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Office of Inspector General*



*NATIONAL OCEANIC AND
ATMOSPHERIC ADMINISTRATION*

*Satellite Memorandums of Agreement Should
Be Improved By Using New Guidance*

Final Audit Report No. BSD-16927-0001/March 2005

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*Office of Audits
Business and Science Division*



UNITED STATES DEPARTMENT OF COMMERCE
The Inspector General
Washington, D.C. 20230

March 31, 2005

MEMORANDUM FOR: John J. Kelly, Jr.
Deputy Under Secretary of Commerce for Oceans and Atmosphere

Gregory W. Withee
Assistant Administrator for Satellite and Information Services

FROM:

Johnnie E. Frazier

SUBJECT:

*Satellite Memorandums of Agreement Should Be Improved
by Using New Guidance*
Final Audit Report No. BSD-16927-0001/March 2005

Attached is the final audit report of "*Satellite Memorandums of Agreement Should Be Improved by Using New Guidance.*" An executive summary begins on page i. A copy of NOAA's response to our draft report is included in its entirety as the Attachment to the report.

In response to our draft report, the Chief Administrative Officer of NOAA agreed with our recommendations. In addition, he noted that NOAA will ensure that current agreements are amended to comply with past and present regulations and that future agreements comply with applicable laws, regulations, and policies.

In accordance with Department Administrative Order 213-5, please provide us with your action plan addressing the recommendations for our review and concurrence within 60 days of this report.

We appreciate the cooperation and courtesies NOAA personnel extended to us during our review. If you have any questions or comments about our report, please feel free to contact me or Ed Blansitt, Deputy Inspector General, on (202) 482-4661.

Attachment



Office of Audits, Business & Science Division

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EXECUTIVE SUMMARY

In September 2000, the Office of Inspector General (OIG) issued a report summarizing a series of reviews on the Department's implementation and oversight of interagency agreements, such as memorandums of agreement (MOAs). Among other things, our prior reviews found that many agreements were improperly or haphazardly completed making them difficult to implement. This report discusses our review of two MOAs used by the National Oceanic and Atmospheric Administration's (NOAA) National Environmental Satellite, Data, and Information Service (NESDIS) to acquire environmental satellites through the National Aeronautics and Space Administration (NASA). Our current review found that on a positive note, NESDIS has established new processes and procedures for appropriately preparing, reviewing, and clearing interagency agreements. At the same time, we found that –

- NESDIS did not completely follow existing guidance when creating the two satellite MOAs; and
- NESDIS should improve the two satellite MOAs by applying the new guidance.

New processes and procedures exist for appropriately preparing, reviewing, and clearing interagency agreements. To address concerns raised by our prior reports, the Department issued the *Interim Interagency and Other Special Agreements Handbook* (April 2004) to provide guidance for the use, management, and oversight of interagency agreements. The handbook assigns responsibility and establishes general policies and procedures for the preparation, review, clearance, approval, monitoring, and closing of interagency agreements. Although the handbook is not yet in final form, the guidelines have been endorsed by senior Department officials and represent best practices for managing the interagency agreement process. NESDIS also issued its own manual for interagency agreements, *Review and Clearance Procedures for Agreements*, on October 31, 2002. A senior NESDIS official told us that the manual had been reviewed and granted interim clearance by the Department's Office of General Counsel (OGC).

To further simplify guidance, staff from the Department's Office of Acquisition Management informed us that they are now working with all departmental agencies to create a single handbook that the agencies will be required to use to write agreements. Such a document would help clarify and enhance the guidance we reviewed in the two manuals. For example, the new handbook would clarify at what level the agreements should be reviewed by various components, *e.g.*, budget and finance, legal, and acquisition. Pending the consolidated guidance, we found that the NESDIS' manual, coupled with the requirements of the departmental handbook and the specific authorizing legislation, provides sufficient guidance for the preparation, review, and clearance of interagency agreements.

NESDIS did not completely follow existing guidance when creating the 1998 satellite MOAs. The 1998 Geostationary Operational Environmental Satellite (GOES) and Polar Operational Environmental Satellite (POES) MOAs were written before the issuance of current departmental and NESDIS guidance, but clearly at a time when there was legal, regulatory, and even some departmental and NOAA guidance to guide the creation and review of these agreements. We found that while the Department's OGC had reviewed the agreements, NESDIS did not completely follow the OGC guidance, federal regulations, and other departmental and NOAA guidance. As a result, the agreements (1) cite conflicting authorities, (2) were entered into without the required justification for using NASA as the procurement source, and (3) did not include required budget and management information.

- ***Failure to follow guidance from the Department's OGC resulted in the citation of conflicting legal authorities.*** The agreements were originally written as joint projects, citing the Department's joint project authority. Joint project authority authorizes two agencies to work together collaboratively toward a project that is of mutual interest, in which the cost of the project is apportioned in an equitable manner. However, the Department's OGC approved the agreements based on the condition that they be issued under the authority and provisions of the Economy Act of 1932, as amended. When certain conditions are met (discussed below), the Economy Act permits federal government agencies to purchase goods or services from other federal government agencies or other major organizational units within the same agency.

