	1	1	2	2	11
Total	22	1	1	2	3	29
		100%	0%	0%	0%	0%
		80%	0%	0%	0%	20%
		94%	0%	0%	0%	6%
		45%	9%	18%	18%	11%
		76%	3%	3%	7%	10%

9. To what extent do the tasks assigned to you relate to software development work? (Please check one)

	None or almost none	Less than half	About half	More than half	All or almost all	Totals
Computer Associates	1	2	1	4	5	13
InterImage	2	0	0	0	3	5
Total contract employees	3	2	1	4	8	18
Government	0	1	0	3	7	11
Total	3	3	1	7	15	29
		8%	15%	8%	31%	38%
		40%	0%	0%	0%	60%
		17%	11%	6%	22%	44%
		0%	9%	0%	27%	64%
		10%	10%	3%	24%	52%

10. To what extent do the tasks assigned to you relate to the maintenance of existing software systems?
(Please check one)

	None or almost none	Less than half	About half	More than half	All or almost all	Totals
Computer Associates	1	5	4	2	1	13
InterImage	3	1	0	1	0	5
Total contract employees	4	6	4	3	1	18
Government	0	5	3	2	1	11
Total	4	11	7	5	2	29
		8%	38%	31%	15%	8%
		60%	20%	0%	20%	0%
		22%	33%	22%	17%	6%
		0%	45%	27%	18%	9%
		14%	38%	24%	17%	7%

11. To what extent do the tasks assigned to you unrelated to software development and/or the maintenance of information technology systems? (Please check one)

	None or almost none	Less than half	About half	More than half	All or almost all	Totals
Computer Associates	11	1	0	0	1	13
InterImage	3	1	0	1	0	5
Total contract employees	14	2	0	1	1	18
Government	9	2	0	0	0	11
Total	23	4	0	1	1	29
		85%	8%	0%	0%	8%
		60%	20%	0%	20%	0%
		78%	11%	0%	6%	6%
		82%	18%	0%	0%	0%
		79%	14%	0%	3%	3%

12. To what extent do the tasks assigned to you relate to skills that are normally associated with your job position/labor category? (Please check one)

	None or almost none	Less than half	About half	More than half	All or almost all	Totals
Computer Associates	0	0	0	2	11	13
InterImage	0	0	0	0	5	5
Total contract employees	0	0	0	2	16	18
Government	0	0	0	5	6	11
Total	0	0	0	7	22	29
		0%	0%	0%	15%	85%
		0%	0%	0%	0%	100%
		0%	0%	0%	11%	89%
		0%	0%	0%	45%	55%
		0%	0%	24%	76%	76%

13.a. **FOR CONTRACTOR EMPLOYEES** To what extent do your work tasks differ from those assigned to Government employees in the Software Development Branch? (Please check one)

	None or almost none	Less than half	About half	More than half	All or almost all	Totals
Computer Associates	<input type="checkbox"/> 5 38%	<input type="checkbox"/> 2 15%	<input type="checkbox"/> 1 8%	<input type="checkbox"/> 2 15%	<input type="checkbox"/> 3 23%	13
InterImage	<input type="checkbox"/> 1 20%	<input type="checkbox"/> 0 0%	<input type="checkbox"/> 1 20%	<input type="checkbox"/> 2 40%	<input type="checkbox"/> 1 20%	5
Total contract employees	<input type="checkbox"/> 6 33%	<input type="checkbox"/> 2 11%	<input type="checkbox"/> 2 11%	<input type="checkbox"/> 4 22%	<input type="checkbox"/> 4 22%	18

13.b. **FOR GOVERNMENT EMPLOYEES** To what extent do your work tasks differ from those assigned to contractor employees in the Software Development Branch? (Please check one)

	None or almost none	Less than half	About half	More than half	All or almost all	Total
Government	<input type="checkbox"/> 2 20%	<input type="checkbox"/> 2 20%	<input type="checkbox"/> 3 30%	<input type="checkbox"/> 0 0%	<input type="checkbox"/> 3 30%	10 (one did not know)

14.a. In the table below, please estimate the percent of your work hours spent for each type of task you worked on in the Software Development Branch since October 1, 2001. (Should total about 100%)

14.b. For each type of task you worked on, to what extent were you provided a clear understanding of the work assigned to you?

