



U.S. ENVIRONMENTAL PROTECTION AGENCY

OFFICE OF INSPECTOR GENERAL

EPA Should Increase Fixed-Price Contracting for Remedial Actions

Report No. 13-P-0208

March 28, 2013



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Abbreviations

| | |
|-------|---|
| CO | Contracting Officer |
| CPFF | Cost-Plus-Fixed-Fee |
| EAS | EPA Acquisition System |
| EPA | U.S. Environmental Protection Agency |
| FAR | Federal Acquisition Regulation |
| GAO | U.S. Government Accountability Office |
| IDIQ | Indefinite-Delivery/Indefinite-Quantity |
| LTRA | Long Term Remedial Action |
| OAM | Office of Acquisition Management |
| OARM | Office of Administration and Resources Management |
| OIG | Office of Inspector General |
| OMB | U.S. Office of Management and Budget |
| OSRTI | Office of Superfund Remediation and Technology Innovation |
| OSWER | Office of Solid Waste and Emergency Response |
| QAP | Quality Assessment Plan |
| RAC | Remedial Action Contract |
| RI/FS | Remedial Investigation/Feasibility Study |
| T&M | Time-and-Materials |

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At a Glance

Why We Did This Review

We conducted this review to determine if the U.S. Environmental Protection Agency (EPA) is reducing the amount of high risk contracting activities for remedial actions. In the cleanup of Superfund sites, EPA uses a variety of instruments (such as contracts, cooperative agreements, and interagency agreements) to obtain Superfund remedial services. One such instrument used in procuring these services is the Remedial Action Contract (RAC). The Agency had expenditures of almost \$570 million for remedial actions under RAC contracts for fiscal years 2007 through 2011.

This report addresses the following EPA Goals or Cross-Cutting Strategies:

- Cleaning up communities and advancing sustainable development.*
- Strengthening EPA's workforce and capabilities.*

For further information, contact our Office of Congressional and Public Affairs at (202) 566-2391.

The full report is at:
www.epa.gov/oig/reports/2013/20130328-13-P-0208.pdf

EPA Should Increase Fixed-Price Contracting for Remedial Actions

What We Found

EPA continues to rely on high risk cost-reimbursement contracts and time-and-materials task orders in the Superfund remedial program. The President, U.S. Office of Management and Budget, Congress, and U.S. Government Accountability Office have called for a reduction in high risk contracts. Resistance to change, regional program office pressure, lack of leadership, and lack of trained qualified staff have contributed to the reliance on high risk contracts. Reducing the reliance on these contracts can result in numerous benefits, including cost savings, increased competition, and achievement of socio-economic goals.

Additionally, the EPA Acquisition System (EAS) contains inaccurate contract and task order types. Specifically, 5 of 17 contracts and 22 of 60 task orders and work assignments reviewed had an incorrect contract or award type listed in EAS. The inaccurate data in EAS is due to the lack of a specific EAS data quality plan and a decentralized quality assessment process. As a result, EPA is misreporting contract and spending information to the public.

Recommendations and Planned Agency Corrective Actions

We recommend that EPA require written acquisition plans for cost reimbursement RAC contracts be approved by the Head of the Contracting Activity. We also recommend that EPA develop performance measures and goals for each region for the use of fixed-price contracts and task orders, and recommend that EPA provide training to staff on how and when less risky contracts and task orders should be used. Finally, we recommend that EPA determine whether staffing changes are needed in each region to ensure that staff have the skills to manage the increased use of fixed-price contracts and task orders and develop a data quality plan for EAS to ensure the adequacy of data across all regions.

EPA agreed in principle to the objectives of the report – to improve acquisition planning and increase the use of fixed price contracts where appropriate. EPA concurred with two of our recommendations but disagreed or did not respond to four others. EPA did agree to provide training on how and when less risky contracts and tasks orders are appropriate. EPA indicated that the decision on contract type must be made on a case-by-case basis and did not agree with requiring certain contract types or setting performance measures for fixed price contracting. We revised one of the draft report recommendations to not require a certain contract type, but to elevate the responsibility for approving future cost-reimbursable RAC contracts.

Noteworthy Achievements

EPA Region 7 is implementing the vision of the original Contracts 2000 Strategy to increase the use of fixed price contracting for Superfund remedial actions.



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
WASHINGTON, D.C. 20460

THE INSPECTOR GENERAL

March 28, 2013

MEMORANDUM

SUBJECT: EPA Should Increase Fixed-Price Contracting for Remedial Actions
Report No. 13-P-0208

FROM: Arthur A. Elkins Jr.

A handwritten signature in black ink, appearing to read "Arthur A. Elkins Jr.", is written over the printed name.

TO: Craig E. Hooks, Assistant Administrator
Office of Administration and Resources Management

Mathy Stanislaus, Assistant Administrator
Office of Solid Waste and Emergency Response

This is our report on the subject audit conducted by the Office of Inspector General (OIG) of the U.S. Environmental Protection Agency (EPA). This report contains findings that describe the problems the OIG has identified and corrective actions the OIG recommends. This report represents the opinion of the OIG and does not necessarily represent the final EPA position. EPA agreed with two recommendations and provided corrective actions with completion dates, and these recommendations are considered resolved. For the other four recommendations, the Agency either disagreed or the response did not address the recommendation, and these will be resolved through the audit resolution process. Final determinations on matters in this report will be made by EPA managers in accordance with established audit resolution procedures.

Action Required

In accordance with EPA Manual 2750, the resolution process begins immediately with the issuance of this report. We are requesting a meeting within 30 days between the Director, Office of Acquisition Management; Director, Office of Superfund Remediation and Technology Innovation; and the OIG's Assistant Inspector General for Audit. If resolution is still not reached, the Assistant Administrator for Administration and Resources Management and the Assistant Administrator for Solid Waste and Emergency Response are required to complete and submit the dispute resolution request to the Chief Financial Officer to continue resolution.

We have no objections to the further release of this report to the public. We will post this report to our website at <http://www.epa.gov/oig>.

If you or your staff have any questions regarding this report, please contact Melissa Heist, Assistant Inspector General for Audit, at (202) 566-0899 or heist.melissa@epa.gov; or Janet Kasper, Product Line Director, at (312) 886-3059 or kasper.janet@epa.gov.

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Chapter 1

Introduction

Purpose

In recent years, the President, U.S. Office of Management and Budget (OMB), Congress, and U.S. Government Accountability Office (GAO) have raised concerns or called for a reduction in high risk contracts. The U.S. Environmental Protection Agency (EPA) Office of Inspector General (OIG) conducted this audit to determine whether EPA is reducing the amount of high risk contracting activities for remedial actions.