The final signed versions of each agreement we reviewed showed that NESDIS managers did not remove the joint project authority citation. Instead, NESDIS added a statement that funds will be transferred under the Economy Act. The first step in writing a clear and executable agreement is selecting the appropriate authority. NESDIS needs to correct the agreements by citing the appropriate authority.

- ***NESDIS entered into agreements without the required justification for using NASA as the procurement source.*** The Economy Act includes provisions to ensure that agencies do not use the Economy Act to circumvent the procedures, time, and cost of open competition. According to federal acquisition regulations, agencies that want to use the Economy Act must first show, among other things, that supplies and services cannot be obtained as conveniently or economically by contracting directly with a private source. However, NESDIS had not analyzed whether using NASA's acquisition services for the satellites was more convenient or economical than contracting directly with some other entity. We also could not determine whether an appropriate acquisition official justified or reviewed the agreements, as required by federal acquisition regulations. Conducting the analysis and having the appropriate acquisition review would help to ensure that NESDIS is acquiring the satellites in the most convenient and economical fashion as required by acquisition regulations.

- **NESDIS managers also did not completely comply with existing MOA guidance when issuing the 1998 agreements.** An Economy Act agreement is similar to a contract in that it involves the purchase of goods and/or services by one federal agency from another. As such, these agreements should clearly specify the terms and conditions of the purchase. We found that the POES and GOES agreements did not include budget or management information as required by then existing departmental and NOAA guidance.

The two satellite MOAs should be improved by applying the new guidance. We evaluated the 1998 POES and GOES agreements against the new guidance to identify areas where the agreements could be strengthened. We found a number of areas where both the Department and NESDIS guidance required information that was not included in the agreements. For example, the agreements do not contain specific products, schedules, delivery requirements, and the amount of payment, or detail specific offices that are responsible for NOAA activities. In addition, given the significant cost of the satellites, the numerous parties involved in the acquisition, and the potential for loss or damage to the satellites, we believe that, at a minimum, the POES and GOES program managers should address how potential loss or damage will be handled at each stage of the acquisition process. The new guidance, if followed, should result in MOAs with clear responsibilities and terms and conditions.

We are recommending that the Deputy Under Secretary of Commerce for Oceans and Atmosphere ensure that the Assistant Administrator for Satellite and Information Services take the following actions:

- (1) cite the proper legal authority in the POES and GOES MOAs, as well as future agreements;
- (2) comply with the requirements of the Economy Act, including federal acquisition regulations that apply to Economy Act transactions; and updated the POES and GOES agreements to follow the new guidance provided in the Department's Interim Interagency and Other Special Agreements Handbook (April 2004) and NESDIS' Review and Clearance Procedures for Agreements (October 31, 2002), and ensure that future agreements comply with both handbooks.



We provided NOAA a draft of our audit report for its review and comment. NOAA's response is provided in Attachment I.

In response to our draft report, the Chief Administrative Officer of NOAA agreed with our recommendations. In addition, he noted that NOAA will ensure that current agreements are

amended to comply with past and present regulations and that future agreements comply with current applicable laws, regulations, and policies.

We appreciate NOAA's prompt response to our draft report and its continued efforts to improve its management and oversight of satellite memorandums of agreement.

INTRODUCTION

Interagency and other agreements, such as memorandums of agreement (MOAs) or memorandums of understanding, are mechanisms federal agencies use to define terms for performing work for others, acquiring work from others, or coordinating complementary programs. These agreements can be between Commerce entities; or between one Commerce unit and another federal agency, a state or local government agency, a university or other educational institution, a not-for-profit organization, or a private party.

In September 2000, the OIG issued a final report summarizing a series of reviews on the Department's implementation and oversight of interagency agreements. Among other things, our reviews found that many agreements were improperly or haphazardly completed making them difficult to implement. We are currently assessing whether problems with interagency agreements have been corrected. This report discusses our review of the MOAs used by NOAA to acquire environmental satellites through NASA.

THE POES AND GOES PROGRAMS



Left to right: Polar Operational Environmental Satellite (POES) and Geostationary Operational Environmental Satellite (GOES). Source: NASA web site at <http://goespoes.gsfc.nasa.gov>.

NOAA's NESDIS is dedicated to providing timely access to global environmental data from satellites and other program sources to promote, protect, and enhance the Nation's economy, security, environment, and quality of life. Its responsibilities include developing and operating the Polar Operational Environmental Satellite (POES) and the Geostationary Operational Environmental Satellite (GOES).

The POES program consists of satellites that provide daily global coverage by circling the earth in a polar orbit, with morning and afternoon orbits that provide information used for global,

long-term forecasting and environmental monitoring. The GOES program consists of two satellites in a stationary orbit over the United States that provide information for national and regional short-range warnings and forecasts.