Computer Associates Responses

	14.a. Extent worked upon					14.b. Guidance		
	0-20%	21-40%	41-60%	61-80%	81-100%	None	Some	Clear
MMS Dev	1	2						3
MMS Maint	1	3						4
OSCAR update		2						2
OSCAR maint		2						2
LANDOC/Doc Mgmt dev	1	2	1					4
LANDOC/Doc Mgmt maint	1	3						4
Premerger/DOJ Clear. dev	2	1				1	2	2
Premerger/DOJ Clear. Maint.	2	1				1	2	2
Identity Theft/CIS dev.	2	3				1	4	4
Identity Theft/CIS maint.	3	2				1	4	4
CIS, Consumer Sentinel Dev.	2	3	2	1		1	7	7
CIS, Consumer Sentinel Maint.	2	4					6	6
MIR and Bus. Intel. Dev.	2	1				1	2	2
MIR and Bus. Intel. Maint.	2	3				1	4	4
Do Not Call Dev.	5						5	5
Do Not Call Maint.	4		1				5	5
FTCWISE/Data Whsng Dev.								
FTCWISE/Data Whsng Maint								
Applications Maintenance	4	2				1	5	5
Appl Dev, Test, and Dplmt	2	1					3	3
Admin/STAFFID Dev	2						2	2
Admin/STAFFID Maint.	3					1	2	2
Training/TRES Dev.	1						1	1
Training/TRES Maint.	2						2	2
STAR Dev.		1					1	1
STAR Maint.	1	1					2	2
Software Dev. Br. Admin	1	1					2	2
Software Dev. Br. Planning	2		1				3	3
Software Dev. Br. Mgmt	2						2	2
Other (please specify)								
Totals	50	38	5	1	0	0	9	85
	53%	40%	5%	1%	0%	0%	10%	90%

InterImage Responses

	14.a. Extent worked upon				14.b. Guidance			
	0-20%	21-40%	41-60%	61-80%	81-100%	None	Some	Clear
MMS Dev	1							3
MMS Maint		1						1
OSCAR update	1							1
OSCAR maint	1							1
LANDOC/Doc Mgmt dev								
LANDOC/Doc Mgmt maint								
Premrger/DOJ Clear. dev								
Premrger/DOJ Clear. Maint.								
Identity Theft/CIS dev.		1						1
Identity Theft/CIS maint.		1						1
CIS, Consumer Sentinel Dev.		1						1
CIS, Consumer Sentinel Maint.		1						1
MIR and Bus. Intel. Dev.								
MIR and Bus. Intel. Maint.	1							1
Do Not Call Dev.	1							1
Do Not Call Maint.								
FTCWISE/Data Whsng Dev.	1							1
FTCWISE/Data Whsng Maint	1							1
Applications Maintenance								
Appl Dev, Test, and Dplmt			1					1
Admin/STAFFID Dev.								
Admin/STAFFID Maint.								
Training/TRES Dev.	1							1
Training/TRES Maint.								
STAR Dev.								
STAR Maint.	1							1
Software Dev. Br. Admin								
Software Dev. Br. Planning								
Software Dev. Br. Mgmt								
Other (please specify)								
Totals	9	6	0	0	3	0	0	18
	50%	33%	0%	0%	17%	0%	0%	100%

SUPERVISION

15. To what extent are you supervised by a contractor program manager or another contract employee?
(Please check one)

	None or almost none	Less than half	About half	More than half	All or almost all	Totals
Computer Associates	3	23%	0	0%	2	38%
InterImage	3	60%	1	0%	1	5
Total contract employees	6	33%	1	11%	3	18
Government	11	100%	0	0%	0	11
Total	17	59%	1	7%	3	29

16. To what extent are you supervised by a Government employee?
(Please check one)

	None or almost none	Less than half	About half	More than half	All or almost all	Totals
Computer Associates	3	23%	2	0%	2	13
InterImage	2	40%	1	0%	0	5
Total contract employees	5	28%	3	0%	2	18
Government	1	9%	2	9%	7	11
Total	6	21%	5	3%	2	29

17. Who authorizes your work schedules? (Please check one)

	CA limage	Total
Contractor Project Manager	5	5
Other Contract employee	0	0
Please specify _____	8	11
Software Development Branch Head*	3	10
Other Government employee	0	2
Please specify _____	2	1

*Some contractor employees noted that this is with the concurrence of the Contractor Project Manager.

18. Who authorizes your vacations? (Please check one)

	CA Image	Total cntr.	Govt
Contractor Project Manager <input type="checkbox"/>	8	1	9
Other Contract employee <input type="checkbox"/>	0	0	0
Please specify _____	5	2	7
Software Development Branch Head*	0	2	10
Other Government employee <input type="checkbox"/>	0	2	2
Please specify _____			

*Some contractor employees noted that this is with the concurrence of the Contractor Project Manager.

19. Who authorizes your sick leave? (Please check one)

	CA Image	Total cntr.	Govt
Contractor Project Manager <input type="checkbox"/>	9	3	12
Other Contract employee <input type="checkbox"/>	0	0	0
Please specify _____	4	0	4
Software Development Branch Head*	0	1	10
Other Government employee <input type="checkbox"/>	0	1	1
Please specify _____			

*Some contractor employees noted that this is with the concurrence of the Contractor Project Manager.

20. Who provides your job assessment ratings? (Please check one)

	CA Image	Total cntr.	Govt
Contractor Project Manager <input type="checkbox"/>	10	4	14
Other Contract employee <input type="checkbox"/>	0	0	0
Please specify _____	3	0	3
Software Development Branch Head*	0	0	10
Other Government employee <input type="checkbox"/>	0	0	1
Please specify _____			

*Some contractor employees noted that the SDB Head provides input to the Contractor Project Manager.

21. Please provide any additional comments that you may have about your work assignments and/or the contractors' work in the Software Development Branch.

THANKS FOR YOUR HELP!