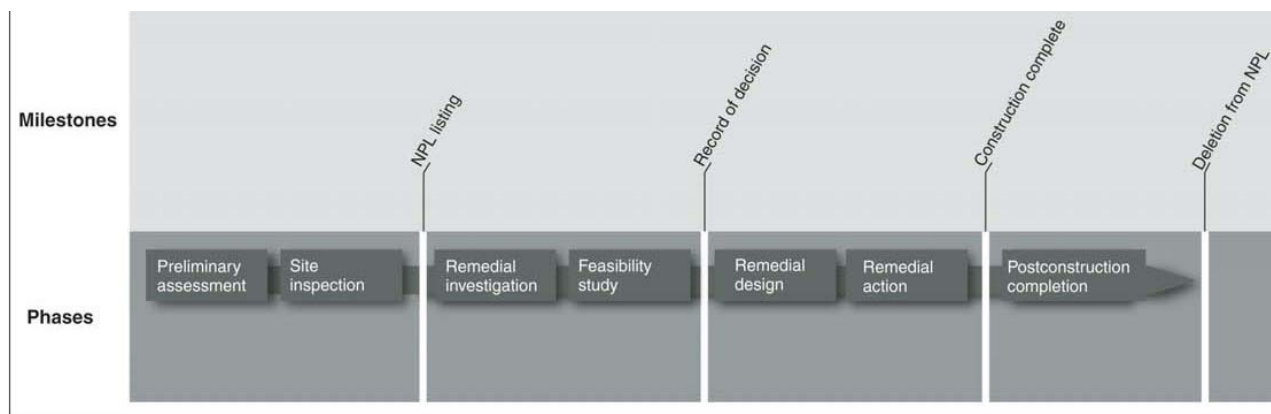
Background

Superfund Cleanup Process

Congress enacted the Comprehensive Environmental Response, Compensation, and Liability Act, commonly referred to as “Superfund,” to address threats to human health or the environment resulting from releases or potential releases of hazardous substances. EPA has primary responsibility for managing cleanup and enforcement activities under Superfund.

EPA’s Superfund cleanup process can be lengthy; it can sometimes take decades to clean up the contamination. The cleanup process involves a series of steps during which specific activities take place or decisions are made (figure 1).

Figure 1: Superfund cleanup phases



Source: GAO analysis of EPA data.

Source: GAO Report GAO-12-109, January 2012.

During the site assessment process, EPA and states collect data to identify, evaluate, and rank hazardous waste sites based on Hazard Ranking System criteria. Using these criteria, EPA conducts a preliminary assessment and, if

warranted, a site inspection to determine whether the site warrants short- or long-term cleanup attention. Sites that EPA determines are among the nation's most seriously contaminated hazardous waste sites are placed on the National Priorities List for attention under the Superfund program.

After a site is placed on the National Priorities List, the remedial process begins with a two-part study of the site: (1) a remedial investigation to characterize site conditions and assess the risks to human health and the environment, and (2) a feasibility study to evaluate various options to address the problems identified through the remedial investigation. The culmination of these studies is a record of decision, which identifies the selected remedy for addressing the site's contamination and a cost estimate for implementing the remedy. EPA or the primary responsible party may develop preliminary estimates of construction costs and, as the site moves from the study phase into the remedial action phase, a more accurate cost estimate may be developed. The method of implementation for the selected remedy is then developed during remedial design and implemented during the remedial action phase, when actual cleanup of the site occurs.

When all construction of the cleanup remedy at a site is finished, all immediate threats have been addressed, and all long-term threats are under control, EPA generally considers the site to be "construction complete." Sites where additional work is required after construction is completed then enter into the post construction phase, which includes actions such as operation and maintenance and conducting 5-year reviews. When EPA determines that no further site response is appropriate, it deletes the site from the National Priorities List.

Remedial Action Contracts (RACs)

In the cleanup of Superfund sites, EPA uses a variety of instruments such as contracts, cooperative agreements, and interagency agreements to obtain services to assist in the remediation of Superfund sites. EPA awards contracts for remedial services using RACs, which are full service contracts that provide all services needed in the Superfund cleanup process. The services include program support (management); remedial investigation and feasibility studies; engineering services to design remedial actions; and engineering services for construction oversight. RAC contractors may also provide technical and management services supporting EPA's coordination and/or oversight of remedial activities performed by a State, the U.S. Army Corps of Engineers, or responsible parties identified in enforcement actions. Overall, the Agency had expenditures of almost \$570 million for remedial actions under RAC contracts for fiscal years 2007 through 2011.

Contracts 2000 Strategy

The Office of Solid Waste and Emergency Response (OSWER), in conjunction with the Office of Acquisition Management (OAM) within the Office of

Administration and Resources Management (OARM), developed the Superfund Contracts 2000 Strategy Report (Contracts 2000 Strategy) to formulate the structure of the Superfund contracting program for the year 2000 and beyond. The central purpose of the strategy was to develop a portfolio of contracts for the future that best met program needs while using the best procurement practices. The strategy established the following goals:

- Balance national consistency with regional flexibility.
- Introduce more competition into the contracting process.
- Increase small-, minority-, and women-owned business participation in the Superfund contracting program.
- Adopt new contracting vehicles and methods such as performance-based, multiple award, and fixed-price contracting.

While the strategy kept most of the existing contract infrastructure in place, it shifted away from large, full service contracts such as RACs to functionally focused contracts for design and construction services. The Agency stated that functional contracts sized and focused on specific activities should reduce infrastructure costs and allow for greater competition.

The Agency stated in the Contracts 2000 Strategy that it planned to split up the requirements previously consolidated under the RACs to allow more firms, especially small businesses, to participate in the program and increase competition. The rationale was that smaller contracts can be more readily adaptable to changing program requirements and increase opportunities for the use of fixed-price, completion form, and performance-based contracting.

Subsequent to issuing the Contracts 2000 Strategy, the Agency changed the strategy to a menu approach, allowing regions to choose from a variety of contract methods and types, including the full service RACs.

Contracts 2010 Strategy

As the successor to the Contracts 2000 Strategy, OSWER and OAM established the Contracts 2010 Strategy in March 2011. This strategy has seven goals, incorporating those highlighted in the previous Contracts 2000 Strategy and adding others that reflect new program directions and heightened government-wide concerns for efficiency and procurement process improvements. This strategy sets the Agency's framework for acquisitions in support of the Superfund program activities for the next 10 years. The seven goals are:

- Balance national consistency with local flexibility.
- Ensure that there is appropriate competition in the contracting process.
- Increase participation of all socio-economic concerns in the Superfund contracting program.
- Implement green policies and procedures.

- Identify and implement opportunities and initiatives for process and cost efficiencies.
- Identify the full range of vehicles or instruments available for obtaining services for the Superfund cleanup programs.
- Mitigate high risk contracting practices.

To achieve the goal of mitigating high risk contracting practices, the Agency identified funding obligated to high risk contracts. The intent is to identify new and existing acquisitions that may be converted to less risky vehicles. To mitigate risks associated with high risk contracts, the Agency identified as a best practice issuing fixed-priced orders against indefinite-delivery/indefinite-quantity (IDIQ) contracts, when possible.

Noteworthy Achievements

Region 7 implemented the vision of the original Contracts 2000 Strategy. For example, the region is breaking out the construction portion of the remedial action and contracting for it directly instead of having the RAC contractor manage it. This allows the region to compete each remedial action, taking advantage of increased competition. Region 7 has trained and hired the staff needed to award and manage fixed-price contracts for remedial actions. As of May 2012, Region 7 had awarded 38 site specific contracts since 2005. We reviewed all of these contracts and determined that only one was not a fixed-price type contract. Region 7's transition to site specific contracts has resulted in fewer high risk contracts, increased competition, and greater achievement of socioeconomic contracting goals.

Scope and Methodology

We conducted this audit from September 2011 to January 2013 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.

We visited Regions 4, 7, and 9, and headquarters (which administers the RAC contracts for Regions 1 and 8). Regions 1, 4, and 9 use IDIQ RAC contracts, while Region 8's RAC contracts are cost-plus-fixed-fee (CPFF). Region 7 uses mostly fixed-price contracts for remedial actions. Our goal was to gain a broad perspective of contracting for remedial actions across the country, which includes providing audit coverage of regions using IDIQ, cost-reimbursement, and fixed-price contracts. Including audit coverage of Regions 1, 4, 7, 8, and 9 gave us the broad perspective needed to form sound conclusions on the Agency's remedial action contracting as a whole.