The first polar orbiting satellite program was originally started by the Department of Defense in 1959. The program was transferred to NASA in 1960 and then to NOAA in 1962. The first satellite was launched in 1960 and since that time, 37 of 41 satellites were launched into a successful orbit. Currently, NESDIS is using NASA to acquire its last series of satellites, POES K-N Prime. According to the POES Acquisition Manager, the POES K, L, M development contract was signed on July 26, 1988. A modification to the existing contract for N and N Prime was signed on December 16, 1994. Table 1 depicts the status of the POES K- N Prime satellites.

Table 1: Status of POES K-N Prime Satellites

SATELLITE	SPACECRAFT	LAUNCH DATE	STATUS
NOAA-K	NOAA-15	May 13, 1998	Back-up
NOAA-L	NOAA-16	Sept. 21, 2000	Active
NOAA-M	NOAA-17	June 24, 2002	Active
NOAA-N		Mar. 2005-planned	
NOAA-N Prime		Dec. 2007- planned	

The first GOES was launched on May 17, 1974, and since that time, 14 of 15 GOES satellites have been launched successfully. Currently, NESDIS is using NASA to acquire GOES N, O, and P and is using NASA to support the initial development of the next series of satellites identified as GOES R. The GOES program manager stated that for GOES R and GOES follow-on satellites, his team plans to evaluate all options for acquiring the satellites, including contracting directly for the acquisition. Table 2 depicts the current status of the GOES N, O, and P, and R series satellites.

Table 2: Status of GOES N-P and R Satellites

SATELLITE	PLANNED LAUNCH DATE
Current Development	
GOES-N	May 2005
GOES-O	Apr. 2007
GOES-P	Oct. 2008
New Series	
GOES-R	Sept. 2012

THE NOAA AND NASA WORKING RELATIONSHIP

NOAA's NESDIS and NASA have been working together for decades to build both polar and geostationary satellites. The NESDIS and NASA working arrangement, *i.e.*, the terms for developing, acquiring, launching, and operating the POES and GOES, has been delineated in MOAs. The latest POES and GOES agreements were signed in March 1998 and the basic agreement was signed in June 1998. The Basic Agreement serves as an umbrella agreement for establishing the NOAA and NASA desire to work together collaboratively. Two separate but virtually identical agreements discuss the specific POES and GOES projects.

Under provisions of the 1998 POES and GOES agreements, NOAA is responsible for defining the requirements and operating the satellites after they have been successfully launched. NASA uses its technical expertise to manage the development effort and launch the satellites. NOAA receives the appropriation for acquiring the satellites and in turn, provides funding to NASA. Both agencies play a role in overseeing aspects of the development; however, NASA is the single official interface with the spacecraft, instrument, and launch service contractors. From fiscal year 1998 (when the latest agreements were signed) through fiscal year 2004, NESDIS estimates that it has transferred approximately \$2.2 billion to NASA to acquire POES and GOES satellites.

The NOAA and NASA working relationship started by congressional direction. The Supplemental Appropriation Act, 1962 (P.L. 87-332), stated that the Department's *Weather Bureau*, now NOAA's National Weather Service, should make the appropriation available to NASA, "for expenses necessary to establish and operate a system for the continuous observation of worldwide meteorological conditions from space satellites and for the reporting and processing of the data obtained for use in weather forecasting...."

Based in part on the 1962 supplemental appropriation language, the Department and NASA delineated the responsibilities for each agency in a 1964 Basic Agreement. The agreement was worded similarly to a joint project, with the Department funding the establishment and operation of what would eventually be titled the National Operational Meteorological Satellite System (NOMSS), and NASA providing acquisition services and research and development funding for new technologies that could be used to enhance environmental satellites.

A 1973 Basic Agreement superseded the initial 1964 Basic Agreement. The 1973 Agreement contained many of the provisions of the 1964 agreement. However, the 1973 agreement included an additional section entitled "Memoranda of Understanding (MOU)" that called for a separate MOU for each major project, such as the GOES and POES projects. At a minimum, these MOUs were required to include, "commitment of NASA and NOAA staff to be assigned directly to the project for planning, technical, and administrative monitoring, including resident representation at contractor facilities; definition of authority; reporting requirements; schedule; and commitment of resources (funds, facilities, etc.)." Despite this requirement, separate

POES and GOES MOUs between NOAA and NASA were never established under the 1973 Agreement.

The current 1998 Basic Agreement superceded the 1973 Basic Agreement. According to the NESDIS POES Acquisition Manager, elimination of NASA Research and Development funding in the 1980s was the driving force for the latest update to the Agreement, which was completed in 1998. The new Basic Agreement is similar to the previous agreement, which stressed the need for NOAA and NASA to work together collaboratively, but removed the NASA requirement to fund research and development efforts.

OBJECTIVES, SCOPE, AND METHODOLOGY

The objectives of our audit were to (1) assess whether the POES MOA was consistent with interim departmental guidance on interagency agreement and whether the departmental guidance and/or the MOA can be improved, (2) determine the process of accomplishing work under the MOA, (e.g. identify the offices and individuals at NOAA who are responsible for each of the NOAA activities and how these activities are accomplished), and (3) ascertain if NOAA is evaluating the POES and GOES MOAs with NASA to determine if the MOA is an appropriate vehicle for accomplishing NOAA's environmental satellite mission. Since the POES and GOES MOAs are identical, our general approach involved using the POES MOA process to assess the adequacy of both of these MOAs, as well as the overall MOA decision-making and implementation process. We focused our questions on the future use of the MOA with NASA on the GOES program, because the last POES is expected to be completed by fiscal year 2008.

