

*TREASURY INSPECTOR GENERAL FOR TAX ADMINISTRATION*



**Management Advisory Report:  
Review of Alleged Regulatory Violation in  
Administering the Accounting Support Services  
Contract**

**October 2000**

**Reference Number: 2001-10-010**

This report has cleared the Treasury Inspector General for Tax Administration disclosure review process and information determined to be restricted from public release has been redacted from this document.

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INSPECTOR GENERAL  
for TAX  
ADMINISTRATION

October 26, 2000

MEMORANDUM FOR CHIEF, AGENCY-WIDE SHARED SERVICES  
CHIEF FINANCIAL OFFICER

*Pamela J. Gardiner*

FROM: Pamela J. Gardiner  
Deputy Inspector General for Audit

SUBJECT: Final Management Advisory Report – Review of Alleged  
Regulatory Violation in Administering the Accounting Support  
Services Contract

This report presents the results of our review of an allegation regarding whether the Internal Revenue Service (IRS) violated regulations when administering the accounting support services contract. In summary, we found that the allegation could not be substantiated; however, the IRS could have more completely documented the factors considered before exercising the contract option years and taken additional steps to prevent the appearance of an employer-employee relationship between the IRS and the contractor. This report is for information purposes only and does not require a response.

The Treasury Inspector General for Tax Administration has designated this report as Limited Official Use (LOU) pursuant to Treasury Directive TD P-71-10, Chapter III, Section 2, "Limited Official Use Information and Other Legends" of the Department of Treasury Security Manual. Because this document has been designated LOU, it may only be made available to those officials who have a need to know the information contained within this report in the performance of their official duties. This report must be safeguarded and protected from unauthorized disclosure; therefore, all requests for disclosure of this report must be referred to the Disclosure Unit within the Treasury Inspector General for Tax Administration's Office of Chief Counsel.

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Please contact me at (202) 622-6510 if you have questions, or your staff may call Maurice S. Moody, Associate Inspector General for Audit (Headquarters Operations and Exempt Organizations Programs), at (202) 622-8500.

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## **Objective and Scope**

*The objective of this review was to determine whether an allegation that the IRS violated the FAR when administering the accounting support services contract could be substantiated.*

The objective of this review was to determine whether an allegation that the Internal Revenue Service (IRS) violated the Federal Acquisition Regulations (FAR)<sup>1</sup> when administering the accounting support services contract could be substantiated. The review was performed from May 2000 to August 2000 at the Chief Financial Officer (CFO) and Procurement Offices in Washington, D.C., and at the contractor work site in Beckley, West Virginia.

The scope of our work was limited to reviewing the specific allegation and the related documentation concerning the contract. Fieldwork tests included reviewing contracting files and interviewing program office employees, CFO staff, and contractor personnel. All of the work in this review was performed in accordance with the President's Council on Integrity and Efficiency's *Quality Standards for Inspections*.

Major contributors to this report are listed in Appendix I. Appendix II contains the Report Distribution List.

## **Background**

During the IRS' restructuring effort, the CFO recognized the need to maintain essential accounting and clerical functions at the Beckley Administrative Service Center (BASC) in Beckley, West Virginia. The IRS' goal is to centralize all IRS payments at the BASC by January 2001. To assist in this effort, the IRS obtained a contractor to perform some duties at the BASC after the

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<sup>1</sup> GENERAL SERVS. ADMIN. ET AL., FEDERAL ACQUISITION REG. ("FAR"), 48 C.F.R. parts 1-52 (1997).

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office of the CFO determined that the workforce needs were greater than the IRS' hiring authority.

In August 1997, the IRS awarded a contract for accounting support services to be performed at the BASC. The contract included a base year and 4 option years. According to the contract, the contractor is responsible for processing of accounting documents, preparation of reports and procedures, data entry, filing, and other general recurring office tasks.

The Treasury Inspector General for Tax Administration Office of Investigations received an allegation that the IRS had improperly contracted for accounting support services that should have been performed by government employees. In addition, the allegation stated that the contract was a prohibited personal service contract under the provisions of the FAR. The Office of Investigations determined that the case lacked criminal merits and forwarded the allegation to the Office of Audit for further assessment.

## Results

*We determined that the allegation could not be substantiated.*

Based on our limited review, we determined that the allegation could not be substantiated. The accounting support services being acquired were commercial activities. Accordingly, the government has the option of using contractors or government employees to perform them. In this regard, the IRS established a valid business need for contractor support when it first awarded the contract. However, the IRS did not adequately document its business case for extending the contract.

Additionally, although the IRS is not providing day-to-day supervision of contractor employees, aspects of administering the contract could be improved to prevent the risk of a prohibited employer-employee relationship.

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**The Internal Revenue Service Did Not Document All Factors Considered Before Exercising Contract Options**

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*According to the cost comparison, contracting out these services cost the government approximately \$283,000 more each year than using government employees.*

The IRS decided to use a contractor for support services at the BASC even though the cost comparison<sup>2</sup> did not support this decision. The cost comparison performed by the IRS in Fiscal Year 1998 indicates that it was more economical to perform the accounting support services with government personnel. According to the cost comparison, using a contractor to perform these services cost the government approximately \$283,000 more each year than it would have cost to use government employees.