We interviewed contracting and program staff in each of these five regions to document the processes used to select a contract type for remedial services and to discuss the types of remedial work performed. We also surveyed Superfund and contracting staff in the other regions to help us identify similar work across the country that could possibly be done as fixed-price or could be compared with similar work that we know has been done fixed-price elsewhere. In addition, we performed the following to answer our audit objective:

- Determined the type of RAC contracts in existence prior to the current RAC contracts and compared to the most recent RAC contracts.
- Determined the number of fixed-price site specific remedial action contracts since 2002.
- Determined the universe of IDIQ and cost-reimbursable RAC contracts.
- Determined the universe of RAC task orders or work assignments for those regions we visited.
- Interviewed regional management and staff regarding their perspectives on fixed-price and IDIQ contracts.
- Met with OSWER's Office of Superfund Remediation and Technology Innovation (OSRTI) and OAM to gain their perspectives on contract type, and to obtain and discuss performance measures or goals related to RAC contracts or the overall reduction of risky contract types.
- Determined how Regions 4 and 7 have overcome institutional resistance and other barriers to using fixed-price contracting.
- Obtained additional information from Region 4 regarding its multiple award solicitation.
- Obtained and analyzed acquisition plans for the RAC contracts.
- Determined if similar remedial actions existed within a region where EPA used both a fixed-price and time-and-materials (T&M) contract or task order to perform the selected remedy.

For all five regions reviewed, we obtained a listing of task orders or work assignments awarded and developed a judgmental sampling methodology for each contract. We selected the task orders and work assignments for review if they met the following criteria: (1) the award was a remedial action; or (2) if there were less than five remedial action task orders or work assignments, then long term remedial actions (LTRA), remedial investigation/feasibility studies (RI/FS), remedial designs, oversight task orders, and 5-year reviews were also judgmentally selected for review. We also included in the sample fixed-price contracts awarded by Region 7. The following provides specific details on each region and the contracts, task orders, and work assignments selected for review.

- Region 1.** Region 1 has two IDIQ RAC contracts. For contract EP-S1-06-01, we judgmentally reviewed 8 of 53 task orders. The target population was remedial action task orders. Because there were only three remedial actions, we also judgmentally reviewed three LTRA task orders and two remedial action oversight task orders to enlarge the sample size. For

contract EP-S1-06-03, we reviewed 8 of 64 task orders. We reviewed three remedial actions and judgmentally reviewed four LTRA task orders and one remedial design task order.

- **Region 4.** Region 4 has two IDIQ RAC contracts. For contract EP-S4-09-02, we judgmentally reviewed 21 of 64 task orders. In addition to the 14 remedial action task orders, we judgmentally reviewed one 5-year review, one removal support, one remedial action oversight, and four LTRA task orders to enlarge the sample size. For contract EP-S4-08-03, we judgmentally reviewed 4 of 25 task orders. Since there was only one remedial action, we also reviewed one RI/FS task order, one remedial design task order, and one risk assessment task order to enlarge the sample size.
- **Region 7.** Because Region 7 was the one region implementing the Contracts 2000 Strategy, we reviewed all 38 site specific contracts issued between June 2005 and May 2012.
- **Region 8.** Region 8 has two cost-reimbursement RAC contracts. For contract EP-W-06-006, we judgmentally reviewed three of the four remedial action work assignments. For contract EP-W-05-049, we reviewed the only two remedial action work assignments issued under the contract.
- **Region 9.** Region 9 has two IDIQ RAC contracts. Since there was only one remedial action for contract EP-S9-08-03, we also judgmentally reviewed two LTRA task orders and two 5-year reviews to enlarge the sample size. For contract EP-S9-08-04, we reviewed all five remedial action task orders and judgmentally reviewed one 5-year review.

For the above contracts, task orders, and work assignments reviewed, we determined whether the type was cost-reimbursement or fixed. We documented the type of work being performed and determined if similar scopes of work existed on fixed-price task orders or contracts. We also performed steps to review data quality issues discovered during preliminary research. These steps entailed comparing the contract, task order, and work assignment type within EPA's systems to the type identified in the contract files for each contract, task order, and work assignment reviewed during our audit. We determined controls governing correct entry of this data and discussed with staff and management the reasons behind any discrepancies. Because we relied on source documentation, the data quality issues identified did not impact our conclusion regarding our primary audit objective.

We reviewed internal and management controls in the context of the Agency's process for selecting contract type in the remedial program. We obtained an

understanding of this process through analysis of the laws, regulations, and guidance, as well as interviews.

We also reviewed the most recent Federal Managers' Financial Integrity Act assurance letters for OSWER and OARM, as well as GAO and OIG management challenges documents. EPA did not identify internal control weaknesses directly related to our audit objectives.

Prior Audit Coverage

EPA OIG

In OIG Report No. 2005-P-00001, *Response Action Contracts: Structure and Administration Need Improvement*, dated December 6, 2004, the OIG recommended that the Agency develop and implement a plan for RACs that increases use of IDIQ and site specific contracts, and conduct a lessons learned analysis of the new IDIQ contracts. We followed up on this prior report during this audit and determined that the Agency did not fully implement these recommendations.

GAO

In GAO Report No. GAO-09-921, *Contract Management: Extent of Federal Spending under Cost-Reimbursement Contracts Unclear and Key Controls Not Always Used*, issued in September 2009, GAO reported that federal agencies obligate billions of dollars annually using cost-reimbursement contracts. GAO stated that this type of contract involves high risk for the government because of the potential for cost escalation and because the government pays a contractor's costs of performance regardless of whether the work is completed. Additionally, GAO stated that cost-reimbursement contracts are suitable only when the cost of the work to be done cannot be estimated with sufficient accuracy to use fixed-price contracts. GAO made recommendations to OMB's Office of Federal Procurement Policy aimed at encouraging timely analysis to determine if a transition can be made to contracts with a firmer pricing basis.

Chapter 2

EPA Continues to Rely on High Risk Contracts for Remedial Actions

EPA continues to rely on high risk cost-reimbursement contracts and T&M task orders in the Superfund remedial program. The President, OMB, Congress, and GAO have called for a reduction in high risk contracts. Resistance to change, regional program office pressure, lack of leadership, and lack of trained qualified staff have contributed to the overreliance on high risk contracts. Reducing reliance on these contracts can result in numerous benefits, including cost savings, increased competition, and achievement of socioeconomic goals.

Federal Government Encouraged to Limit High Risk Contracts

Presidential and OMB Memorandums

On March 4, 2009, President Obama issued a memo regarding federal contracting practices. The memo stated that cost-reimbursement contracts create a risk that taxpayer funds will be spent on contracts that are wasteful, inefficient, subject to misuse, or otherwise not well designed to serve the needs of the federal government or the interests of the American taxpayer. The memo directed OMB to issue guidance to govern the appropriate use and oversight of all contract types in full consideration of the agency's needs, and to minimize risk and maximize the value of government contracts. On July 29, 2009, OMB issued a memo providing guidance to agencies to reduce high risk contracts. The memo stated that cost-reimbursement, T&M, and labor-hour contracts pose a risk because they provide no direct incentive to the contractor for cost control. However, a subsequent OMB memo provided examples of when cost-reimbursement contracts are appropriate (e.g., when there is considerable uncertainty about the resources that will be necessary to achieve the government's objective).

