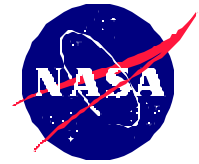


National Aeronautics and
Space Administration

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



Reply to Attn of: W

December 27, 2000

TO: A/Administrator

FROM: W/Inspector General

SUBJECT: Assessment of Agencywide Use of Support Service Contractors at NASA,
G-00-016

The Office of Inspector General reviewed NASA's use of support service contractors. Based on our review, we found that NASA should institute several Agencywide policy changes to ensure appropriate differentiation between civil servants and support service contractors.¹

NASA relies heavily on contractors to achieve its mission. Pressure for Government agencies to increase their outsourcing requirements is on the rise. Nevertheless, Federal regulations and legislation continue to place constraints on the types of services that can be obtained through contracted sources. Performance by contractors of personal services and/or inherently governmental functions continues to be prohibited. NASA needs to balance the two seemingly conflicting goals of increased outsourcing while still complying with existing regulations. This balance is best achieved by establishing adequate separation of the functions performed by civil servants and contractors.

Concerns related to maintaining proper separation between contractor and civil servant functions at NASA date back to the 1960's. We recommended that NASA provide better guidance to clearly distinguish between contractors and civil servants. We also recommended that NASA Centers periodically familiarize their workforces regarding appropriate communications and interactions between civil servants and contractors.

NASA Centers increasingly rely on contractors to perform general administrative support services. Due to the integral nature of this type of work (i.e., sorting mail, typing, taking notes, entering timecards, making copies, answering phones, filing, etc.) the potential for contractors to perform personal services is relatively high. Unless care is taken, civil servants can exercise relatively continuous supervision or control over contractor personnel performing general administrative services when they are co-located with civil

¹ For the purposes of this report, the term *contractors* includes support service contractors, grantees, and other non-civil servants funded under NASA contracts, grants or cooperative agreements.

servants. Because of the way in which some of these support service contracts are administered, we believe that they may violate the intent of several Government regulations. As a result, we suggested that the Agency take steps to ensure that NASA Centers are administering their contracts for general administrative services in an appropriate manner. We recommended that both the Office of Human Resources and Education and the Office of Procurement include administrative reviews of these specific service contracts as part of their self-assessment processes. These reviews are necessary to ensure that NASA complies with Government regulations related to the services in question.

NASA management concurred with all six of our recommendations (See Appendix C of the report).

Original Signed by David M. Cushing for Ms. Gross, December 27, 2000

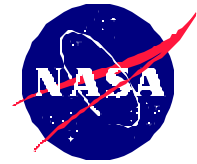
Roberta L. Gross

Enclosure:

Agencywide Use of Support Service Contractors at NASA, G-00-016

National Aeronautics and
Space Administration

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



Reply to Attn of: **W**

December 27, 2000

TO: F/Associate Administrator for Human Resources and Education
H/Associate Administrator for Procurement

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

SUBJECT: Agencywide Use of Support Service Contractors at NASA, G-00-016

NASA relies heavily on contractors¹ to achieve its mission. Pressure for Government agencies to increase their outsourcing requirements is on the rise. Public Law 105-270, Federal Activities Inventory Reform Act of 1998 (the FAIR Act), is intended to compel Federal agencies to identify and make available as many opportunities as possible for outsourcing activities previously done by civil servants. In addition, earlier this year, the NASA Administrator announced a new initiative to hire a larger portion of nonpermanent employees through the use of such hiring mechanisms as term and temporary appointments and Intergovernmental Personnel Act assignments. This initiative is expected to result in the increased use of outside contractors, including temporary help services, experts, and consultants by the Agency.

Nevertheless, Federal regulations and legislation continue to place constraints on what types of services can be obtained through contracted sources.² Performance by contractors of personal services³ and/or inherently Governmental functions⁴ continues to

¹ For the purposes of this report, the term contractors includes support service contractors, grantees, and other non-civil servants funded under NASA contracts, grants or cooperative agreements.

² Appendix A contains a synopsis of legislation, regulations, and policies related to the appropriate use of contractors by the Government and the applicability of this guidance to NASA.

³ A personal service contract is a contract that creates an employer-employee relationship between the Government and the contractor's personnel. The Government is normally required to obtain employees by direct hire under competitive appointment or other procedures required by the civil service laws. Unless Congress specifically authorizes acquisition of the services by contract, obtaining personal services by contract rather than by direct hire circumvents those laws. NASA does not possess the authority to enter into personal service contracts. (Source: Federal Acquisition Regulation (FAR) 37.104, *Personal Services Contracts*.)

⁴ An inherently governmental function is a function so intimately related to the public interest as to mandate its performance by Government employees. Inherently governmental functions include those activities that require either the exercise of discretion in applying Government authority or making value judgments in making decisions for the Government. Governmental functions normally fall into two

be prohibited. NASA needs to properly balance the two seemingly conflicting goals of increased outsourcing and compliance with regulations. This balance is best achieved by establishing adequate separation of the functions performed by civil servants and contractors.

I. BACKGROUND

The National Aeronautics and Space Administration (NASA) Office of Inspector General (OIG) recently conducted assessments of how support service contractors are being used at NASA.⁵ Prior OIG audits also identified concerns over NASA's use of contractors.⁶ We found that NASA's use of on-site support service contractors could be improved by better distinguishing between the proper functions of civil servants and contractors. Agencywide training programs for both civil servants and on-site contractors would enhance understanding of appropriate interactions. We also determined that NASA's current approach to managing contracts for general administrative support services runs counter to the intent of several Federal regulations. We recommend that NASA institute several Agencywide policy changes to ensure appropriate differentiation between civil servants and contractors.

In the past, NASA has been cited for failing to maintain proper separation between the functions performed by contractors and civil servants. In 1967, the Civil Service Commission's Office of General Counsel issued the *Pallerzi* opinion—one of the earliest and most comprehensive efforts to define relationships between Federal and contractor employees. This opinion was issued in response to allegations that NASA was exploiting

categories: (1) the act of governing, namely, the discretionary exercise of Government authority; and (2) monetary transactions and entitlements. Contractors should not be hired to perform inherently governmental functions. (Source: FAR Part 7.5 and OFPP Letter 92-1, *Inherently Governmental Functions*.)

⁵ Office of Federal Procurement Policy (OFPP) Letter 93-1, *Management Oversight of Service Contracting*, encourages Inspectors General to conduct assessments of agencies' use of support service contractors. This report addresses our findings and recommendations regarding the Agencywide use of support service contractors. The other assessment, *Use of Support Service Contractors at the Glenn Research Center (Glenn)*, (G-99-017), focuses on a single NASA Center and is addressed to that Center's management. This report will be issued shortly. In this report we made several recommendations related to Glenn's practices of co-locating civil servants with contractors, rehiring of retired civil servants as contractors, and using contractors to perform general administrative support services.