To accomplish our work, we interviewed POES and GOES program managers, the POES acquisition manager, the Director and staff from NESDIS' Interagency and International Affairs office, staff from the NESDIS Planning and Budget Office and Management Operations and Analysis Office, the Director and staff from NOAA's Acquisition and Grants Office, NOAA's and the Department's Office of General Counsel, and staff from the Department's Acquisition and Management Office. We reviewed appropriate legislation, including the Economy Act of 1932 as amended, the corresponding Code of Federal Regulations (CFR), the Department's and NESDIS' interagency agreement guidance, and the current and prior MOAs used to support the POES and GOES programs. We also evaluated NESDIS management controls for Economy Act agreements to assess whether they were sufficient to ensure these MOAs received the appropriate review and approval.

We did not assess the reliability of computer-generated data because such data were not material to our audit objectives. We conducted our fieldwork from September 2004 to January 2005 at NOAA offices in Silver Spring and Suitland, Maryland. We performed this audit in accordance with *Government Audit Standards* issued by the Comptroller General of the United States, and under the authority of the Inspector General Act of 1978, as amended, and Department Organization Order 10-13, dated May 22, 1980, as amended.

FINDINGS AND RECOMMENDATIONS

Our review found that NESDIS has established new processes and procedures for appropriately preparing, reviewing, and clearing interagency agreements that address our past concerns. While this new guidance was not available in 1998 when the current MOAs were written, we found that NESDIS managers did not completely follow existing guidance when creating the two current satellite MOAs. As a result, the MOAs cite conflicting legal authority, do not completely follow federal acquisition regulations, and do not include other information required at that time. We also compared the MOAs against the new guidance and found that they do not include required information. For example, the agreements do not detail specific offices that are responsible for NOAA activities or contain specific products, schedules, delivery requirements, and the amount of payment.

I. NEW PROCESSES AND PROCEDURES EXIST FOR APPROPRIATELY PREPARING, REVIEWING, AND CLEARING INTERAGENCY AGREEMENTS.

Past OIG reviews, conducted at about the same time that NOAA was updating the Basic Agreement and GOES and POES MOAs, identified concerns in the preparation, review, and clearance of interagency agreements at a number of operating units, including NOAA.¹ To address these concerns, the Department issued the *Interim Interagency and Other Special Agreements Handbook* (April 2004) to provide guidance for the use, management, and oversight of interagency agreements. The handbook assigns responsibility and establishes general policies and procedures for the preparation, review, clearance, approval, monitoring, and closing of interagency agreements. Although the handbook is not yet in final form, the guidelines have been endorsed by senior Department officials and represent best practices for managing the interagency agreement process.

In response to these same OIG reviews, the Deputy Under Secretary for Oceans and Atmosphere directed all NOAA line offices to draft MOA guidance. NESDIS issued its own manual for interagency agreements, *Review and Clearance Procedures for Agreements*, on October 31, 2002. The NESDIS' International and Interagency Affairs Office prepared the NESDIS *Review and Clearance Procedures for Agreements* manual based on its experience establishing memoranda of agreements with foreign countries and other agencies interested in participating in NOAA satellite, data, and information programs. According to an official from

¹ *National Oceanic and Atmospheric Administration OAR's Interagency and Other Special Agreements Require Additional Improvements for Compliance*, IPE-10310, May 1998; *National Oceanic and Atmospheric Administration NMFS's Interagency and Other Special Agreements Require Additional Improvements*, IPE-10755, September 1998; *Office of the Secretary Interagency and Other Special Agreements Require Better Management and Oversight*, IPE-10418, September 1998; *Improvements Are Needed in Commerce Agencies' Implementation and Oversight of Interagency and Other Special Agreements*, IPE-9460, September 2000.

the International and Interagency Affairs Office, the manual was reviewed and granted interim clearance by the Department's OGC. The manager of each NESDIS office is responsible for ensuring that each agreement entered into by that office complies with the provisions of the manual. For the satellite development programs, that responsible office is the Office of Systems Development. This office provides the primary contact with NASA and arranges for the development of major system elements (spacecraft, sensors, communications, ground receipt, and data/product processing and delivery); and the integration, installation, and acceptance of the NOAA civil operational remote-sensing satellite systems.

All agreements entered into by a NESDIS office, such as the Office of Systems Development, are supposed to be coordinated with the NESDIS International and Interagency Affairs Office. NOAA's OGC also is required to review all agreements and NOAA's Office of Finance is required to review all reimbursable agreements.

MEMORANDUM OF UNDERSTANDING

PURSUANT TO
THE ECONOMY ACT

THROUGH WHICH

[name of your operating unit]
U.S. DEPARTMENT OF COMMERCE

IS PURCHASING
[state what you are purchasing]

FROM

[name of other agency]

[Note: This format is for use only when NOAA/NESDIS is paying another Federal Agency or DOC Operating Unit for goods or services, i.e., when NOAA/NESDIS is the "requesting agency."]