Congressional Action

Section 864 of the Duncan Hunter National Defense Authorization Act for Fiscal Year 2009, PL 110-417, required that the Federal Acquisition Regulation (FAR) be revised to address the use of cost-reimbursement contracts. Specifically, the FAR addresses the following:

- When and under what circumstances cost-reimbursement contracts are appropriate.
- The acquisition plan findings necessary to support a decision to use cost-reimbursement contracts.
- The acquisition workforce resources necessary to award and manage cost-reimbursement contracts.

FAR 16.1

The FAR groups contract types into two broad categories: fixed-price contracts and cost-reimbursement contracts. It further states that specific contract types range from firm-fixed-price, in which the contractor has full responsibility for the performance costs and resulting profit (or loss), to CPFF, in which the contractor has minimal responsibility for the performance costs and the negotiated fee (profit) is fixed. The FAR also states that contracting officers (COs) should avoid protracted use of a cost-reimbursement or T&M contract after experience provides a basis for firmer pricing.

FAR 16.3

The FAR states that the CO shall use cost-reimbursement contracts only when: (1) circumstances do not allow the agency to define its requirements sufficiently to allow for a fixed-price type contract, or (2) uncertainties involved in contract performance do not permit costs to be estimated with sufficient accuracy to use any type of fixed-price contract. Further, a cost-reimbursement contract may be used only when specific factors have been considered and adequate government resources are available to award and manage a contract other than firm-fixed-price.

EPA Continues Reliance on High Risk Contracts and Task Orders for Remedial Actions

Despite urging from the President, OMB, Congress, and EPA internal strategies (Contracts 2000 and 2010 Strategies), only EPA Regions 4 and 7 have reduced high risk contracting activities in the Superfund remedial program.¹ As of June 2012, there were 24 RAC contracts. Of those 24 contracts, 12 (50 percent) were high risk, CPFF contracts and 12 (50 percent) were IDIQ contracts. The 12 high risk CPFF contracts were awarded from four EPA regional offices (Regions 2, 3, 5, and 8). Despite the inherent risks associated with these contracts, these four EPA regional offices have not transitioned to IDIQ contracts.

The advantage of IDIQ contracts is that they allow for the possibility of awarding fixed-price task orders. We found that only Region 4 is significantly issuing fixed-price task orders. We reviewed 25 Region 4 task orders and found that 18 were firm-fixed-price type task orders. These task orders were for remedial actions, including some long-term remedial actions. We reviewed 30 additional task orders from Regions 1 and 9 (which also have IDIQ contracts) and found that 29 were high risk T&M task orders. We confirmed through interviews with both EPA headquarters and regional program and contracts staff that EPA does not award a significant amount of lower risk, task orders for remedial action activities

¹ OMB defines high risk contracting activities as noncompetitive contracting, cost-reimbursement contracts, T&M contracts, and labor hour contracts.

outside of Region 4. Therefore, while some regions have converted their RAC contracts to IDIQ, most continue to rely on high risk task order types.

Region 7 has awarded 38 site specific contracts since 2005, the majority of which were for remedial actions. We reviewed all 38 and determined that 37 were fixed-price type contracts. Region 7 contracts with the construction contractor directly, using regional contracting staff to award and administer the contracts, and remedial project managers to oversee the construction contractor.

EPA Strategies to Reduce High Risk Contracting Not Successful

EPA's Contracts 2000 Strategy encouraged shifting away from large umbrella contracts (such as the full service RACs that perform all pipeline activities from site assessment to cleanup) to functionally focused contracts for design and construction services. This shift was done in part to increase opportunities for the use of fixed-priced, performance-based contracting and to reduce the over-reliance on cost-reimbursement contracts. However, the plan allowed for flexibility when awarding contracts. This flexibility allowed regions to continue to use and rely heavily on high risk CPFF contracts and high risk task orders pursuant to their IDIQ contracts.

In 2011, EPA published its Contracts 2010 Strategy Report, which sets the framework for acquisitions in support of the Superfund program activities for the next 10 years. One of the goals of the Contracts 2010 Strategy is to mitigate high risk contracting practices. In order to achieve the lowest level of high risk contracts possible, EPA identified several tasks to reduce the number of these high risk contracts. However, this plan lacks specifics and once again allows for regional flexibility. Without increased specificity and goals, this strategy may also be ineffective in reducing high risk contracts and task orders.

EPA Culture Encourages Status Quo

EPA Regional Program Staff Resistant to Change

Most EPA regional program offices have resisted the use of fixed-price contracting in the remedial program for more than a decade. EPA regional program offices prefer the full service RAC cost-reimbursement contracts or IDIQ contracts utilizing T&M task orders because they provide flexibility in structuring projects at various stages of the remedial program. The full service RAC contracts allow EPA to leverage its resources, as EPA project managers are used to oversee multiple sites and act as the focal point of communications and coordinate project team efforts, ensuring that project participants work together to accomplish the goals of the project.

The regions' resistance to change is well documented through the years and was continually communicated to the OIG during this audit. One of the earliest

examples of resistance from the regions came when EPA tried to implement the Contracts 2000 Strategy. The original Contracts 2000 Strategy called for dividing the design and construction portions of the RAC contracts so that the construction portion could possibly be fixed-price. However, the regions did not like this mandate because of the Agency's limited experience and in-house resources to directly contract and manage construction projects. Therefore, Contracts 2000 was ultimately implemented using a menu approach emphasizing regional flexibility and only encouraged the use of fixed-price contracts. The menu approach allowed regions to choose from several options when developing their contracts. Those options included use of site specific contracts, RACs, remedial design contracts, and interagency agreements. The menu approach has allowed the status quo to continue for more than a decade. When discussing why fixed-price contracting is not being implemented with OAM headquarters, regional contracting staff, and OSRTI headquarters, the overall response was because of regional program office resistance.

More recently, OAM and OSWER developed the Contracts 2010 Strategy. This strategy once again emphasized regional flexibility. Superfund program and contracting representatives are working on Phase 2 of the Contracts 2010 Strategy. While this plan is not complete, the OIG obtained a draft of the plan and it is also not specific with regard to contract types and allows for continuing flexibility for the regions. When we discussed with OAM and OSRTI staff the lack of specificity regarding contract type, regional program resistance was cited as the reason why more progress is not being made in reducing high risk contracting.

EPA Staff Believe that Remedial Actions Do Not Lend Themselves to Fixed-Price Type Contracts

One of the reasons EPA regional staff cited for not using fixed-price contracts is that there are too many unknown and unforeseen factors associated with subterranean construction. Both program and contracting staff in EPA regions informed us that in order to award fixed-price type contracts, the work to be performed must not be complex, or there must be few unknowns so that the activities can be well-defined. While the OIG agrees that fixed-price contracts lend themselves to a well-defined scope of work and not all tasks can be fixed-price, we do not agree that remedial actions do not lend themselves to fixed-pricing. Both Region 4 and Region 7 regularly award fixed-price type contracts or task orders for remedial actions and have done so for several years. When identifying the types of activities funded with fixed-price type contracts in Regions 4 and 7, we found similar types of activities in other regions that do not use fixed-price contracting.

In addition, EPA's RAC contractors award fixed-price type subcontracts to accomplish the remedial actions. These RAC contractors are generally architect and engineering firms and usually do not perform the remedial action themselves.