⁶ Previous OIG audits examining NASA's use of contractors include: *Review of Selected Aspects of Contractor Labor Provided to Space Station*, dated February 21, 1990; *Final Report on Labor Floorchecks of On-site Contractor Employees*, (A-GO-90-006), March 23, 1992; *Contract for Technical Support Services at Langley*, (LA-93-003); and *Moving Support Service Contractors On-Center at Langley*, (LA-96-001 and LA-96-004), March 13, 1996, and July 25, 1996.

its contracting authority to acquire *de facto* employees.⁷ FAR Part 37.104, *Personal Services Contracts*, derives from the *Pallerzi* opinion and identifies the same well-established criteria to determine whether a contract constitutes personal services.

OPM conducts oversight reviews of NASA personnel management every 3 years. The most recent OPM review was issued in January 1998.⁸ This review addressed prevention of personal services contracting at NASA. OPM's overall findings regarding use of contractors for personal services were positive, but the review only focused on whether NASA management officials had instituted appropriate policies and procedures. OPM did not determine through individual case reviews whether NASA actually maintains appropriate working relationships with its contractors.

NASA periodically performs internal reviews or self-assessments to address compliance with policies related to the use of support service contractors. Between 1991 and 1994, NASA used *Pallerzi*-like criteria to review the Agency's working relationships with its contractors. As a result of this review, NASA concluded that as many as 4,000 contractor employees were performing work that should be performed by Federal employees. In response to these findings, NASA terminated some existing contracts and redirected the work being performed to Agency employees.⁹

II. GENERAL USE OF ON-SITE SUPPORT SERVICE CONTRACTORS

A. Distinguishing Between Civil Servants and Contractors Can Be Improved

NASA Policy Directive (NPD) 3310.1, *Distinguishing between Contractor and Civil Service Functions*, is the primary Agencywide policy regarding personal services and inherently Governmental contracting. The NPD states the following:

⁷ The Civil Service Commission, predecessor to the Office of Personnel Management (OPM), found that contracts at the Goddard Space Flight Center (Goddard) were in violation of Government personnel laws. The contracts in question were described as cost-plus-award fee contracts for scientific, engineering, design, and fabrication services to be provided on site at Goddard. The contracts called for a specified number of direct labor man years to be provided by the contractor with average monthly rates of effort specified. Key personnel, mainly contractor supervisors, were named in the contract and had to meet the approval of Goddard officials and could not be reassigned or transferred without permission of the Agency. The statement of work in the contracts was general in nature and the Agency ordered individual tasks to be performed by the contractor. The contractor employees worked on site as integral adjuncts of Goddard organizational units. Many had worked in the same jobs for a number of years even though they had changed contractors. (Source: Federal Personnel Manual Letter 300-8, *Contracting for Personal Services*, December 12, 1967.)

⁸ OPM visited six of NASA's ten sites: NASA Headquarters, Ames Research Center (Ames), Dryden Flight Research Center (Dryden), Goddard, Johnson Space Center (Johnson), and Marshall Space Flight Center (Marshall).

⁹ OPM *Report of an Oversight Review of the National Aeronautics and Space Administration*, January 1998.

Because contractor employees are co-located with NASA employees and support the same organization, proper contract administration is critical in situations in which an employer/employee relationship may develop because contractor employees are co-located with NASA employees and support the same organization.

The NPD, however, does not, as its title suggests, specify how the Agency should properly distinguish between civil servants and contractors. Moreover, several key policy documents that relate to this topic are not referenced in the NPD.¹⁰ We believe the Agency needs to revise the current NPD.

NASA Centers have developed various practices that serve to prevent the performance of personal services and inherently Governmental functions by contractors. These practices require individuals who work in a co-located¹¹ environment to be aware of one another's affiliation through the use of physical, visual, and verbal cues. Different colored security badges, special identifiers in telephone directories,¹² company identifiers on e-mail addresses¹³ and organization charts, and physically separate office spaces are all clear cues that can help to distinguish between civil servants and contractors. Despite the fact that many of these practices are standard at NASA Centers, NPD 3310.1 does not require such differentiation. Revising the NPD would better ensure Agency compliance with FAR Part 11.106.

¹⁰ The following documents are not referenced in NPD 3310.1: FAR Part 11.106, *Purchase Descriptions for Service Contracts*; Office of Management and Budget (OMB) Circular A-76, *Performance of Commercial Activities*; Public Law 105-270, *Federal Activities Inventory Reform Act of 1998 (the FAIR Act)*; Title 5, Code of Federal Regulations, Sections 300-501, *et seq.*, *Use of Private Sector Temporaries*; and Equal Employment Opportunity Commission (EEOC) Enforcement Guidance Notice No. 915.002, *Application of the Equal Employment Opportunity Laws to Contingent Workers Placed by Temporary Employment Agencies and Other Staffing Firms*. Appendix A contains a synopsis of the relevance of each of these regulations to service contracts.

¹¹ For the purposes of this report, the term co-located refers to situations where civil servants and contractors are sharing the same office space (sitting side by side) with little or no physical separation between them.

¹² Dryden takes this identification process one step further by requiring contractors to identify their company affiliations when answering the telephone.

¹³ The name of the company employing NASA contractors is routinely included in their employees' e-mail addresses unless the employee's e-mail system uses a NASA e-mail server. If a contractor's e-mail uses a NASA e-mail server, usually nothing distinguishes their e-mail address from that of a civil servant. Determining the affiliation of individuals who are assigned to a NASA e-mail server requires looking them up in the telephone directory or the X.500 service. One way to access the NASA X.500 service is through the NASA Headquarters home page at <http://www.hq.nasa.gov>. The name of a person's employer is usually included as part of the information provided in the database.

FAR Part 11.106, *Purchase Descriptions for Service Contracts*, states the following:

[P]urchase descriptions shall require proper identification of contractor personnel who attend meetings, answer Government telephones, or work in situations where their actions could be construed as acts of Government officials unless, in the judgement of the Agency, no harm can come from failing to identify themselves....

Whenever an agency uses on-site support service contractors, they must take care to abide by this FAR requirement. However, these issues are not normally considered to be part of the procurement planning process at NASA. NASA statements of work do not normally contain requirements that contractors identify themselves when they perform functions that could be construed as acts of Government officials. Procurement personnel we talked to stated that they usually discuss such issues with contractors after they award the contract. Such discussions typically occur as part of post-award conferences, during meetings attended by contractors, or as other issues arise over the life of the contract.

Various documents at NASA Centers address the use of on-site support service contractors. The most thorough official Center policy we identified was Johnson Management Instruction 5151.5B, *Management of Support Contractors* (see Appendix B). Another useful reference document was recently developed at Dryden. This document compares and contrasts appropriate and inappropriate actions for civil servants interacting with contractors. Dryden's reference guide is shown below:

Activity	Appropriate Actions by Civil Service Employees	Inappropriate Actions by Civil Service Employees
1. Scope of Work (SOW) to be Performed	Direction must be provided by detailed specification in the contract's statement of work, delivery order, or task order.	Expand, or otherwise change, individual contractor assignments beyond duties assigned via contractor management/supervisor, in accordance with SOW.
2. Performance Monitoring	Recognize that management and inspections of work are performed by the contractor's management/supervisors and that any performance issues must be resolved through COTR's ¹⁴ or task monitors.	Provide direct feedback on errors, changes, or consult directly with the contract employee in the evaluation of work products.

