



U.S. Department of Energy
Office of Inspector General
Office of Audit Services

Audit Report

Management Controls over the Use of Service Contracts at the Office of River Protection

OAS-M-09-02

April 2009



Department of Energy
Washington, DC 20585

April 29, 2009

MEMORANDUM FOR THE MANAGER, OFFICE OF RIVER PROTECTION

George W. Collard

FROM: George W. Collard
Assistant Inspector General
for Performance Audits
Office of Inspector General

SUBJECT: INFORMATION: Audit Report on "Management Controls over the Use of Service Contracts at the Office of River Protection"

BACKGROUND

The Department of Energy's (Department) Office of River Protection (ORP) is responsible for the storage, treatment, and disposal of over 53 million gallons of highly radioactive waste from over 40 years of plutonium production at the Hanford Site. Because of the diversity, complexity, and large scope of its mission, coupled with its small staff, ORP told us that it has found it necessary to engage in service contracts to obtain consulting services, technical expertise, and support staff.

Federal policy generally permits contractors to perform a wide range of support service activities, including, in most situations, the drafting of Government documents subject to the review and approval of Federal employees. Federal policy issued by the Office of Management and Budget, however, prohibits contractors from drafting agency responses to Congressional inquiries and reports issued by the Office of Inspector General and Government Accountability Office (GAO) because they are so closely related to the public interest and provide the appearance of private influence.

To provide a majority of its needed services, ORP issued a Blanket Purchase Agreement to Project Assistance Corporation (PAC) in 2003. Through the Blanket Purchase Agreement, ORP acquired services in the areas of project management, risk assessment, program assessment, quality assurance, safety, cost and schedule estimating, budgeting and finance, and engineering. PAC has, in turn, subcontracted with various other firms to obtain some of the services needed by ORP. From 2005 to 2008, the total annual cost for the contract with PAC had grown from \$4.7 million to \$9.2 million. Because of the extent of the services provided and growing costs of the contract, we conducted this review to determine whether ORP appropriately administered its contract with the Project Assistance Corporation.



RESULTS OF AUDIT

Our review disclosed that, in some instances, ORP had not appropriately administered all work performed under the PAC contract. Specifically, ORP allowed PAC employees to perform work that was inherently governmental and created situations where a potential conflict of interest occurred. Specifically:

- ORP assigned PAC employees responsibility for providing information and responses to Congressional inquiries and reports issued by the GAO and the Department of Energy's Office of Inspector General (OIG);
- PAC employees were also allowed to perform functions that created potential conflicts of interest. ORP permitted PAC employees, for example, to develop statements of work and approve funding of work to be performed under PAC's own contract.

We concluded that these problems occurred, at least in part, because ORP had not established controls necessary to effectively administer the PAC contract. Federal procurement regulations recommended that agencies provide additional management controls over contractors whose work has the potential to influence the action of government officials. ORP, however, had not implemented the controls specifically recommended in Federal policy guidance for administering contracts, including:

- Performing conflict of interest reviews; and,
- Separating contractor and Department employees either physically or organizationally.

By not effectively administering its contract with PAC, ORP increased the risk that decisions based on work performed by the contractor may not have been made in the best interests of the Department. For example, ORP increased the risk that approved work would be unnecessary or too costly.

As we also recently noted in our report on [*Management Challenges at the Department of Energy*](#) (DOE/IG-0808, December 2008), contract administration issues such as those discussed in this report remain a significant vulnerability. Continued efforts to improve this area are vitally important since the risk that contractors receive payments for unallowable costs could also increase as the Department expands its contracting activities under the American Recovery and Reinvestment Act.

To its credit, however, ORP has recognized that there are weaknesses in its oversight of the PAC contract and is in the process of taking certain corrective actions. ORP indicated that it had reassigned responsibility to a Federal employee for responding to Congressional requests, GAO reviews, and OIG reports, and, planned to physically separate PAC employees from their government counterparts. While positive, those actions do not sufficiently address the issues identified in our report. Accordingly, we have made several recommendations designed to strengthen internal controls over this area.