Instead, these firms subcontract out the performance of the selected remedy. We reviewed several of these subcontracts or proposed subcontract agreements between architectural and engineering firms and their subcontractors, and all of the subcontracts reviewed were fixed-price type subcontracts. The types of fixed-price type subcontracts awarded were for various services, including the following:

- Dredging and related services.
- Drilling services.
- In-situ chemical oxidation.
- In-situ thermal treatment.
- Removal of access roads, and enhancements to stream banks, roads, and fencing.
- Removal of contaminated tailings and soil.

Program Office Pressure

The CO has ultimate responsibility for determining contract type. COs are responsible for safeguarding the interests of the United States in its contractual relationships. In order to perform this responsibility, COs should be allowed wide latitude to exercise business judgment. At the same time, the program offices are the CO's customer, resulting in a situation that can create a conflict for the CO between satisfying the customer and determining the appropriate contract type based on the statement of work and other related data. Contracting staff stated that the program offices wield significant influence on the selection of the contract type. One CO stated that he was surprised at how much influence the program office has on contract type at EPA, while another CO stated that the program office essentially dictates the contract type. In other cases, the discussion of the task order type is not even taking place between the program office and the CO. It is assumed that the task order type will be T&M and a discussion of whether certain tasks can be fixed does not take place.

Lack of Leadership and Lack of Performance Measures

Overcoming the barriers that have prevented EPA from moving away from high risk contracting requires strong leadership. In the past, however, OAM and OSRTI have not always displayed strong leadership. For example, the original Contracts 2000 Strategy called for dividing the design and construction portions of the RAC contracts to provide more opportunity for fixed-price contracting. EPA regions essentially rejected this approach, and management allowed the plan to be changed to a more flexible menu approach which allowed regions flexibility and choices. In fact, regions were allowed to keep the same contracting practices and continue to operate as in the past. Again in April 2004, another EPA Superfund study² highlighted discussions about whether the existing contracts are

² EPA, *SUPERFUND: Building on the Past, Looking to the Future*, April 22, 2004

used effectively and whether different contract types should be used more frequently (e.g., performance-based and site specific contracts). This same study stated that site specific and task order contracts can result in significant cost savings to the program. However, EPA has awarded almost no site specific contracts outside of Region 7, nor fixed-price task orders outside of Region 4. With the Contracts 2010 Strategy, the leadership strategy of allowing regional flexibility continues to be advocated resulting in continued use of high risk contracting strategies. OAM management informed us that they have a number of initiatives that they believe will address the issue. Some of these initiatives include:

- Institutionalizing a more disciplined acquisition planning process.
- Implementing management controls and oversight mechanisms to ensure the performance of the required analysis and documentation for the selection of appropriate contract types.

However, it is too early to evaluate the impact of any of these initiatives.

Neither the Contracts 2000 nor Contracts 2010 Strategies included performance goals or measures for assessing progress toward using fixed-price contracting. The Government Performance and Results Act of 1993 emphasized the use of goals for program performance and measuring results. The Government Performance and Results Modernization Act of 2010 reemphasized the use of goals and measures to improve outcomes. Performance goals can help programs achieve results. Performance measures may assist the Agency in moving toward fixed-price contracting. In fact, the EPA Director of Small Business Programs stated that performance measures have helped EPA become one of the top agencies in meeting small business goals.

EPA Officials and Staff Cite Lack of Personnel as Barrier to Fixed-Price Contracting

EPA officials and staff stated that they do not have personnel with the right skill mix or experience to award, administer, and manage fixed-priced contracts. While this may be the case, the Agency has had more than a decade since its Contracts 2000 Strategy to train and hire the staff needed to implement fixed-price contracting in the remedial program, and with the exception of Region 7, has chosen not to do so.

In 2005, OSWER initiated the Superfund Workload Assessment. The primary purposes of the Superfund Workload Assessment were to:

- Better understand how Superfund personnel resources are being used across the program relative to the future long-term workload.
- Establish a baseline of current workload distribution and resource constraints.

- Explore opportunities to continue to improve the program's use of its personnel resources.

OMB Guidance Memorandum M-09-26, *Managing the Multi-Sector Workforce*, instructs agencies to determine the mix of skills and amount of labor needed for the agency to perform efficiently and effectively. According to the guidance, agencies should take into account the mission, functions, desired performance standards, and workload. While the Superfund Workload Assessment did examine the workforce on board at the time of the assessment, it did not identify the mix of skills needed for the agency to implement the Contracts 2000 Strategy.

EPA staff contended that a fixed-priced contract is more labor intensive than a cost-reimbursement contract and requires adequate, experienced personnel to award, administer, and manage a fixed-priced contract. While fixed-pricing work does require more upfront planning such as developing a well defined scope of work, this makes the stages after award easier to administer and manage. Moreover, cost-reimbursement contracts require increased government surveillance. FAR 16.301-3 states that a cost-reimbursement contract can only be used when adequate government resources are available to award and manage a contract other than firm-fixed-priced. This includes appropriate government surveillance during performance to provide reasonable assurance that efficient methods and effective cost controls are used. This point was reiterated in OMB's memorandum in response to the President's directive concerning high risk contracting, which stated that cost-reimbursement and T&M contracts are often used without an appropriate basis or sufficient management and oversight to limit taxpayer risk.

EPA Missing Out on the Benefits of Fixed-Price Contracting

The reliance on high risk contracts and task orders provides little incentive to the contractor to control costs. As a result, EPA is not reaping the benefits of cost savings related to fixed-price contracting. Fixed-price contract savings can sometimes be difficult to calculate, since projects are often unique. We found one instance in Region 7 where EPA was cleaning up residential yards in the same county using two different contractors. One contract was a T&M contract, and the other contract was awarded by paying the contractor a fixed price per ton of remediated land. Tasks performed for each contract were similar. We used a conversion rate to convert tons to cubic yards and found the cost per cubic yard for the T&M contract was \$80.16, while the cost per cubic yard for fixed price type contract was \$32.74. EPA awarded the first contract using a high risk T&M contract. It later awarded the second contract using a fixed price per ton because of several concerns, one of which was the cost being incurred to clean up the yards using the T&M contract. By moving to the fixed-price type contract, Region 7 saved \$13,828,003 for the 261,607 cubic yards removed by the fixed-price contractor.

Region 7's use of fixed-price type contracts has also resulted in increased socioeconomic participation. Region 7 has continually had the highest percentage of contracts awarded as "small business" from 2006 through 2011. In fact, Region 7 has led in almost each category for small business concerns during that time period. The EPA Director of the Office of Small Business Programs informed us that Region 7 is the premier regional office in terms of meeting EPA's small business goals.

Another benefit of Region 7's use of site specific contracting is competition. We reviewed 38 Region 7 site specific contracts. Of those, 30 were awarded competitively. The average number of bids for the 30 competitive contracts was 8.4, and the number of bids ranged between 3 and 17. For 4 of the 30 competitive contracts, the range of bids was over \$24 million. Other regions are not able to take advantage of the benefits of competition since they do not competitively award task orders or work assignments under RAC contracts.

Recommendations

We recommend that the Assistant Administrator for the Office of Administration and Resources Management:

- 1a. Require that written acquisition plans for future cost-reimbursement RAC contracts be approved by the Head of the Contracting Activity.
- 1b. For current cost reimbursement RAC contracts, at the end of the base period, require written acquisition plans be prepared and approved by the Head of the Contracting Activity.