¹⁴ Contracting Officer's Technical Representative (COTR).

3. Employment Decisions	Recognize the contractor's management/supervisor has sole authority to hire, fire, establish hours of duty, grant and deny leave requests and reassign employees.	Interfere with, or influence the contractor's actions regarding individual workers. Permit employees of other contractors to so interfere or influence.
4. Location of Work Performance	Physically separate contractor personnel from civil service personnel.	Intermingle workstations to the point that a reasonable, casual observer cannot distinguish the civil servant from the contractor workers.
5. Technical Direction	Contract only for service requiring minimal technical direction from NASA personnel.	Train or instruct the contractor how to do the work, what forms to use, and what priority to place on assignments.

All NASA Centers use support service contractors to support their missions. NASA's Agencywide policies regarding the use of such contracts should be clear and applicable to all Centers. This can be accomplished by establishing Agencywide policies and procedures that require uniform approaches to distinguishing between civil servant and contractor functions.

Recommendation 1: The Office of Human Resources and Education should revise NPD 3310.1 to incorporate FAR Part 11.106, *Purchase Descriptions for Service Contracts*; Title 5, Code of Federal Regulations, Sections 300-501, *et seq.*, *Use of Private Sector Temporaries*; and Equal Employment Opportunity Commission (EEOC) Enforcement Guidance Notice No. 915.002, *Application of the Equal Employment Opportunity Laws to Contingent Workers Placed by Temporary Employment Agencies and Other Staffing Firms*.

Recommendation 2: The Office of Human Resources and Education and the Office of Procurement should work closely with other responsible Headquarters organizations to establish Agencywide policy regarding the need to clearly differentiate between civil servants and contractors.¹⁵

¹⁵ Several best practices that readily distinguish civil servants from contractors that are not uniformly used across the Agency include requiring contractors to state their company affiliation when answering the telephone on behalf of NASA, including company affiliation within e-mail addresses or as part of the signature portion of e-mail messages, including special identification of contractors on organization charts, and physically separating office space.

B. Uniform Training for Civil Servants and Contractors Can Be Efficiently Enhanced

NASA's team-oriented environment results in frequent interaction between civil servants and contractors. Training and guidance regarding proper interactions between civil servants and contractors can greatly increase both groups' understanding of their respective roles. However, Government-provided training generally targets a small audience of procurement professionals, COTR's, and their designees. Likewise, most contractors do not provide such training to the majority of their employees.¹⁶

Recommendation 3: The Office of Procurement should reiterate the requirements of FAR Part 11.106 with Contracting Officers and COTR's who develop purchase descriptions for service contracts.

III. SOME CENTERS ARE IMPROPERLY USING CONTRACTORS FOR GENERAL ADMINISTRATIVE SUPPORT SERVICES

General administrative support services consist of secretarial, clerical, and administrative office support personnel performing a wide range of functions in support of one person or a group of individuals.¹⁷ Unless extreme care is taken, civil servants often can exercise relatively continuous supervision or control over contractor general administrative support personnel, resulting in personal service contracting. At least two NASA Centers are using contractors to perform general administrative support in a manner that should be restricted to civil servants.

NASA is increasingly relying on contractors to perform general administrative support services. Prior to 1999, only Glenn and Dryden contracted for these types of services. However, last year, NASA's three largest Centers, Goddard Space Flight Center (Goddard), Johnson, and Marshall, established new contracts or purchase orders for continuous general administrative support services to supplement their civil servant clerical staff. Indications are that the day-to-day management of these contracts may be resulting in personal services contracting. Two recently completed reviews support this conclusion.

The Office of Procurement recently concluded their Procurement Survey of Johnson. This review included an assessment of Johnson's use of contractors providing

¹⁶ Of the four contracts we reviewed at Glenn, only one contractor provides formalized training to their employees regarding appropriate interactions between civil servants and contractors. Generally, the employees of this contractor were more aware of appropriate/inappropriate actions than were other contractor personnel we spoke with.

¹⁷ Service pools, which are set up to perform defined functions, are not included in the definition of general administrative support. Examples of service pools might include a typing pool, copy center, or clearly defined accounting, personnel, legal, or procurement clerical functions.

administrative and clerical support services. The Office of Procurement found that Johnson is administering its contract for general administrative support services in a manner that appears to match the criteria for personal services as defined by FAR 37.104(a). The report recommended that Johnson correct this situation by modifying the contract to include specific measures to prevent the perception or reality of Government supervision of contractor personnel.

OIG Report *Use of Support Service Contractors at the Glenn Research Center*, (G-99-017), found that the use of general and administrative support services at Glenn also appears to match the criteria for personal services.¹⁸ In addition, our report finds that the use of such services also runs counter to several other Government regulations. Glenn obtains the majority of its general and administrative support from contractors. Our report recommends several significant structural changes to the manner in which Glenn administers their contract for these services in order to prevent continued inappropriate use of these contract services.

FAR Part 37.104, Personal Services Contracts, lists descriptive elements to be used as a guide in assessing whether an effort is personal in nature.¹⁹ The elements are as follows:

FAR 37.104 Elements Suggesting Personal Services are Occurring
1. Performance on site.
2. Principal tools and equipment furnished by the Government.
3. Services are applied directly to the integral effort of the Agency or an organizational subpart in the furtherance of its assigned function or mission.
4. Comparable services, meeting comparable needs, are performed in the same or similar agencies using civil service personnel.
5. The need for the type of service provided can reasonably be expected to last beyond one year.
6. The inherent nature of the service, or the manner in which it is provided, reasonably requires directly or indirectly, Government direction or supervision of contractor employees in order to – (i) Adequately protect the Government’s interest; (ii) Retain control of the function involved; or (iii) Retain full personal responsibility for the function supported in a duly authorized Federal officer or employee.

Based on the recently completed reviews of both Johnson and Glenn, all of these elements are present in their contracts for general administrative support services. Moreover, indications are that the contracts for these services at Dryden, Goddard, and

¹⁸ This report will be released separately in the near future.

¹⁹ These six elements are the same elements used by the Comptroller General to determine whether a personal services relationship exists (Comptroller General Decision B-194970, *Manpower Temporary Services – Purchase Orders for Typing Services*, July 3, 1979). (Source: Memo entitled, *Avoiding Personal Services Contracts in Contracting for Clerical Services*, from Goddard Chief Counsel to Director of Human Resources, dated March 23, 1998.)

Marshall are being administered in a similar fashion. All these contracts by their nature are susceptible to personal service issues and therefore need to be properly structured in order to prevent or eliminate this possibility.

Office of Management and Budget (OMB) Circular A-76, *Performance of Commercial Activities*, is also an important reference point regarding the appropriateness of contracting for general administrative support. Circular A-76 contains a representative listing of functions that include examples of commercial activities considered to be acceptable for outsourcing (the list is not all inclusive, but contains many of the most frequently used types of services). Functions listed under the subsection entitled *Office and Administrative Services* are the most similar to the type of general administrative work being performed at NASA Centers.