MANAGEMENT REACTION

Management generally concurred with our recommendations. Management stated that services provided by PAC employees had not impacted federal oversight of the Department's decision-making process in responding to Congressional inquiries and reports issued by the GAO and the OIG. Management also stated that PAC employees provided only administrative support in the development of procurement requests that did not involve inherent government functions.

Although it did not fully agree that PAC employees performed functions not appropriately assigned to contractors, management recognized the need to improve controls over the contractor. Specifically, management stated that as a result of its own internal assessment and discussions with the OIG, it was in the process of identifying internal control weaknesses and has begun taking actions to correct them. Management concurred with our recommendations and planned to take corrective actions to address them. Management's comments and our responses are summarized in the body of the report and are attached as Appendix 3.

Attachment

cc: Office of the Deputy Secretary
Office of the Under Secretary of Energy
Chief of Staff
Acting Assistant Secretary for Environmental Management

**REPORT ON MANAGEMENT CONTROLS OVER THE USE OF SERVICE
CONTRACTS AT THE OFFICE OF RIVER PROTECTION**

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SERVICE CONTRACT ADMINISTRATION

Contract Administration Issues

The Department of Energy's (Department) Office of River (ORP) had not always appropriately administered its contract with the Project Assistance Corporation (PAC). Specifically, we found one instance in which ORP allowed PAC to perform a specific, inherently governmental function. Further, we identified situations in which potential conflicts of interest existed for activities performed by PAC employees.

Performance of Inherently Governmental Functions

Office of Management and Budget Policy (OMB) Letter 92-1 defines functions that are inherently governmental as those that are so intimately related to the public interest as to mandate performance by a government employee. We identified one instance in which ORP directed PAC employees or its subcontractors to perform work that is expressly stated as being inherently governmental in nature. OMB Policy Letter 92-1, states that contractors are not to be used for drafting agency responses to Congressional inquiries and reports issued by the Office of Inspector General (OIG) and Government Accountability Office (GAO). However, we found that PAC's statement of work assigned responsibility to the contractor for providing information and responses to Congressional inquiries and reports issued by the OIG and the GAO.

Conflicts of Interest

In addition, ORP allowed PAC to perform functions that resulted in potential conflict of interest situations. Specifically, PAC employees developed their own scope of work for services to be provided to ORP and approved funding authorizations for procurement requests related to PAC's own contract. Specifically, ORP allowed PAC employees to:

- Prepare statements of work for 16 of the 27 baseline change requests to its contract. Accordingly, PAC employees were allowed to establish the Federal requirements for work to be performed under the contract.
- Approve funding authorizations as the Program Budget Official and/or Certifying Official for 29 of the 80 Procurement Request/Authorizations

issued on the PAC contract between February 2006 and February 2008. In signing as the Program Budget Official, the PAC employee certified "that funds cited are proper for this procurement and in compliance with applicable appropriation acts and fiscal law." As Certifying Official, the PAC employee was certifying that the funds were available.

Internal Controls

The Office of Management and Budget (OMB) policy and Federal Acquisition Regulations specify that Federal agencies should provide additional management controls for the oversight and administration of contracts that have the potential for influencing the actions of government officials. OMB Policy Letter 92-1 identifies conflict of interest reviews and physical separation of contractor employees from government personnel, for example, as controls needed over contractors' work. In spite of this specific requirement, we noted that ORP had not completed the required conflict of interest reviews of the PAC contract. Specifically, ORP had not reviewed the PAC contract to identify areas where PAC employees would be performing tasks directly affecting their own contract such as preparing their own statements of work and approving funds for the work.

Also, ORP had not physically separated PAC employees from government personnel. In fact, ORP integrated PAC employees into various administrative functions and co-located them with their government employee counterparts. Although there was evidence of government employees' review of PAC employees' work products, the integration of contractor employees with ORP employees blurred the lines of responsibility. For example, there was no indication that employees who certified that funding was available and in compliance with applicable laws for PAC work authorizations were PAC employees and not government employees.

The Manager of the ORP told us that as a result of our audit and ORP's internal review, she had (1) reassigned responsibility for responding to Congressional requests, GAO reviews, and OIG reports to a Federal employee; and (2) planned to physically separate PAC employees from their government counterparts.