We recommend the Assistant Administrators for both the Office of Administration and Resources Management and the Office of Solid Waste and Emergency Response:

2. Develop performance measures for each region for the use of fixed-price contracts and task orders for remedial actions. The performance measures should be implemented in a way that holds the regions accountable (both the Superfund program staff and contracting staff) for decreasing the use of high risk contracts and task orders.
3. As part of the implementation of the Contracts 2010 Strategy, provide training to both Superfund program and contracting staff on how and when less risky contracts and task orders should be used in the Superfund remedial program.
4. Determine whether staffing changes are needed in each region to ensure that staff have the skills to manage the increased use of fixed-price

contracts and task orders, and develop a plan for addressing the staffing needs.

Agency Response and OIG Evaluation

EPA agreed in principle to the objectives of the report – to improve acquisition planning and increase the use of fixed price contracts where appropriate. However, the Assistant Administrators did not agree with some of the recommendations, and provided specific comments to passages in the report. Our responses to the specific comments can be found in Appendix B.

A recurring comment in the response to the draft report is that the draft did not provide a balanced view of fixed-price contracting and that it might not always be appropriate for Superfund work. We agree that OMB guidance states that when there is considerable uncertainty regarding what is needed a cost reimbursable contract may be more effective. The OMB memorandum goes on to state that, over time, experience should generally enable the agency to address the uncertainties, making it possible to convert to fixed-price contracting. While subsurface and underwater activities are difficult to characterize, there are other types of remediation activities that the EPA has past experience with and converting to fixed-price contracting should be considered.

In the draft report, the first recommendation was that the EPA replace all current cost-reimbursement RAC contracts at the end of the current base or option period with IDIQ contracts to allow the use of fixed-price task orders when appropriate. EPA did not agree with recommendation 1, and stated that OAM recently published Interim Policy Notice 12-03 on Acquisition Planning. EPA stated that the processes, procedures, and oversight associated with the interim policy notice are intended to institutionalize more informed and collaborative decision making throughout the acquisition planning process, which includes contract type. The Agency also stated that due to the requirements of the recently established Remedial Acquisition Framework, EPA plans to review all of the Agency's contracts in support of the Superfund Remedial Program in order to determine the appropriate time to re-compete under the new proposed remedial model described in the framework.

Based on available information, the Agency's proposed action will not address the recommendation. We reviewed the interim policy notice for acquisition planning and it requires that FAR Part 7 requirements must be met for all EPA acquisitions. It does require the contract team to document the rationale for the contract type proposed. However, this would not be applied to the RAC contracts until the current contracts expire. As for the remedial action framework, the EPA was unable to provide a copy to review. Until we are able to review the framework and determine that it adequately addresses replacing the RAC contracts that only allow for cost reimbursement task orders, we cannot accept the alternate correction action.

Based on the EPA's response to the draft report, we revised recommendation 1. We recognize that the revised acquisition policy does require that the rationale for the contract type be documented. Due to the size of the RAC contracts and the issues in the audit report regarding program office pressure and resistance to change, we are recommending that the written acquisition plan be approved by the Head of the Contracting Activity, as opposed to the Chief of the Contracting Office. For the current cost-reimbursable RAC contracts we are recommending that the agency re-evaluate whether cost-reimbursable is the appropriate form of contract at the end of the base contract periods. RAC contracts generally have 5 option years, making the expiration date of some of the current cost-reimbursable contracts as 2018 and 2019. We believe that action should be taken sooner than that. The audit resolution process will be used to resolve this recommendation.

For recommendation 2, the Agency did not agree with establishing performance measures. The Agency stated that it would develop guidelines for use when selecting the most appropriate type of contract and task order, considering the results of the Remedial Acquisition Framework and the Centers of Expertise Study. The proposed guidelines are not available for the OIG to evaluate, in particular whether it includes a method for evaluating the effectiveness of the guidelines in increasing the use of fixed-price contracting vehicles. The audit resolution process will be used to resolve this recommendation.

EPA agreed with recommendation 3 and committed to providing training to both Superfund program and contracting staff. The training will include how to document the analysis leading up to the contract type selection. The targeted completion date is November 30, 2013. The Agency actions, when implemented, should address the recommendation.

For recommendation 4, the Agency agreed to continue to ensure that staff have the skills necessary to manage all types of contracts. The ongoing Centers of Expertise study is assessing the staffing needs associated with implementing new business processes, such as prescriptive acquisition planning requirements. In responding to the draft report, the Agency acknowledged that it will require additional resources and infrastructure to perform direct construction activities. While the Agency agreed that it should maximize the use of fixed-price contracting as appropriate, it has not addressed how it will develop the infrastructure needed to support fixed-price contracting. Therefore, we consider this recommendation unresolved and will initiate the audit resolution process.

Chapter 3

Inaccurate Contract Data

The EPA Acquisition System (EAS) contains inaccurate contract and task order information. Specifically, 5 of 17 contracts and 22 of 60 task orders and work assignments had an incorrect contract or award type listed in EAS. EPA's Open Government Data Quality Plan 1.0 states that each of the 13 major EPA contracting offices is responsible for overseeing the quality of its acquisition operations through its Quality Assessment Plan (QAP). Additionally, EPA's Acquisition Handbook states that by using the QAPs, EPA verifies and validates that the information in EPA's procurement system is consistent with the official contract files. The inaccurate data in EAS is due to the lack of a specific EAS data quality plan and a decentralized QAP process. EAS data is made available to the public through the Federal Procurement Data System. As a result, EPA is misreporting contract and spending information to the public.

OMB's Open Government Directive Requires Data Quality

In February 2010, OMB issued an Open Government Directive regarding the quality of federal spending information. The directive cited duplication of data, missing transactions and data elements, and inaccurate or untimely data as the challenge with regards to the accuracy of federal spending data. The directive also stated that agencies should ensure that information on federal spending is objective and of high quality. OMB directed agencies to submit data quality plans by April 14, 2010. Additionally, OMB required the Senior Accountable Official of each agency to certify its plan.

To comply with OMB's directive, EPA issued its Open Government Data Quality Plan 1.0 on May 18, 2010. This plan states that each of the 13 major EPA contracting offices is responsible for overseeing the quality of its acquisition operations through its QAP. Each QAP should contain internal control and integrity requirements to ensure that acquisition rules and regulations are followed, files and records are kept to document the acquisition processes and procedures, and sufficient efforts are taken to perform pre- and post-award reviews of transactions to ensure that controls are working as intended. Each QAP also directly places the responsibility for data quality and integrity on the contract specialists and contracting officers.

In order to maintain visibility of all Agency QAPs, OAM requires a current repository of the plans for all primary contracting organizations. Based on this requirement, all current QAPs shall be submitted to OAM for review and concurrence. Thereafter, all primary contracting organizations must submit their QAP to OAM for review when the plans have been modified.

EPA's Acquisition Handbook states that by using the QAPs, EPA verifies and validates that the information in EPA's procurement system is consistent with the official contract files. It further states that a summary of the validation is required to be documented for the record.

Incorrect Contract and Task Order Types Listed in EAS

Five of 17 (29 percent) contracts reviewed had incorrect contract types listed in EAS when compared to the individual contract file. Additionally, 22 of 60 (37 percent) task orders and work assignments reviewed had award types listed in EAS that did not match the individual task order or work assignment file.