Circular A-76 states that any of the listed services (e.g., library operations, stenographic recording and transcribing, word processing/data entry/typing services, mail/messenger, translation, etc.) are considered to be appropriate for the purposes of outsourcing. Due to the discrete nature of each service listed, they are normally performed as totally separate functions. None of the services listed in Circular A-76 is of a general nature. Each is a commercially available service, the operation of which is easily contracted out in its entirety. By contrast, the general administrative support being provided to various NASA Centers consists of multi-task, ongoing, co-located support that represents a combination of the types of functions listed in Circular A-76 (e.g., sorting mail, typing, taking notes, entering timecards, making copies, answering phones, etc.). By allowing these multiple functions of a general administrative nature to be performed by support contractors, NASA appears to be in violation of the intent of OMB Circular A-76.

Co-locating general administrative support contractors with civil servants on a continual basis also runs counter to the intent of the OPM regulations contained in Title 5, Code of Federal Regulations, Sections 300-501, et seq., *Use of Private Sector Temporaries*. This OPM regulation was established to prevent circumvention of controls on employment levels, to avoid personal service contracts, and to preclude the use of contractors for inherently Governmental functions. The regulation imposes a time limit of 120 workdays (an agency may extend this limit by an additional 120 workdays, if necessary) on the use of private sector temporaries. The type of services being provided under NASA's contracts for general administrative support services is the type of work intended to be subject to the restrictions of this regulation.²⁰ These functions should either be performed by civil servants or through the use of temporary service agencies. However, it may still be possible to obtain general administrative support through long-term support contracts. In order to correctly administer general administrative support contracts, OPM officials

²⁰ Other Government officials, both inside and outside NASA, in the fields of procurement, legal, and personnel, share our interpretation of the intent of this regulation. In particular, OPM officials in the Office of General Counsel and the Office of Staffing Reinvention, confirmed that continual use of co-located contractors performing multiple support tasks would violate the intent of this regulation.

recommend the use of service pools set up to perform specific functions such as those delineated in Circular A-76.²¹

The manner in which NASA Centers are managing these general administrative support services contracts may increase NASA's vulnerability to equal employment opportunity complaints. NASA issued implementing instructions based on recently issued EEOC guidance, *Application of the Equal Employment Opportunity Laws to Contingent Workers Place by Temporary Employment Agencies and Other Staffing Firms*. These implementing instructions state the following:

[E]mployees of NASA contractors, grantees, or other recipients of NASA financial assistance as well as individuals working at NASA through temporary staffing firms may, under certain circumstances, be able to pursue complaints of discrimination against the Agency and its officials. Whether or not a contingent worker will be able to pursue his or her complaint of discrimination through the Federal sector process will be dependent in many cases upon the extent to which NASA exercises supervisory control over the individual.²²

FAR Part 37.104, also identifies the exercise of supervision and control over contractor personnel by Government employees as being the key to whether a contract is personal services in nature. Therefore, this new EEOC guidance under certain circumstances, may pose an added potential liability for NASA and its supervisors or managers who are determined to control the means and manner of contractors' performance.

Not every NASA Center has chosen to supplement their general administrative support needs through contractors. Discussions with senior procurement officials at Ames, Kennedy Space Center (Kennedy), Langley Research Center (Langley), and Stennis Space Center (Stennis), indicated that they would be reluctant to obtain such services due to concerns that such contracts would be difficult to manage properly. Specifically mentioned was the likelihood that such contracts could easily create improper relationships between civil servants and contractor personnel. These concerns, coupled with recent findings on general and administrative support contracts at Glenn and Johnson, support the need for NASA Headquarters to review the appropriateness of such contractors across the Agency. The Office of Human Resources and Education and the Office of Procurement should review the use of these types of service contracts at

21

** Information omitted under authority of exemption (b)(5) of the Freedom of Information Act. **

²² Memorandum entitled, *Agency Implementing Instruction on Contingent Workers*, issued jointly by the NASA General Counsel and the Associate Administrator for Equal Opportunity Programs on August 31, 1999.

Dryden, Glenn, Goddard, Johnson and Marshall to determine whether the services being performed are appropriate for performance by contractors.

Recommendation 4: The Office of Human Resources and Education and the Office of Procurement should periodically (at least once every 2 years) request that NASA Centers familiarize their workforces regarding appropriate communications and interactions between contractors and civil servants. Widely accessible resources such as newsletters, web sites, and presentations could be used to facilitate dissemination of this information.

Recommendation 5: The Office of Human Resources and Education, as part of their Technical Assistance Visits, should specifically assess the appropriateness and necessity of any general administrative support being provided to NASA Centers. Where problems exist, the Office of Human Resources and Education should work with individual centers to correct any problems to ensure that there is no appearance of personal services or violation of OPM regulations in the operation of these contracts.²³

Recommendation 6: As part of its self-assessment process, the NASA Office of Procurement should determine whether NASA Centers are properly structuring and administering their contracts for general administrative support to avoid personal services.

IV. SUMMARY AND EVALUATION OF NASA MANAGEMENT RESPONSE

We received NASA Management's response to the draft report on December 15, 2000 (See Appendix C). NASA concurred with all six recommendations and provided corrective action implementation plans for each. These planned actions are responsive and we will follow-up on Agency corrective actions to our recommendations in the future.

V. CONCLUSION

The findings outlined in this report focus on concerns related to the Agencywide use of support service contractors at NASA. We believe the recommendations contained in this report will help resolve problems related to the use of support service contractors across the Agency.

[Original signed by]

David M. Cushing

²³ Corrective action may include modifying the contract to establish the use of service pools for defined functions, limit the use of co-located general and administrative contractors to temporary critical needs for periods of no more than 120 continuous workdays (an additional 120 days may be permitted on an exception basis), and convert contracted positions to civil servant positions.