**Impact on
Government Decisions**

ORP increased the risk that decisions based on work performed by the contractor may not be in the best interests of the Department. For example, ORP increased the risk that approved work under the contract would be unnecessary or too costly.

RECOMMENDATIONS

ORP has recognized that there are weaknesses in its administration of the PAC contract and is in the process of taking certain corrective actions. To help ensure that these actions are effective, we recommend that the Manager of the Office of River Protection:

1. Conduct a conflict of interest review of PAC-performed functions to ensure that they don't directly affect the PAC contract; and,
2. Complete the planned separation of PAC employees from their government employee counterparts.

**MANAGEMENT
REACTION**

Management generally concurred with our report and recommendations. Management asserted that as a result of its assessment and discussion with the OIG, it has identified a number of internal control weaknesses with its administration of the PAC contract and is in the process of taking corrective actions to address those weaknesses. Regarding PAC employees being tasked to provide responses to Congressional inquiries, OIG, and GAO audit reports, management stated that contractor employees assisted in data collection and consolidation but that federal staff reviewed, edited, and finalized all agency responses. Management's position was that such administrative functions did not influence Department decision-making. Management also stated that it has taken action to revise the contract workscope for this activity and has placed the responsibility for responding to Congress, the OIG, and GAO under the purview of a single federal employee.

With regard to the issues of conflict of interest, ORP officials asserted that they revised the process for developing Statements of Work (SOWs) and that PAC employees' signatures on Procurement Request/Authorization forms were only to verify that data had been input into the Budget Execution and Report System. ORP officials also asserted that the Procurement Request/Authorization forms were reviewed and approved by multiple federal officials prior to submission to the contracting officer for contract modification. Accordingly,

management concluded that the administrative services did not constitute an inherent government function. Further, management stated that PAC officials no longer sign these forms.

Management concurred with the recommendation to perform a conflict of interest review and plans for the Contracting Officer for the PAC contract to conduct such a review. ORP also concurred with our recommendation to separate PAC employees from their federal counterparts. ORP plans to have PAC employees physically separated by September 30, 2009.

**AUDITOR
RESPONSE**

Management's completed and planned actions are responsive to our recommendations and should, if effectively implemented, improve administration of the PAC service contract. We recognize that ORP has taken action to identify and address issues with the contract. Regarding management's assertion that contractor employees performed only administrative functions, we observed during the course of our audit that PAC employees represented management at meetings with the OIG and responded to OIG inquiries without disclosing they were not federal employees. Further, regarding the approval of Procurement Request/Authorization forms, we concluded that the close proximity of contractor and federal employees increased the risk that the federal managers over-relied on contractors to define work to be performed and approve funding for such work.

Appendix 1

OBJECTIVE

The objective of this audit was to determine whether the Office of River Protection (ORP) appropriately administered its contract with the Project Assistance Corporation (PAC).

SCOPE

We conducted the audit from June 10, 2008 to April 22, 2009, at ORP in Richland, Washington. The scope of the audit covered contract administration activities by ORP in relation to its contract with PAC.

METHODOLOGY

To accomplish the audit objective, we:

- Reviewed applicable laws and regulations pertaining to the administration of service contracts;
- Reviewed prior reports issued by the Office of Inspector General, the Government Accountability Office, and ORP;
- Interviewed ORP Acquisition Management Division officials to identify policies, procedures, and practices used to administer the contract with PAC;
- Reviewed ORP's contract file for the PAC contract to identify tasks assigned to PAC to perform;
- Interviewed ORP officials and PAC employees to determine what tasks PAC employees performed and the manner in which they performed them;
- Reviewed PAC invoices submitted to ORP; and,
- Identified PAC employees who had worked for other ORP prime contractors.

We conducted this performance audit in accordance with generally accepted government auditing standards. Those standards require that we plan and perform the audit to obtain sufficient, appropriate evidence to provide a reasonable basis for our findings and conclusions based on our audit objectives. We believe that the evidence obtained provides a reasonable basis for our findings and conclusions based on our audit objectives. Because our review was limited, it would not necessarily have disclosed all internal deficiencies that may have existed at the time of our audit. We also assessed performance measures in accordance with the *Government Performance and Results Act of 1993* and determined that

Appendix 1 (continue)

performance measures had not been established for the administration of service contracts by ORP. We did not rely on computer processed data to satisfy our audit objectives. ORP management waived an exit conference.