The accounting support services contract was awarded in August 1997 because a hiring freeze imposed at the IRS prevented the BASC from meeting the work demands. The contract was subsequently renewed in 1998, 1999, and 2000 under the option-year provisions based on the satisfactory performance of the contractor.

A business need was identified when the contract was initially awarded; however, we determined that other possible alternatives were not properly documented before exercising the option years. IRS management attested that other non-monetary considerations impacted the decision to continue the contract, although they did not document them in the contract file. These non-monetary considerations included increasing workload, existing resources, and limitations on available full-time equivalent positions.

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<sup>2</sup> Due to the limited scope of this review, we did not validate the completeness of the IRS' cost comparison. However, the comparison appeared to reflect reasonable cost elements.

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The Office of Management and Budget Circular A-76 and the Federal Activities Inventory Reform Act<sup>3</sup> provide that the federal government should contract out commercial activities when cost beneficial.

Although the cost comparison showed that contractor services would be more expensive, IRS management determined that the contractor was needed to supplement in-house staff to meet requirements for a peak workload. In this regard, the IRS should have maintained better documentation of the relevant factors, both monetary and non-monetary, used to make the decision to award the original contract and in exercising the contract provision for option years.

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**Aspects of Administering the Contract Can Be Improved to Prevent the Appearance of an Employer-Employee Relationship**

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While we found no violation of the FAR, the IRS was administering the BASC accounting support services contract in a manner that could give the appearance of an employer-employee relationship. In addition, some of the activities on this contract exposed the IRS to a risk of engaging in prohibited practices.

The FAR provides that the government should not award a contract or administer a contract in a manner that would create an employer-employee relationship. In determining whether an employer-employee relationship exists, the key question is whether the government exercised relatively continuous supervision and control over the contractor personnel performing the contract. Also, the FAR provides descriptive elements for consideration when determining whether an

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<sup>3</sup> Federal Activities Inventory Reform Act of 1998, Pub. L. No. 105-270.

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*The terms and conditions of the contract did not create a personal service contract.*

employer-employee relationship exists.<sup>4</sup> One of these descriptive elements is whether the government directly or indirectly provided supervision to the contractor.

The accounting support services contract states “The parties recognize and agree that no employer-employee [relationship] exists or will exist under the contract between the Government and the Contractor’s employees.” Additionally, we found no evidence that the IRS is directly supervising contractor employees. However, the IRS is engaging in activities that could be construed as developing an employer-employee relationship.

For example, the IRS is allowing contractor employees to attend training classes with the BASC employees. These training classes (Equal Employment Opportunity (EEO), Unauthorized Access (UNAX), Automated Financial System Security, and local area networking) are geared to government employees and are required for the BASC employees. Although the EEO and UNAX training may be beneficial to contractor employees, we do not believe that these classes are directly related to the contractor’s duties. IRS management stated that they believe the training was appropriate and related to the work being performed by the contractor’s employees.

*Although the contract clearly states that the IRS will provide training for only the first 90 days, the IRS continues to provide training to the contractor’s new employees.*

In addition, the IRS is continuing to assist the contractor with training new employees. The contract required the IRS to provide training to the contractor within the first 90 days of the contract. After the first 90 days, the contractor was expected to train all new employees at the contractor’s expense. However, IRS employees

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<sup>4</sup> There are six descriptive elements to be assessed when determining whether a contract is personal in nature. We believe the first five elements (i.e., performance on site, government furnished principal tools, furtherance of agency mission, comparable services performed by civil service personnel at other agencies, and expected to last beyond 1 year) were met in this contract.



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continued to assist in training new contractor employees after the first 90 days.

Further, in a requisition modifying the contract, the justification stated that the IRS was requesting contract employees to work overtime, on a volunteer basis, in order to meet a due date. Under the terms of the contract, scheduling contractor employees is the sole responsibility of the contractor, and the contractor has an on-site supervisor to oversee contractor employees.

We believe the IRS' actions in advising the contractor on how to schedule its employees to meet the requested due date could be construed as indirect supervision of the contractor. IRS management explained that they do not believe they told the contractor how to schedule its employees but were acknowledging that overtime would be necessary, thus eliminating the need for the contractor to come back and request overtime. In our opinion, the contractor should have made the decision about the need for overtime and then requested IRS approval for the overtime premiums.

While we believe the contract itself is not a prohibited personal service contract under the provisions of the FAR, the above practices could give the appearance that the contract employees are being treated like government employees and increase the IRS' risk of engaging in prohibited contract practices. Accordingly, the IRS should take the necessary steps to ensure that the terms of this contract are enforced and to prevent any appearance of an employer-employee relationship.

## **Conclusion**

The allegation that the IRS improperly contracted for accounting support services that should have been performed by government employees and entered into a contract that was a prohibited personal service contract could not be substantiated. The accounting support

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services being acquired were commercial activities that could be legally performed by a contractor. However, the IRS did not adequately document the non-monetary factors considered in making the decision to extend the contract when the IRS' cost comparison indicated it was more economical to perform these tasks in-house. Additionally, some of the actions taken by the IRS could give the appearance of an employer-employee relationship and expose the IRS to a risk of engaging in prohibited contract practices.

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**Appendix I**

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**Appendix II**

**Report Distribution List**

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