**First Page of NESDIS Template Used to Guide Completion of
Economy Act Agreements When NESDIS is the Requesting Agency**

To further simplify guidance, staff from the Department's Office of Acquisition Management informed us that they are now working with all departmental agencies to create a single

handbook that the agencies will be required to use to write agreements. Such a document would help clarify and enhance the guidance we reviewed in the two manuals. For example, the new handbook should clarify at what level the agreements should be reviewed by various components, *i.e.*, budget and finance, legal, and acquisition. Pending the consolidated guidance, we found that the NESDIS manual, coupled with the requirements of the departmental handbook and the specific authorizing legislation, provides sufficient guidance for the preparation of Economy Act agreements.

II. NESDIS DID NOT COMPLETELY FOLLOW EXISTING GUIDANCE WHEN CREATING THE 1998 SATELLITE AGREEMENTS

The 1998 GOES and POES MOAs were written before the issuance of current Departmental and NESDIS guidance, but clearly at a time when there was legal, regulatory, and even some departmental and NOAA guidance to guide the creation and review of these agreements. We found that while the Department's OGC had reviewed the agreements, NESDIS did not completely follow the OGC guidance, federal regulations, and other departmental and NOAA guidance. As a result, the agreements (1) cite conflicting authorities, (2) were entered into without the required justification for using NASA as the procurement source, and (3) did not include required budget and management information.

A. Failure to Follow Guidance from the Department's Office of General Counsel Resulted in Citation of Conflicting Legal Authority

An agency entering into an interagency agreement obligating government funds should properly document the agreement, such as citing the legal authority for entering into the agreement.² Citation to a proper legal authority is important because it provides the legal basis for the agreement, and can have an impact on the treatment of funds, requirements and procedures for assuring compliance, and approvals by authorized officials.

The 1964 and 1973 Basic Agreements were based primarily on NASA's and NOAA's authorizing legislation and organizational guidance, and the 1962 Supplemental Appropriation Act. The 1998 Basic Agreement included a more specific legal authority, the Department's Joint Project Authority, 15 U.S.C. § 1525, which authorizes two agencies to enter into an agreement and work collaboratively toward a project that is of mutual interest, in which the cost of the project is apportioned in an equitable manner. The 1998 POES and GOES agreements also cited the joint project authority.

As required by guidance issued by the Department's OGC, the agreements were submitted to that office for review. Because only NOAA was funding the work discussed in the POES and

² 31 U.S.C. § 1501(a)(1)(A); see also Title 7, "Fiscal Guidance," *Policy and Procedures Manual for Guidance of Federal Agencies*, General Accounting Office (May 18, 1993).

GOES agreements, OGC approved the agreements based on the condition that they be issued under the authority and provisions of the Economy Act of 1932, as amended, not the joint project authority. When certain conditions are met, the Economy Act permits federal government agencies to purchase goods or services from other federal government agencies or other major organizational units within the same agency.

The final signed versions of each agreement we reviewed showed that NESDIS managers did not remove the joint project authority citation. Instead, NESDIS added a statement that funds will be transferred under the Economy Act. We were unable to determine how or why both authorities were cited in the MOAs. We were told that the attorney in NOAA's OGC who should have reviewed the agreements after the changes were made had since retired and was therefore unavailable to comment on the matter. At a minimum, we found no documentation to suggest that NOAA OGC reviewed the MOAs after the Department's OGC recommended that the agreements should be executed under the provisions of the Economy Act. The NOAA attorney who currently reviews NESDIS interagency agreements told us that he believes that the citation of conflicting authorities would have been detected if an attorney had reviewed the agreements. Each agreement should be corrected by removing the joint project authority reference.

B. Failure to Follow Economy Act Regulations Allowed NESDIS to Enter Into The Agreements Without The Required Justification for Using NASA as The Procurement Source

The Federal Acquisition Regulation (FAR) prescribes the policies and procedures applicable to interagency acquisitions under the Economy Act.⁴ When a government agency purchases a good or service from another government agency pursuant to the Economy Act, the requesting agency must prepare a Determination & Finding (D&F). The D&F must state that (1) the use of an interagency acquisition is in the best interest of the government, and (2) supplies and services cannot be obtained as conveniently or economically by contracting directly with a private source.⁵ If the Economy Act order requires contract action by the servicing agency, as the POES and GOES projects do, the D&F should include a statement, as described in the regulation, that justifies why the servicing agency is needed to enter into the contract.⁶ A contracting officer of the requesting agency with the authority to contract for the supplies and services to be ordered, or another official designated by the agency head, must approve the D&F.⁷

⁴ 48 Code of Federal Regulation (C.F.R.) Subpart 17.5

⁵ 48 C.F.R. § 17.503(a).

⁶ 48 C.F.R. § 17.503(b).

⁷ 48 C.F.R. § 17.503(c).