4 Enclosures:

Appendix A: Applicable Legislation, Regulation, and Policy Guidance

Appendix B: Johnson Space Center Management Instruction 5151.5B, *Management of Support Contractors*

Appendix C: NASA Management Response

Appendix D: Report Distribution

NASA Office of Inspector General Reader Survey

MAJOR CONTRIBUTORS TO THIS REPORT

Diane Frazier, Procurement Analyst (team leader)

Yolande Harden, Procurement Analyst

Joseph Kroener, Procurement Analyst

Donna Triplett, Editor

Appendix A

Applicable Legislation, Regulation, and Policy Guidance

APPLICABLE LEGISLATION, REGULATION AND POLICY GUIDANCE

- **Equal Employment Opportunity Commission (EEOC) Enforcement Guidance Notice No. 915.002, *Application of the Equal Employment Opportunity Laws to Contingent Workers Placed by Temporary Employment Agencies and Other Staffing Firms*.** This guidance has implications regarding the manner in which NASA administers its support service contracts. NASA's Implementation Instructions for this guidance points out the Agency's historic reliance on its contractor workforce, indicating that this dependence on contractors may leave the Agency vulnerable to increased EEO complaints by contractors and other contingent workers.
- **Federal Acquisition Regulation (FAR) Part 11.106, *Purchase Descriptions for Service Contracts*.** This FAR clause applies to the drafting of contract requirements, specifications, statements of work or other purchase descriptions. It is intended to ensure that when the requiring organization drafts their contracting requirements they do not assign or appear to assign inherently governmental functions to contractors. Towards that end, this clause states in part that purchase descriptions shall require proper identification of contractor personnel who attend meetings, answer government telephones, or work in situations where their actions could be construed as acts of Government officials unless, in the judgement of the agency, no harm can come from having contractors fail to identify themselves.
- **FAR Part 37.104, *Personal Services Contracts*.** Personal service contracts create an employer-employee relationship between the government and the contractor's personnel. The government is normally required to obtain its employees by direct hire under competitive appointment or other procedures required by the civil service laws. Unless Congress has specifically authorized acquisition of the services by contract, obtaining personal services by contract rather than by direct hire circumvents those laws. NASA has not been granted this authority. This section of the FAR also identifies the well-established criteria used to determine whether a contract constitutes personal services.
- **NASA Policy Directive (NPD) 3310.1A, *Distinguishing Between Contractor and Civil Service Functions*.** This NPD addresses some broad policy issues identified in some of the previously mentioned regulations, but does not provide any additional guidance related to NASA-specific issues related to distinguishing between contractors and civil servants.
- **Office of Federal Procurement Policy (OFPP) Policy Letter 92-1 and FAR Part 7.5, *Inherently Governmental Functions*.** These regulations establish Executive Branch policy relating to service contracting and inherently governmental functions. The purpose of these policies is to assist Executive Branch officers and employees in avoiding an unacceptable transfer of official responsibility to government contractors. An inherently governmental function is defined as a function so intimately related to the public interest as to mandate its performance by government employees. These functions include those activities that require either the exercise of discretion in applying government authority or the making of value judgments in making decisions for the government. Determining

whether a function is inherently governmental is often difficult. At NASA, transfer of official responsibility is most likely to occur when a contractor's involvement in Agency functions is so extensive or the work product is so far advanced toward completion, that the Agency's ability to develop or consider options other than those provided by the contractor is restricted.

- **OFPP Policy Letter 93-1, *Management Oversight of Service Contracting*.** This Policy Letter establishes Government-wide policy, assigns responsibilities, and provides guiding principles for Executive Departments and Agencies in managing the acquisition and use of services.
- **OMB Circular A-76, *Performance of Commercial Activities*.** This Circular establishes Federal policy regarding the performance of commercial activities and was recently amended to implement the statutory requirements of the Federal Activities Inventory Reform Act (see below). The policy, as stated in the Circular, is to: (a) achieve economy and enhance productivity, (b) retain governmental functions in-house, and (c) rely on the commercial sector. However, the Circular prohibits the conversion of functions from the government to a commercial contractor solely to avoid personnel ceilings or salary limitations. Attachment A of the Circular contains a representative listing of commercial activities that may be outsourced by the government. The functions in this list can be described as discrete and easily separable from the core functions of the organization being supported.
- **Public Law 105-270, *Federal Activities Inventory Reform Act of 1998 (the FAIR Act)*.** This legislation directs Agencies to develop inventories of their commercial activities and to conduct cost comparisons to determine whether a commercial activity that is performed by a government source should instead be performed by a private-sector source. The goals of this legislation are closely related to policies previously established under Office of Management and Budget (OMB) Circular A-76. The FAIR Act is intended to compel federal agencies to perform a more disciplined analysis of their needs for civil servants and contractors by functional area.
- **Title 5, Code of Federal Regulations, Section 300-501, *et seq.*, *Use of Private Sector Temporaries*.** OPM issued this regulation to recognize the Government's requirement for temporary services for "critical needs." This regulation partially lifted the ban on use of such services that had been imposed by the *Pallerzi* decision. Prior to the issuance of this regulation, such services were impermissible. In order to prevent the establishment of employer-employee relationships between government and contractor employees, the regulation establishes a limit of 120 continuous workdays (an additional 120-day extension is permitted on an exception basis). This 120-day limitation also serves to prevent the circumvention of civil service hiring restrictions.

Appendix B

**Johnson Space Center Management Instruction 5151.5B,
*Management of Support Contractors***

Responsible Office: BB

Subject: MANAGEMENT OF SUPPORT CONTRACTS

1. PURPOSE.

To provide guidelines and procedures for managing support contracts, including appropriate relationships, responsibilities of the personnel and offices involved, and the appropriate flow and content of communications.

2. APPLICABILITY.

a. This directive applies to contracts for services which require performance onsite or in proximity to JSC, including Ellington Field. Generally, these contracts fall into the following groups:

- (1) Contracts for engineering or scientific services directly supporting the Center.
- (2) Contracts for services in support of JSC's institutional programs. Typical services in this group include plant maintenance and operations; security; safety, reliability, and quality assurance; aircraft maintenance and modification; technical information; public affairs support; computational services; and custodial support.

*b. This directive does not apply to the contractor performance evaluation process which is covered in JMI 5150.7, "Performance Evaluation and Notification Procedures for Award Fee Contracts." That process is separate and distinct from the support contract management process. It is recognized, however, that at JSC both processes may be performed simultaneously--in many cases, by the same personnel. These parallel activities can sometimes overlap and be used for the same purposes, such as assessing a contractor's performance; however, it is important to note that the performance evaluation process is not designed to work as a substitute for the exercise of contractual remedies that may be applicable as a part of the contract management process (such remedies might include, for example, default determination of a contract or a disallowance of costs incurred by a contractor). Accordingly, the Contracting Officer's Technical Representative (COTR) should promptly report to the Contracting Officer (CO) any substantive problems relating to the contractor's performance, even though it may be anticipated that such problems will be

covered in the contractor's performance evaluation. For the purpose of this directive, the contract management and performance evaluation processes are defined as follows:

- (1) Contract Management. Process by which the Government ensures that the contractor receives appropriate work assignments and direction and performs the work required by the contract in a manner consistent with its terms and conditions. Contract management includes an assessment of the contractor's performance for the purpose of determining whether it conforms to contract requirements.
- * (2) Contractor Performance Evaluation. Process by which the Government determines the quality, timeliness, efficiency, and economy of work performed by the contractor as a means of determining the amount of award fee the contractor has earned for that performance.