PRIOR REPORTS

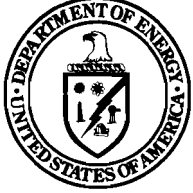
RELATED AUDIT REPORTS

Office of Inspector General Reports

- *Audit of the Department of Energy Program Offices' Use of Management and Operating Contractor Employees* (DOE/IG-0392, July 1996). The audit found that the use of contract employees for service support functions at the Department of Energy (Department) Headquarters resulted in situations where conflicts of interest and contractor performance of inherently governmental functions could have been occurring. The primary cause was that the Department had not established guidance for using these type of contractor employees and that the Department was not monitoring their use.

Government Accountability Office Reports

- *Defense Contracting: Army Case Study Delineates Concerns with Use of Contractors as Contract Specialists* (GAO-08-360, March 2008). The audit found that contractor personnel were not always clearly identifying themselves as non-government employees and that there was a high potential for personal services issues. Personal and organization conflicts of interest were being mitigated but notification of the potential was reliant upon the contractor employees. The Government Accountability Office (GAO) also found that the government was paying more for contract employees than for similarly graded government employees. Finally, GAO also found that the Contracting Center of Excellence was inappropriately ordering contract specialists under a General Services Administration contract. This was inappropriate because the services were out of the scope of those contracts.



Department of Energy

Washington, DC 20585

APR - 3 2009

MEMORANDUM FOR GEORGE W. COLLARD
ASSISTANT INSPECTOR GENERAL FOR
PERFORMANCE AUDITS
OFFICE OF INSPECTOR GENERAL

FROM: J. E. SURASH 
DEPUTY ASSISTANT SECRETARY FOR
ACQUISITION AND PROJECT MANAGEMENT

SUBJECT: Draft Report on "Management Controls Over the Use of
Service Contracts at the Office of River Protection"
(Case File No. A08RL057)

This is in response to your memorandum dated February 6, 2009, concerning the subject report. To address this request for comment, the Office of River Protection's Acquisition Management Division has reviewed the Office of Inspector General's draft report and provided the following responses regarding the facts presented and feasibility of the recommendations made.

The OIG's recognition of the actions underway at the Office of River Protection (ORP) to further strengthen the administration of the contract with Project Assistance Corporation (PAC) is noted and appreciated.

ORP began a self-assessment of its contract oversight in November 2007, made observations, and identified recommended actions for strengthening internal controls. The report, titled *Assessment of Project Management and Subcontract Management Services Provided Under GSA Task Order/Blanket Purchase Agreement No. DE-AB27-03RV14546*, summarized those findings and was finalized on March 25, 2008. Subsequently, ORP executed additional controls prior to the initiation of the OIG's audit in June 2008.

We believe that actions currently underway as a result of ORP's self assessment, as well as discussions with OIG staff during the course of this audit, will fully address the concerns regarding administration of the PAC contract.

In response to the facts presented in the IG draft report, EM offers the following information.

Performance of Inherently Governmental Functions

Office of Management and Budget (OMB) Policy Letter 92-1 defines functions that are inherently governmental as those that are so intimately related to the public interest as to



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mandate performance by a government employee. The IG identified one instance in which ORP directed PAC employees or its subcontractors to perform work that is expressly stated as being inherently governmental in nature. OMB Policy Letter 92-1, states that contractors are not to be used for drafting agency responses to Congressional inquiries and reports issued by the Office of Inspector General and the Government Accountability Office (GAO). However, the IG found that PAC employees had been assigned the responsibility for providing information and responses to Congressional inquiries and reports issued by the OIG and GAO as called for in the contractor's work scope description.

Response: The ORP responses to Congress and reports issued by the OIG and GAO represent the positions, policy, and viewpoints of federal managers at ORP. Support from PAC employees was used to coordinate this effort; collecting and consolidating technically-complex and/or administrative information for federal staff. However, ORP management and its technical staff reviewed, edited, and finalized all agency responses to Congressional, OIG, and GAO reports. It is our position that the services provided did not impact federal oversight or the Department's decision-making process. ORP has taken action to redefine this task in the contractor's work scope by issuing a revised Statement of Work for this activity on January 14, 2009. At the same time, all congressional inquiries and reports to the OIG and GAO were placed under the purview of a single federal employee in late January 2009.