⁸ 48 C.F.R. § 17.503(a).

⁹ 48 C.F.R. § 17.503(c).

While language citing the D&F criteria is included in the agreement, there is no documentary evidence that the required analysis was done to ensure that the D&F criteria were met. We also could not find any documentary evidence that an appropriate acquisition official justified or reviewed the agreements pursuant to the Economy Act. Specifically, we sought to assess how NESDIS determined that GOES and POES satellites could not be obtained as conveniently or economically from a source other than NASA. At the start of our review, we questioned the NESDIS managers about whether NESDIS had or was planning to evaluate options other than using NASA to acquire satellites. At that time, we were told that no official reviews had or were being undertaken. At our exit conference, NESDIS managers acknowledged that they did not fully comprehend what was required to support the D&F requirements. As such, these managers readily agreed that the federal acquisition regulations relating to the D&F were not followed.

During the course of our review, NESDIS officials told us that they have continued to use NASA to acquire satellites because NASA has unique technical capabilities to develop satellites that NOAA does not have and would have to develop in-house. In addition, these managers explained that because of the nature of NASA's mission, NASA has access to technical experts not readily available to NOAA. The GOES program manager, however, stated that for GOES R and subsequent follow-on satellites, his team plans to evaluate all options for development of the satellites including the possibility of contracting directly with a private source for the acquisition. By working with the appropriate acquisition official to conduct an assessment of alternatives, NESDIS will be able to formally address the pros and cons of working with NASA, as NASA completes the ongoing POES and GOES projects, as well as meet the Economy Act and D&F requirements.

C. Failure to Follow Past Departmental and NOAA Guidance Created Agreements that Lack Important Budget and Management Information

Departmental and NOAA guidance pertaining to interagency agreements in 1998 included Office of Management and Budget Circular (OMB) A-25, the *Department of Commerce Accounting Principles and Standards Handbook*, and the *NOAA Budget Handbook* (June 30, 1994), both of which required budget information to be included in interagency agreements to ensure full cost recovery. The *NOAA Budget Handbook* also provided a model interagency agreement, in which mandatory provisions containing specific information were to be included in all interagency agreements. For example, management responsibilities of the respective agencies were to be completely identified, and services (*e.g.*, procurement, personnel services) under the agreement were to be separately itemized. Specific budgeting and funding information was required, including the total estimated dollar values of the services, and an advance payment schedule if the total estimated cost would exceed \$50,000 or the length of time to complete the work would exceed 6 months. The model agreement also required periodic reviews of the agreement.

The POES and GOES agreements lacked much of the information required in the model agreement. As we discuss more fully below, the new guidance provides direction to address the problems we have identified.

III. THE TWO SATELLITE AGREEMENTS SHOULD BE IMPROVED BY APPLYING THE NEW GUIDANCE

An Economy Act Agreement is similar to a contract in that it involves the purchase of goods and/or services by one federal agency from another. As such, these agreements should clearly specify agency responsibilities and the terms and conditions of the purchase. We evaluated the 1998 POES and GOES agreements against the new guidance to identify areas where the agreements should be updated. We found a number of areas where both the Department and NESDIS guidance required information that was not included in the 1998 POES and GOES agreements. The MOAs should be updated to address these requirements.

- ***Contact Information***

Both the Department's and NESDIS guidance require that MOAs identify all parties to the MOA. The MOA should include the name and address of each organization(s) as well as a contact person, contact person's title, and telephone number. Changes to the contact person should be done through written notification. Our review of the POES and GOES MOAs found that they did not include contact person information.

- ***Responsibilities of Each Party to the MOA***

The Department's guidance requires that division of responsibilities and commitments should be defined as precisely as possible. Our review of the MOAs found that additional steps could be taken to more precisely identify parties responsible for each activity. For example, the MOAs describe NOAA, NASA, and joint responsibilities, but they do not identify which office at NOAA and NESDIS are responsible for specific activities or which policies and procedures will be followed. This type of information assigns accountability and ensures that appropriate management controls are in place to accomplish the work. When we asked NESDIS officials to identify which offices accomplished the tasks, the officials readily did so. As such, this information should be fairly easy to include in the MOAs.

Another area where responsibilities could be better defined is in areas of quality assurance. For example, the MOAs state that "NOAA may be present during [NASA] contract negotiations, shall participate in contract award fee determination, and shall participate in project configuration management" and that "NASA shall negotiate with and be the single official interface with the spacecraft, instruments, and launch services." However, the MOAs do not detail inspection and quality assurance procedures, including who is responsible for them. When we asked how NESDIS officials make sure that NASA and the contractor are accomplishing the tasks, NESDIS officials provided a detailed listing of meetings and events that are used to monitor project execution by NASA and the

contractors. A summary of these activities and who will be accomplishing them could be easily added to the MOAs.

- ***Details of the Procurement***

Both the Department and NESDIS guidance address details about the procurement strategy. The Department's handbook states, "Where applicable, the agreement should include goals, performance measures, products, and a schedule of strategic milestones." The NESDIS manual requires the acquiring party to identify the item being purchased with specificity, the delivery requirements, and the amount the party will receive as payment. The POES and GOES agreements do not contain specific products, schedules, delivery requirements, and the amount of payment.