3. POLICY.

- a. This Center will comply fully with that provision of Office of Management and Budget (OMB) Circular A-76, "Performance of Commercial Activities," paragraph 7c(5), which prohibits an employer-employee relationship between the Government and individual contractors. Government employees must avoid even the appearance of supervision of contractor employees. Contractor personnel may not be required or requested to report, in the sense of being accountable for their presence or their actions, to Government personnel. The accountability of individual contractor employees is to their supervisor. Specific task assignments, if required, should only be given by Government personnel to the contractor's designated manager/supervisor in accordance with applicable contract provisions. Personnel actions relating to contractor employees (hiring, firing, etc.) are the responsibility and prerogative of the contractor. Government personnel shall not attempt to influence such actions except in exigent situations where a failure to do so might result in an unreasonable risk to important Governmental or public interests.
- b. The greatest possible and practical separation of contractor personnel from Government personnel should be maintained, consistent with operational requirements and efficiency. The order of preference in this is as follows:
 - (1) No onsite work; all work at the contractor's offsite facility.
 - (2) Work performed onsite, but with complete

separation of work areas.

- (3) Work performed onsite in the same general work areas, with a discernible separation.
 - (4) Work performed onsite in the same general work area with no discernible separation. (While the nature of some work may require this last and least desirable situation, the dangers inherent in this arrangement should be obvious.)
- c. Contractor personnel performing work onsite must always be clearly distinguishable from Government personnel. The means of identification must be reasonable and appropriate, but clear and always observable.
 - *d. All contractual direction and technical direction will be issued in writing by the CO and/or COTR to a corresponding level of the contractor's management having responsibility for implementing the direction.

4. RESPONSIBILITIES OF DESIGNATED PERSONNEL.

- a. The Director of Procurement (also the JSC Procurement Officer) initiates JSC policy as required to ensure efficient, effective, and authorized procurement practices and serves as the Center's point of coordination for procurement matters of substance.
- b. The CO is appointed by the Procurement Officer to negotiate, execute, amend, and administer contracts, and to issue directions and changes under the contract. Primary duties include:
 - (1) Participating in contract resources and contract requirements management planning.
 - (2) Taking necessary action to enter into a contract in response to a purchase request, after fully coordinating with all concerned Government elements.
 - (3) Administering all terms and conditions of the contract to ensure that the contractor is fulfilling its total obligations and that all Government obligations are met in a timely manner.
 - (4) Delegating appropriate authorities and responsibilities in writing to designated representatives outside the Procurement organization, to manage the contract effectively, and coordinating those delegated powers to ensure that JSC presents a single position to the contractor through the CO.
 - (5) Ensuring compliance with all pertinent laws,

executive orders, directives, regulations, and policies in the placement and administration of assigned contracts.

- c. The COTR is a Government employee, assigned to the major cognizant element, who has been designated by line management and appointed by the CO to monitor the contractor's technical effort within the scope of the contract. Responsibilities and authorities of the COTR may include:
- (1) Monitoring contractor's performance and reporting any problems to the CO.
 - (2) Ensuring, in conjunction with the CO, adequate planning and coordination of proposed statements of work.
 - (3) Initiating purchase requests and supporting documentation, and initiating action as necessary to ensure contract modifications to fulfill technical requirements.
 - (4) Resolving technical problems in conjunction with the contractor's manager(s) and elements of other organizations, as required to fully facilitate contractor performance.
 - (5) Collecting, consolidating, and coordinating contract resources budget requirements (funds, materials, work resources).
 - (6) Monitoring the contractor's effective and efficient use of work resources (including overtime utilization) and Government-owned equipment. Assuring that the contractor uses the caliber of personnel required by the terms of the contract.
 - (7) Approving and issuing such technical direction as may be required and authorized by the contract.
 - (8) Monitoring the contractor's performance to ensure compliance with the technical requirements of the contract work statement and advising the CO of any incidents of noncompliance.
 - (9) Providing the contractor with such technical data and information as the contract may require that the Government furnish.
 - (10) Ensuring that the contractor is provided the equipment, material, and physical space which the contract requires to be furnished by the Government, including base support in accordance with the contract Support Agreement and JHB 5151, "JSC Support Contractor Handbook," and

coordinating with other organizations as required.

- (11) Exercising fiscal responsibilities regarding performance of contracts and managing the work in conformance with established budget(s).

5. INTERFACES.

- a. General. Interfaces between Government and contractor personnel must follow specified lines. All formal interfaces must be with the contractor's appropriate manager/supervisor, never with an employee performing a specific task, except when required by law or regulation (e.g., interviewing individual employees regarding actual payment of wage rates, as required by the Davis-Bacon Act for construction contracts).
- b. The CO normally deals directly with the contractor's management personnel, as appropriate, in conducting normal contract administration activities. When it is necessary to deal directly with personnel in specific functional areas of the contractor's organization to carry out required contract administration activities, such dealings will be conducted with the coordination and consent of the cognizant contractor management/supervisory personnel.
- c. The COTR normally deals with the contractor's top-level technical management/supervisory personnel, but may interface at the next level of management/supervision, depending on the nature of his/her assigned responsibilities.

6. COMMUNICATIONS. Communications between the Government and support contractors are categorized as "contractual direction," "technical direction," or "informal correspondence."

- a. Contractual Direction is direction which is given to a contractor unilaterally by the CO pursuant to the "Changes" clause or other enabling provisions of the contract. Contract direction, as contemplated by this directive, normally creates a right on the part of the contractor to an adjustment in estimated cost and fee (or price), schedule, or other contract terms and conditions, to the extent any of these are affected by the direction given. By regulation, change orders and most other contractual direction are required to be in writing and can only be executed by a CO. No contractual direction should be issued to the contractor without prior review of cost and schedule impact, funding status, effect on interfaces (if applicable), and other appropriate technical considerations.
- b. Technical Direction is defined as Government direction to the contractor which fills in details, suggests

possible lines of inquiry, or otherwise more specifically defines work set forth in the contract. Technical direction to be valid:

- (1) Must be issued in writing consistent with the general scope of the work set forth in the contract.
- (2) May not modify the Statement of Work or change the expressed terms and conditions of the contract.
- (3) Shall not commit the Government to any adjustment of the estimated cost, fee, or other contract provisions.

*Technical direction may be signed by the CO or the COTR if specifically authorized in the appointment delegation. When technical direction is not signed by the CO, a copy of the direction will be furnished to the CO concurrently with distribution to the contractor.

- c. Informal Correspondence is defined as exchange of information or administrative instructions relative to the work required under the contract. Informal correspondence may be initiated by the CO, COTR, or a JSC element having a programmatic or operational interest in the contract mission. Copies of informal correspondence not signed by the CO shall be furnished to the CO. A copy of all correspondence received from the contractor by the COTR will be forwarded to the CO if that individual is not on distribution. The necessity for verbal exchanges is recognized; however, all substantive verbal communications shall be confirmed in writing within 24 hours.

7. RESCISSION. JMI 5151.5A, 9/30/88.

*Denotes change.

Approved by:
W. R. Kelly
Director, Administration

Appendix C

NASA Management Response

National Aeronautics and
Space Administration
Headquarters
Washington, DC 20546-0001



DEC 15 2000

Reply to Attn of:

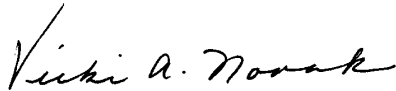
FM

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

FROM: F/Associate Administrator for
Human Resources and Education

SUBJECT: Agencywide Use of Support Service Contractors at NASA,
G-00-016, Draft Report

Enclosed is the combined Code F and Code H response to the recommendations of the draft report. We have concurred with all of the recommendations and have included a brief description of our plan for implementing them.