In response to finding outlines provided to EPA, OAM stated that the "Contract Type Per File" and "EAS Contract Type" do not represent coding inconsistencies, as both data entries are correct. OAM asserts that contracts may be both IDIQ and T&M. IDIQ refers to the contract type and T&M refers to the pricing arrangement for the task order. OAM believes both contract types may accurately describe one contract in terms of type and pricing, and OAM sees no error in this reporting. Nonetheless, OAM believes that consistency in how such data is reported is important for effective contract management and will consider developing policy guidance to facilitate consistency in how such data is reported. We disagree with OAM regarding the use of the pricing arrangement for the contract type. The contract type refers to the overall contract and the pricing arrangement applies to the task orders issued under that contract. Pricing arrangement under an IDIQ contract may allow for many different task order types. For example, the pricing arrangement for one region's contracts allows for three different types of task orders to be issued. Therefore, these contracts should be reported as IDIQ contracts.

Our analysis resulted in a lower accuracy rate than what EPA certified to OMB. EPA's certification to OMB for fiscal year 2011 had an 88.3 percent accuracy rate for the correct contract type and a 99.5 percent accuracy rate for the correct award type when comparing EAS to the individual contract or task order file. EPA's data is based on a contractor's review, and we did not review the contractor's scope and methodology.

The analysis for both the 17 contracts and 60 task orders and work assignments are detailed in appendix A.

Lack of a Specific Data Quality Plan for EAS and a Decentralized QAP Process Led to Data Integrity Issues

EPA does not have a specific data quality plan for EAS. Instead, EPA relies on its overall data quality plan, EPA's Open Data Quality Plan 1.0, for acquisitions. The plan states that data integrity is the responsibility of the contract specialist and CO and that specific data integrity requirements are contained in each of EPA's major

contracting offices' QAPs. Because of the absence of a specific data plan for EAS and the decentralized reliance on QAPs, EPA does not have a consistent methodology for reviewing and maintaining contract data integrity in EAS.

We reviewed six QAPs and found that all had the basic requirements of a QAP as defined in EPA's Acquisition Handbook. However, in some cases the QAPs lacked detailed instructions on how to accomplish the data validation. We also found that Region 1 is operating on an unapproved QAP, further highlighting the inconsistent methods for validating the integrity of contract data through the QAP process. In response to why there were errors concerning contract type and award type in EAS, contracting officers from Regions 1, 4, and 9 stated they were due to input errors.

EPA Is Misreporting Vital Contract and Spending Information

Federal spending information is designed to inform the public on how and where tax dollars are being spent to provide transparency to the federal government's operations. EAS data is made available to the public through the Federal Procurement Data System. As a result, EPA is certifying inaccurate contract data in required annual submissions to the OMB.

Recommendations

We recommend that the Assistant Administrator for the Office of Administration and Resources Management:

5. Develop and implement a data quality plan for EAS to ensure the adequacy of data across all regions. The plan should include detailed instructions for ensuring contract types and task order pricing arrangements are input in EAS correctly and that procedures are established to verify the accuracy of the information.
6. Ensure that Region 1 has an approved QAP and members of Region 1's contracting staff are aware of the QAP's contents and requirements.

Agency Response and OIG Evaluation

In response to recommendation 5, the EPA agreed that data quality is important and would evaluate the source of discrepancies and implement appropriate corrective action. After the exit conference, OAM revised its response to the recommendation to include additional activities that it is conducting. In 2011 and 2012, OAM provided training to contracting staff targeted at correcting past errors. In FY 2013, OAM will continue training and is planning on conducting quarterly data quality reviews. Through its self-assessment and peer review programs, OAM will also conduct file reviews, which include data reporting. As the Regional Acquisition Framework progresses, OAM will identify opportunities to ensure consistency in EPA's reporting on associated contracting vehicles, and will implement the policy

or training necessary to improve agency-wide acquisition report. The response did not address development of a data quality plan or provide an explanation as to why it was not needed. The response relies upon QAPs that the audit found lacked detailed instructions on how to accomplish the data validation. The Remedial Action Framework is not completed and available for us to assess the adequacy of the actions EPA plans to take. The additional information did not provide an adequate response to the recommendation and the audit resolution process will be used to resolve the recommendation.

In response to recommendation 6, the Agency stated that the Region 1 QAP has been approved and staff are aware of the QAP's contents and requirements. The Agency's action addressed the recommendation. Therefore, we consider the corrective action completed.

Status of Recommendations and Potential Monetary Benefits

| RECOMMENDATIONS | | | | | | POTENTIAL MONETARY BENEFITS (in \$000s) | |
|-----------------|-------------|--|---------------------|---|-------------------------------|--|---------------------|
| Rec. No. | Page No. | Subject | Status ¹ | Action Official | Planned Completion Date | Claimed Amount | Agreed-To Amount |
| 1a | 15 | Require that written acquisition plans for future cost-reimbursement RAC contracts be approved by the Head of the Contracting Activity. | U | Assistant Administrator for Administration and Resources Management | | | |
| 1b | 15 | For current cost-reimbursement RAC contracts, at the end of the base period, require written acquisition plans be prepared and approved by the Head of the Contracting Activity. | U | Assistant Administrator for Administration and Resources Management | | | |
| 2 | 15 | Develop performance measures for each region for the use of fixed-price contracts and task orders for remedial actions. The performance measures should be implemented in a way that holds the regions accountable (both the Superfund program staff and contracting staff) for decreasing the use of high risk contracts and task orders. | U | Assistant Administrator for Administration and Resources Management, and Assistant Administrator for Solid Waste and Emergency Response | | | |
| 3 | 15 | As part of the implementation of the Contracts 2010 Strategy, provide training to both Superfund program and contracting staff on how and when less risky contracts and task orders should be used in the Superfund remedial program. | O | Assistant Administrator for Administration and Resources Management, and Assistant Administrator for Solid Waste and Emergency Response | 11/30/13 | | |
| 4 | 15 | Determine whether staffing changes are needed in each region to ensure that staff have the skills to manage the increased use of fixed-price contracts and task orders, and develop a plan for addressing the staffing needs. | U | Assistant Administrator for Administration and Resources Management, and Assistant Administrator for Solid Waste and Emergency Response | | | |
| 5 | 20 | Develop and implement a data quality plan for EAS to ensure the adequacy of data across all regions. The plan should include detailed instructions for ensuring contract types and task order pricing arrangements are input in EAS correctly and that procedures are established to verify the accuracy of the information. | U | Assistant Administrator for Administration and Resources Management | | | |
| 6 | 20 | Ensure that Region 1 has an approved QAP and members of Region 1's contracting staff are aware of the QAP's contents and requirements. | C | Assistant Administrator for Administration and Resources Management | 03/04/13 | | |

¹ O = recommendation is open with agreed-to corrective actions pending
 C = recommendation is closed with all agreed-to actions completed
 U = recommendation is unresolved with resolution efforts in progress