NESDIS officials explained that much of this information is available but is done through a separate bi-annual process referred to in the MOA. We believe that an estimate of costs, schedule, milestones, the number of satellites, and other specific items being procured should be included in the MOA. By providing details about the satellite acquisition, managers can ensure that all parties and stakeholders to the agreement are aware of the key provisions regarding the acquisition. In addition, information about the cost of the program also triggers the level of review. Since these acquisitions cost hundreds of millions of dollars, they warrant and should receive the highest levels of review. As cost and schedule information changes, this information can be updated as required and amendments made to the MOA.

- ***Required Funding Information***

Both the Department and NESDIS require information regarding the transfer of funds. The Department's handbook states, "If funds are to be obligated under the agreement, the financial arrangements for all parties to the agreement must be clearly stipulated." The model Economy Act agreement in the NESDIS manual requires an explanation of how NOAA/NESDIS will pay for the goods/services *i.e.*, whether payments will be monthly, quarterly, or in advance if required by the servicing agency. It also includes language to help the drafter identify the appropriation out of which the specific NESDIS office will pay for the services, the date on which the funds will expire, and a sentence that states how that the funds will be deobligated to the extent that the servicing agency has not incurred obligations before the end of the period of availability of that appropriation. Again, this information was not included in the POES and GOES MOAs. By including it in the updated MOAs, NESDIS could more clearly define the terms and conditions of its agreements with NASA.

- ***An Official Agreement File***

The Department's handbook and NESDIS' manual both discuss requirements for record keeping. The Department requires that the operating unit responsible for managing interagency agreements maintain an official file for each agreement. The file should contain a copy of the agreement and all modifications and amendments, a copy of all appropriate correspondence, D&Fs, clearance documents, proposed budget or other basis for estimating funds, financial information and other information regarding location and retention of records. According to the NESDIS manual, the office responsible for managing the agreement shall maintain an official file for each agreement. The Official Agreement File shall contain many of the similar items listed in the Department's handbook. Officials responsible for maintaining such files did not have ones for the POES and GOES agreements. NOAA should ensure that Official Agreement Files are created and maintained for the new agreements.

- ***Periodic Review Procedures***

As discussed in the prior section, agreements should be periodically reviewed. The Department's handbook includes suggested language for agreements that states, "If the agreement is for an extended or indefinite period of time it should contain a provision for review, at least every three years, to determine continuing need and whether the agreement should be revised, renewed, or canceled." The model Economy Act agreement in the NESDIS manual directs users to include language that states when an agreement becomes effective and the date it terminates. If an agreement is expected to last longer than 3 years, the manual suggests including provisions for reviewing the agreement every 3 years consistent with the Department's handbook. The POES and GOES MOAs are for indefinite periods of time and do not include specific provisions for review. When updating the agreements, review provisions should be added.

- ***Suggested Areas for Terms and Conditions***

NESDIS should also consider these other areas of improvement as suggested by the Department's handbook:

1. ***Delegations of authority and channels and protocols for working relationships***
Some of the information regarding protocols for working relationships is contained in the MOA. However, in regards to resolving programmatic issues that have not been resolved at the program level the information appears to be outdated. We were told that the specific group designated to resolve such issues, the NOAA-NASA Planning Coordination Council, no longer exists.

2. *Liability Issues, if any*

The Department's handbook states that liability may apply to projects under the interagency agreement where there is any potential for damage or injury to persons or property. However, the handbook provides little detail on how liability or risk of loss issues are to be addressed in interagency agreements. Under the terms and conditions of the current POES and GOES MOAs, many parties are involved in the acquisition – NASA provides acquisition management, several contractors are involved in developing the instruments and spacecraft, and other parties are involved in the launch. While the MOAs state that NASA is responsible for the satellite until it is successfully launched and in an operational orbit, the MOAs are silent about how issues related to satellite damage or loss will be handled.

Given the significant cost of the satellites, the numerous parties involved in the acquisition, and the potential for loss or damage to the satellites, we believe that, at a minimum, the POES and GOES program managers should take a cue from the Department's handbook and address how potential loss or damage will be handled at each stage of the acquisition process. For example, a risk of loss provision could be considered for inclusion in future agreements, which provides that the servicing agency will ensure that the contractor will bear the risk of loss, theft, destruction, or damage to the goods or services being purchased by the requesting agency.

IV. RECOMMENDATIONS

The Deputy Under Secretary of Commerce for Oceans and Atmosphere should take the necessary actions to ensure that the Assistant Administrator for Satellite and Information Services:

- (1) cites the proper legal authority in the POES and GOES MOAs, as well as future agreements;
- (2) complies with the requirements of the Economy Act, including federal acquisition regulations that apply to Economy Act transactions; and
- (3) updates the POES and GOES agreements to follow the new guidance provided in the Department's *Interim Interagency and Other Special Agreements Handbook* (May 2004) and NESDIS' *Review and Clearance Procedures for Agreements* (October 31, 2002), and takes the necessary steps to ensure that future agreements comply with this guidance.