Vicki A. Novak

Enclosures

**Response to Draft Report Recommendations for
Agencywide Use of Support Service Contractors at NASA , G-00-016**

Recommendation 1:

The Office of Human Resources and Education should revise NPD 3310.1 to incorporate FAR Part 11.106, *Purchase Descriptions for Service Contracts*; Title 5, Code of Federal Regulations, Sections 300-501, *et seq.*, *Use of Private Sector Temporaries*; and Equal Employment Opportunity Commission (EEOC) Enforcement Guidance Notice No. 915.002, *Application of the Equal Employment Opportunity Laws to Contingent Workers Placed by Temporary Employment Agencies and Other Staffing Firms*.

Concur: The Office of Human Resources and Education (Code F) will initiate a change to NPD 3310.1 to include the above references. In addition, Code F will add the phrase "differentiating contractor personnel by use of different colored badges, special identifiers in telephone directories, or company identifiers on e-mail addresses" to the list of examples of control measures in paragraph 1.b. of the NPD.

Recommendation 2:

The Office of Human Resources and Education and the Office of Procurement (Code H) should work closely with other responsible Headquarters organizations to establish Agencywide policy regarding the need to clearly differentiate between civil servants and contractors.¹

Concur: Although, the Office of Human Resources and Education (Code F) and the Office of Procurement (Code H) have no functional responsibility for telephone answering requirements or for e-mail addressing formats, Code F and Code H will ensure that the cognizant functional offices receive copies of this IG report and will request that they address those issues under their responsibility relating to the policy requirement "to ensure that reasonable identification of contractors and contractor work products is made whenever there is a risk that the public, Congress, or other persons outside of the Government might confuse them with Government officials or with Government work products, respectively." We will also refer to the examples for distinguishing contractor personnel as mentioned in response to recommendation 1 above.

¹ Several best practices that readily distinguish civil servants from contractors that are not uniformly used across the Agency include requiring contractors to state their company affiliation when answering the telephone on behalf of NASA, including company affiliation within e-mail addresses or as part of the signature portion of e-mail messages, including special identification of contractors on organization charts, and physically separating office space.

Recommendation 3:

The Office of Procurement should reiterate the requirements of FAR Part 11.106 with Contracting Officers and COTR's who develop purchase descriptions for service contracts.

Concur: Code H will reiterate the requirements of FAR Part 11.106 through the Code H Homepage or other means of communication to all Center Procurement Offices.

Recommendation 4:

The Office of Human Resources and Education and the Office of Procurement should periodically (at least once every 2 years) request that NASA Centers familiarize their workforces regarding appropriate communications and interactions between contractors and civil servants. Widely accessible resources such as newsletters, web sites, and presentations could be used to facilitate dissemination of this information.

Concur: The Office of Human Resources and Education and the Office of Procurement will biannually re-iterate the issues of their February 23, 2000 (enclosure), joint letter discussing the use of contractor support and the proper relationship between contractors and civil servants. In doing this, they will also emphasize the need to pass this information to the civil service workforce that interacts with contractor personnel. The February 23, 2000, memo addresses the problem of improper employer/employee relationships when using contractor support and offers four steps that starts with the initial contract scope, stresses the need for making proper contacts with contractor employees, emphasizes that the contractor should supervise his/her contract employees and emphasizes that NASA managers and supervisors who interact regularly with contractor employees should receive training and periodic re-education on their relationship with support contractors.

Recommendation 5:

The Office of Human Resources and Education, as part of their Technical Assistance Visits, should specifically assess the appropriateness and necessity of any general administrative support being provided to NASA Centers. Where problems exist, the Office of Human Resources and Education should work with individual centers to correct any problems to ensure that there is no appearance of personal services or violation of OPM regulations in the operation of these contracts.²

² Corrective action may include modifying the contract to establish the use of service pools for defined functions, limit the use of co-located general and administrative contractors to temporary critical needs for periods of no more than 120 continuous workdays (an additional 120 days may be permitted on an exception basis), and convert contracted positions to civil servant positions.

Concur: The Office of Human Resources and Education and the Office of Procurement will jointly recommend to Centers that support service contracts for general administrative support be reviewed in accordance with Center self-assessment activities. The Office of Human Resources and Education will include this topic as an Agency Self-Assessment Program requirement that will be used during Technical Assistance Visits.

Recommendation 6:

As part of its self-assessment process, the NASA Office of Procurement should determine whether NASA Centers are properly structuring and administering their contracts for general administrative support to avoid personal services.

Concur: The Office of Procurement Survey Team is now including in their reviews the area of “Contracts for Administrative or Office Support – Personal Services”. Since this is now a regular part of the Code H survey process we consider this recommendation closed

National Aeronautics and
Space Administration
Headquarters
Washington, DC 20546-0001



Reply to Attn of

FPP

FEB 23 2000

TO: NASA Centers
Attn: Personnel Director
Procurement Officer

FROM: FP/Director, Personnel Division
HC/Director, Analysis Division

SUBJECT: Use of Contractor Support

Years of downsizing combined with the 1998 Federal Activities Inventory Reform Act (FAIR) has encouraged NASA to look outside the Agency for performance of certain functions. Use of contractor support has enabled NASA to focus its limited FTE on core technical competencies while maintaining critical administrative support. Although use of contractor support provides an innovative staffing solution, it is critical that managers/supervisors understand how to properly define and manage the Agency-contractor relationship.

Federal contracting law and regulation prohibit contracting for 'personal services'. This is characterized by the existence of an employer/employee relationship. The central criterion in determining whether such a relationship exists is generally related to the nature of supervision. Simply stated, if a contractor employee is supervised by a Federal employee, a personal services relationship exists. Although this may not have been intended, co-location with the government staff and broad, non-specific contract language can easily lead to the appearance of such a relationship.

In determining whether an improper relationship exists, you should consider the various elements of supervision including assigning work, evaluating performance, giving instructions, providing training, making personnel selections, and controlling time and attendance. One must not focus on any single element or behavior, but rather on the whole relationship. Generally, when it becomes difficult to distinguish between the contract employee and Federal employee in the work setting, an employer/employee relationship may be construed.

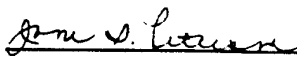
Personal services contracts leave the Agency vulnerable in other areas. For example, if a personal services relationship exists, the contract employee could be entitled to use of the Federal employment discrimination complaints process. On August 31, 1999, NASA's Equal Opportunity Programs Office and Office of General

Counsel issued a joint letter to NASA Centers (enclosed) advising on how to identify improper relationships and how to address worker complaints received from contractor employees. Because of the Government liability that can result, it is increasingly important that NASA Centers understand the current contractor/employer relationships within their Centers, and take steps to ensure that their Federal managers and supervisors understand how to properly work with contractor employees.