Conflicts of Interest

The IG reported that ORP allowed PAC to perform functions that resulted in potential conflict of interest situations. Specifically, PAC employees developed their own scope of work for services to be provided to ORP and approved funding authorizations for procurement requests related to PAC's own contract. Specifically, ORP allowed PAC employees to prepare statements of work for sixteen of the twenty-seven baseline change requests to its contract. Accordingly, PAC employees were allowed to establish the Federal requirements for work to be performed under the contract.

In addition, the IG reported that ORP allowed PAC employees to approve funding authorizations as the Program Budget Official and/or Certifying Official for twenty-nine of the eighty Procurement Request/Authorizations issued on the PAC contract between February 2006 and February 2008. In signing as the Program Budget Official, the PAC employee certified "that funds cited are proper for this procurement and in compliance with applicable appropriation acts and fiscal law." As Certifying Official, the PAC employee was certifying that the funds were available.

Response: This issue was identified by ORP in its self-assessment. To address this, ORP issued a new procedure in August, 2008 to strengthen work scope development and approval and the Baseline Change Request (BCR) process. In accordance with this procedure, ORP only allows Federal staff

to develop Statements of Work (SOW) and submit the BCRs to the Contracting Officer (CO) as part of the technical requirements package. The CO approves all SOWs and BCRs prior to authorizing the contractor to perform specific tasks.

Due to the limited federal staff at ORP, PAC staff had provided administrative support in entering data into the Budget Execution and Reporting System. Support staff had also signed the Procurement Request (PR) forms that verified data entry. It was the position of ORP that this administrative support was not inherently governmental. Additionally, the PR form was approved by multiple federal staff prior to submission to the CO for contract modification.

Since ORP's self assessment and this audit, additional Federal support staff have been hired; a new invoice review procedure, titled *Review of Technical/Project Management Support Service Contractor Invoices*, was developed and approved on November 24, 2008. Internal training for staff was initiated on January 21, 2009, and completed on February 16, 2009. Refresher training will be provided as needed.

Contractor staff no longer work on the development of SOWs or sign the PR forms. A new ORP procedure titled *Post-Award Labor Classification Review/Approval Process for Support Services Contractor Resources* was approved August 13, 2008. This procedure specifies that federal staff are responsible for drafting SOWs. Also, ORP will develop a contract management plan (CMP) for the follow-on support services contract. The CMP will provide detailed roles, responsibilities, and plans for mitigating conflicts of interest. ORP will provide contract management training to all Federal staff by October 2009.

With regard to the recommendations in the draft report, EM offers the following responses.

- 1) Conduct a conflict of interest review of the PAC-performed functions to ensure that they don't directly affect the PAC contract.

Response: In addition to the self-identified and self-initiated actions already in progress, EM agrees with this recommendation. The Contracting Officer cognizant for the PAC service contract at ORP will conduct an in-depth review of all current support service SOWs to ensure no conflicts exist. As discussed earlier in this response, ORP procedures now require that SOWs will be developed by Federal staff.

- 2) Complete the planned separation of PAC employees from their government employee counterparts.

Response: EM agrees with this recommendation and ORP will strive to physically separate all non-administrative federal and contractor staff by September 30, 2009. Where co-location of non-administrative staff is deemed necessary for efficient performance of functions, appropriate signage will be used to clearly identify support service personnel.

Thank you for the opportunity to review the draft of your report and provide responses.

Should you require additional information, please contact me, at (202) 586-3867.

cc: J. Owendoff, EM-3
M. Connolly, EM-52
S. Olinger, ORP
J. Poniatowski, ORP

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2. What additional information related to findings and recommendations could have been included in the report to assist management in implementing corrective actions?
3. What format, stylistic, or organizational changes might have made this report's overall message more clear to the reader?
4. What additional actions could the Office of Inspector General have taken on the issues discussed in this report which would have been helpful?
5. Please include your name and telephone number so that we may contact you should we have any questions about your comments.

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