V. NOAA RESPONSE AND OIG RESPONSE

We provided NOAA a draft of our audit report for its review and comment. NOAA's response is provided in Attachment I.

In response to our draft report, the Chief Administrative Officer of NOAA agreed with our recommendations. In addition, he noted that NOAA will ensure that current agreements are amended to comply with past and present regulations and that future agreements comply with current applicable laws, regulations, and policies.

We appreciate NOAA's prompt response to our draft report and its continued efforts to improve its management and oversight of satellite memorandums of agreement.




Attachment I

UNITED STATES DEPARTMENT OF COMMERCE
National Oceanic and Atmospheric Administration
CHIEF ADMINISTRATIVE OFFICER

MAR 28 2005

MEMORANDUM FOR: Alexis M. Stefani
Assistant Inspector General for Auditing

FROM: 
William F. Broglie
Chief Administrative Officer

SUBJECT: *Satellite Memorandums of Agreement Should Be Improved
By Using New Guidance*
Draft Report No. BSD-16927/March 2005

Attached is the National Oceanic and Atmospheric Administration's response to the Office of Inspector General's draft report on satellite memorandums of agreement. The response was prepared in accordance with Department Administrative Order 213-3.

We appreciate the opportunity to respond to your draft report.

Attachment



**NOAA Comments on the Draft OIG Report Entitled
“Satellite Memorandums of Agreement Should Be
Improved By Using New Guidance”
(Draft Report No. BSD-16927/March 2005)**

General Comments

The National Oceanic and Atmospheric Administration (NOAA) commends the review team from the Office of Inspector General (OIG) for its thorough review of the current Polar-orbiting Operational Environmental Satellites (POES) and Geostationary Operational Environmental Satellites (GOES) agreements between NOAA and the National Aeronautics and Space Administration (NASA). NOAA acknowledges there is always room for improvement and believes this review will assist with the formulation and execution of better future agreements. While the report cites several areas of weaknesses with the construct of the current agreements, NOAA believes these agreements have not detracted from NOAA’s ability to effectively manage current programs. NOAA will ensure the current agreements are amended to reflect current policy and the future GOES-R agreement fully complies with the Department's *Interim Interagency and Other Special Agreements Handbook* (May 2004) and other applicable policies.

Recommended Changes for Factual/Technical Information

NOAA suggests no factual/technical changes to the draft report.

Editorial Comments

NOAA offers no editorial comments to the draft report.

NOAA Response to OIG Recommendations

Recommendation 1: The Deputy Under Secretary of Commerce for Oceans and Atmosphere should take the necessary actions to ensure that the Assistant Administrator for Satellite and Information Services cites the proper legal authority in the POES and GOES memorandums of agreement, as well as future agreements.

NOAA Response: NOAA agrees the current POES and GOES I-P agreements erroneously cited both the Department’s joint project authority and the Economy Act. Only one of these two authorities should have been cited. NOAA will amend the two existing agreements as necessary to ensure they cite the correct legal authority. In the case of GOES-R, a whole new agreement will be formulated, and NOAA will ensure the new agreement cites only one legal authority.

Recommendation 2: The Deputy Under Secretary of Commerce for Oceans and Atmosphere should take the necessary actions to ensure that the Assistant Administrator for Satellite and Information Services complies with the requirements of the Economy Act, including federal acquisition regulations that apply to Economy Act transactions.

NOAA Response: With respect to the POES and GOES I-P agreements, NOAA substantially complies with the Economy Act and federal acquisition regulations. At the time of the entry into these agreements, NOAA did not have the necessary infrastructure to directly manage the procurement of the POES or GOES I-P satellites. Since the 1960s, NOAA has funded NASA to build and maintain that infrastructure. NOAA concentrated on maintaining its expertise in developing ground systems, data processing systems, and the science needed to effectively use the data from these satellites and to determine the requirements for new generations of satellites. NOAA will amend the existing agreements to better document those factors and to bring the agreements into full compliance with both the regulations that applied at the time the agreements were written, as well as the new regulations. For the new GOES-R series, NOAA will rigorously follow the current regulations, including performing a cost-benefit analysis of using NASA as our acquisition agent versus performing these functions within NOAA.

Recommendation 3: The Deputy Under Secretary of Commerce for Oceans and Atmosphere should take the necessary actions to ensure that the Assistant Administrator for Satellite and Information Services updates the POES and GOES agreements to follow the new guidance provided in the Department's *Interim Interagency and Other Special Agreements Handbook* (May 2004) and National Environmental Satellite, Data, and Information Service's (NESDIS) *Review and Clearance Procedures for Agreements* (October 31, 2002), and takes the necessary steps to ensure that future agreements comply with this guidance.

NOAA Response: NOAA strongly concurs that its interagency agreements must comply with Department, NOAA, and NESDIS policies and clearance procedures. NOAA will amend its legacy agreements to comply with requirements. NOAA will also ensure the future GOES-R series agreement with NASA addresses the areas of improvement mentioned in this report.