The use of contractor support is a valuable tool for NASA. In order to maximize the use of the authority, we must be prepared to properly manage it. The most effective way to reduce the risk of establishing a personal services relationship is to form a physical separation between the contract employees and Federal workforce. In administrative support positions, this is often accomplished through a pooling arrangement. However, recognizing that proximity is often needed to ensure efficiency, a number of steps should be taken to reduce the vulnerability if the Federal employees and contract employees must remain in close physical proximity.

1. Start with the contract. Ensure that the contract clearly specifies expected tasks and work products.
2. Use the contract as your guide. Limit work assignments provided directly to the contractor employee to those specifically addressed in the contract. Provide all other requests on a work order through the contracting officer.
3. Engage the contractor employee's supervisor. Ensure that the contractor employee's supervisor makes regular contact with their employees and is responsible for all performance, discipline, training, and work assignments not specifically addressed in the contract.
4. Train and re-educate. Provide training and periodic re-education to supervisors and managers who interact regularly with contractor employees in the workplace or manage contract work.

We encourage you to review your current contractor personnel providing services and take appropriate actions to ensure that there is no appearance of personal services. Should you have any questions on the information provided above, or need any further assistance, please contact Candy Irwin on 202-358-1206.



 Joan S. Peterson

2/17/00

 Date



 Anne C. Guenther

2/17/00

 Date

Enclosure

cc:

C/Christensen

EC/B. Manuel-Alexander

GG/D. Wojnarowski

M-1/W. Readdy

M-6/M. Reilly

R/M. Mann

RS/J. Henn

Y/M. Luther

National Aeronautics and
Space Administration
Headquarters
Washington, DC 20546-0001



AUG 31 1999

Att of: E

TO: Distribution

FROM: E/Associate Administrator for Equal Opportunity Programs
G/General Counsel

SUBJECT: Agency Implementing Instructions on Contingent Workers

On December 3, 1997, the Equal Employment Opportunity Commission (EEOC) issued its Enforcement Guidance Notice No. 915.002, Application of the Equal Employment Opportunity Laws to Contingent Workers Placed by Temporary Employment Agencies and Other Staffing Firms. Under these guidelines, certain complaints of employment discrimination by contingent workers must be processed within the Federal sector, and NASA may be found liable for alleged discrimination against such a contingent worker. Because of NASA's historic reliance on its contractor workforce and the potential for increased EEO complaint activity resulting from EEOC's guidance, we have jointly developed the enclosed Implementing Instructions to assist the Agency in addressing contingent worker complaints.

At NASA, contingent workers may include anyone who is not a Federal employee or applicant for Federal employment. Thus, employees of NASA contractors, grantees, or other recipients of NASA financial assistance as well as individuals working at NASA through temporary staffing firms may, under certain circumstances, be able to pursue complaints of discrimination against the Agency and its officials. Whether or not a contingent worker will be able to pursue his or her complaint of discrimination through the Federal sector process will be dependent upon the extent to which NASA exercises supervisory control over the individual. A number of factors, outlined in the enclosed Implementing Instructions, will be considered in determining whether NASA is supervising the contingent worker such that the person is a Federal employee for purposes of Federal employment discrimination laws. Because of the potential governmental liability which can result, supervisors and managers should exercise care that they are not controlling the means and manner of performance of the workers carrying out responsibilities under contracts, grants, or other agreements.

Enclosure

Enclosed are copies of the EEOC Enforcement Guidance Notice along with the Agency Implementing Instructions regarding contingent workers. Please read this guidance and the Implementing Instructions carefully and effectuate these procedures immediately.

Should you have any questions about implementing this guidance, please feel free to contact the Director, Discrimination Complaints Division at (202) 358-2180 or the Associate General Counsel (General) at (202) 358-2465.


George E. Reese

August 30, 1999
Date


Edward A. Frankle

August 31, 1999
Date

Enclosures

cc:
CE/Christopher Rodriguez
GG/Doris Wojarowski
ARC/Herman Gardner
ARC/Sally O. Mauldin
DFRC/Erma Cox
DFRC/Terrance R. Mahurin
GRC/Belinda Hill
GRC/J. William Sikora
GSFC/Dillard Menchan
GSFC/Lawrence F. Watson
JPL/Larry Dumas
JPL/Ozell Grissom
JSC/Estella Gillette
JSC/Mike Winchell
KSC/Ken Aguilar
KSC/Bruce Anderson
LaRC/Vivian Merritt
LaRC/Kathy Kurke
MSFC/Charles Scales
MSFC/William Hicks
SSC/Pamela Covington
SSC/Kenneth R. Human
WFF/Roland Wescott

Appendix D

Report Distribution

Distribution

National Aeronautics and Space Administration (NASA) Officials:

A/Administrator
AI/Associate Deputy Administrator
B/Chief Financial Officer
E/Associate Administrator for Equal Opportunity Programs
G/General Counsel
J/Associate Administrator for Management Systems & Facilities
JM/Director, Management Assessment Division
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
U/Associate Administrator for Life & Microgravity Sciences & Applications
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/Jet Propulsion Laboratory
Director/Johnson Space Center
Director/Kennedy Space Center
Director/Langley Research Center
Director/Marshall Space Flight Center
Director/Stennis Space Center

NASA Advisory Official:

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 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/oig/hq/inspections/closed.html>

NASA Office of Inspector General Reader Survey

The NASA Office of Inspector General has a continuing interest in improving the quality of our reports. Could you help us by completing our reader survey? Please mail your completed questionnaire to the Office of Inspector General, NASA Headquarters, Code W, Room 8Z78, Washington, D.C. 20546-0001.

Report: Agencywide Use of Support Service Contractors at NASA, G-00-016

Please circle the appropriate rating for the following statements.

	Strongly Agree	Agree	Neutral	Disagree	Strongly Disagree	N/A
1. The report was clear and readable	5	4	3	2	1	N/A
2. The report was logically organized	5	4	3	2	1	N/A
3. The report was concise and to the point	5	4	3	2	1	N/A
4. The facts were presented fairly and accurately	5	4	3	2	1	N/A
5. The report contained sufficient information to support the finding(s) in a balanced and objective manner	5	4	3	2	1	N/A
6. The recommendation(s) made sense and were relevant	5	4	3	2	1	N/A
7. The recommendation(s) were timely	5	4	3	2	1	N/A

Overall, how would you rate the report?

Excellent	Fair
Very Good	Poor
Good	

How could we improve the report? _____

Are there steps we should have taken, but didn't? _____

Is there anything else we should have done differently? _____

How did you use the report? _____

Can you suggest any additional (related or unrelated) issues that the NASA Office of Inspector General should review? (You can also call our anonymous 24-hour Hotline at 1-800-424-9183) _____

Additional comments _____

Your occupation

Congressional Staff

NASA Employee

Private Citizen

Government: Federal: _____ State: _____ Local: _____

Media

Public Interest

Other: _____

May we contact you about your comments?

Yes: _____

No: _____

Name: _____

Telephone: _____

Thank you for completing this survey.