Sampled Contracts, Task Orders, and Work Assignments for Data Integrity

RAC Contracts and Region 7 Site Specific Contracts

| Region | Contract | EAS contract type | Contract type as listed in the contract | Contract Type same | Contract Type different |
|---------------|-----------------|--------------------------|--|---------------------------|--------------------------------|
| Region 1 | EP-S1-06-03 | T&M | IDIQ | | X |
| Region 1 | EP-S1-06-01 | T&M | IDIQ | | X |
| Region 4 | EP-S4-09-02 | T&M | IDIQ | | X |
| Region 4 | EP-S4-08-03 | T&M | IDIQ | | X |
| Region 7 | EP-S7-09-02 | Fixed-Price | Fixed-Price | X | |
| Region 7 | EP-R7-08-14 | Fixed-Price | Fixed-Price | X | |
| Region 7 | EP-S7-11-07 | IDIQ | IDIQ | X | |
| Region 7 | EP-S7-11-01 | Fixed-Price | Fixed-Price | X | |
| Region 7 | EP-R7-08-12 | IDIQ | IDIQ | X | |
| Region 7 | EP-S7-07-10 | Fixed-Price | Fixed-Price | X | |
| Region 7 | EP-S7-11-04 | IDIQ | IDIQ | X | |
| Region 7 | EP-S7-10-03 | Fixed-Price | Fixed-Price | X | |
| Region 8 | EP-W-05-049 | CPFF | CPFF | X | |
| Region 8 | EP-W-06-006 | CPFF | CPFF | X | |
| Region 9 | EP-R9-09-01 | T&M | IDIQ | | X |
| Region 9 | EP-S9-08-03 | IDIQ | IDIQ | X | |
| Region 9 | EP-S9-08-04 | IDIQ | IDIQ | X | |

RAC Contract Task Orders and Work Assignments

| Region | Contract | TO/WA | EAS Contract /TO/WA Pricing | Pricing per TO/WA in EPA files | EAS and EPA file the same | EAS and EPA file different for TO/WA type |
|---------------|-----------------|--------------|------------------------------------|---------------------------------------|----------------------------------|--|
| Region 1 | EP-S1-06-03 | 1 | T&M | T&M | X | |
| Region 1 | EP-S1-06-03 | 5 | T&M | T&M | X | |
| Region 1 | EP-S1-06-03 | 12 | T&M | T&M | X | |
| Region 1 | EP-S1-06-03 | 17 | multiple ³ | T&M | | X |
| Region 1 | EP-S1-06-03 | 22 | multiple | T&M | | X |
| Region 1 | EP-S1-06-03 | 37 | T&M | T&M | X | |
| Region 1 | EP-S1-06-03 | 38 | multiple | T&M | | X |
| Region 1 | EP-S1-06-03 | 45 | T&M | T&M | X | |
| Region 1 | EP-S1-06-01 | 3 | T&M | T&M | X | |
| Region 1 | EP-S1-06-01 | 8 | multiple | T&M | | X |
| Region 1 | EP-S1-06-01 | 28 | multiple | T&M | | X |
| Region 1 | EP-S1-06-01 | 31 | multiple | T&M | | X |
| Region 1 | EP-S1-06-01 | 41 | multiple | T&M | | X |

³ Task order contains multiple line items with differing award types (i.e. cost-type, T&M, FP, etc.)

| <i>Region</i> | <i>Contract</i> | <i>TO/WA</i> | <i>EAS Contract /TO/WA Pricing</i> | <i>Pricing per TO/WA in EPA files</i> | <i>EAS and EPA file the same</i> | <i>EAS and EPA file different for TO/WA type</i> |
|---------------|-----------------|--------------|------------------------------------|---------------------------------------|----------------------------------|--|
| Region 1 | EP-S1-06-01 | 42 | T&M | T&M | X | |
| Region 1 | EP-S1-06-01 | 52 | multiple | T&M | | X |
| Region 1 | EP-S1-06-01 | 53 | T&M | T&M | X | |
| Region 4 | EP-S4-09-02 | 1 | multiple | FFP | | X |
| Region 4 | EP-S4-09-02 | 2 | T&M | T&M | X | |
| Region 4 | EP-S4-09-02 | 9 | Multiple | FFP | | X |
| Region 4 | EP-S4-09-02 | 10 | Fixed-Price | FFP | X | |
| Region 4 | EP-S4-09-02 | 11 | Fixed-Price | FFP | X | |
| Region 4 | EP-S4-09-02 | 12 | Fixed-Price | T&M | | X |
| Region 4 | EP-S4-09-02 | 14 | T&M | FFP | | X |
| Region 4 | EP-S4-09-02 | 15 | T&M | T&M | X | |
| Region 4 | EP-S4-09-02 | 16 | T&M | FFP | | X |
| Region 4 | EP-S4-09-02 | 20 | T&M | FFP | | X |
| Region 4 | EP-S4-09-02 | 24 | T&M | FFP | | X |
| Region 4 | EP-S4-09-02 | 27 | T&M | FFP | | X |
| Region 4 | EP-S4-09-02 | 28 | T&M | FFP | | X |
| Region 4 | EP-S4-09-02 | 33 | cost | FFP | | X |
| Region 4 | EP-S4-09-02 | 42 | T&M | FFP | | X |
| Region 4 | EP-S4-09-02 | 46 | Fixed-Price | FFP | X | |
| Region 4 | EP-S4-09-02 | 51 | Fixed-Price | FFP | X | |
| Region 4 | EP-S4-09-02 | 56 | Fixed-Price | FFP | X | |
| Region 4 | EP-S4-09-02 | 59 | Fixed-Price | FFP | X | |
| Region 4 | EP-S4-09-02 | 61 | T&M | FFP | | X |
| Region 4 | EP-S4-09-02 | 62 | T&M | FFP | | X |
| Region 4 | EP-S4-08-03 | 6 | T&M | T&M | X | |
| Region 4 | EP-S4-08-03 | 8 | T&M | T&M | X | |
| Region 4 | EP-S4-08-03 | 11 | T&M | T&M | X | |
| Region 4 | EP-S4-08-03 | 15 | Fixed-Price | T&M | | X |
| Region 8 | EP-W-05-049 | 209 | CPFF | CPFF (LOE) | X | |
| Region 8 | EP-W-05-049 | 212 | CPFF | CPFF (LOE) | X | |
| Region 8 | EP-W-06-006 | 107 | CPFF | CPFF (LOE) | X | |
| Region 8 | EP-W-06-006 | 108 | CPFF | CPFF (LOE) | X | |
| Region 8 | EP-W-06-006 | 115 | CPFF | CPFF (LOE) | X | |
| Region 9 | EP-R9-09-01 | 1 | T&M | T&M | X | |
| Region 9 | EP-R9-09-01 | 2 | T&M | T&M | X | |
| Region 9 | EP-S9-08-03 | 8 | T&M | T&M | X | |
| Region 9 | EP-S9-08-03 | 17 | T&M | T&M | X | |
| Region 9 | EP-S9-08-03 | 36 | T&M | T&M | X | |
| Region 9 | EP-S9-08-03 | 41 | T&M | T&M | X | |
| Region 9 | EP-S9-08-03 | 50 | T&M | T&M | X | |
| Region 9 | EP-S9-08-04 | 7 | T&M | T&M | X | |
| Region 9 | EP-S9-08-04 | 43 | T&M | T&M | X | |
| Region 9 | EP-S9-08-04 | 45 | T&M | T&M | X | |
| Region 9 | EP-S9-08-04 | 48 | T&M | T&M | X | |
| Region 9 | EP-S9-08-04 | 50 | T&M | T&M | X | |
| Region 9 | EP-S9-08-04 | 53 | T&M | T&M | X | |
| Region 9 | EP-S9-08-04 | 65 | Fixed-Price | Fixed-Price | X | |

Source: OIG analysis of contract files and EAS data.

Agency Response to Draft Report and OIG Evaluation



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
WASHINGTON, D.C. 20460

MAR 4 2013

MEMORANDUM

SUBJECT: Response to Office of Inspector General Draft Report No. OA-FY11-0594
EPA Must Increase Fixed-Price Contracting in the Remedial
Program, Dated January 8, 2013

FROM: Craig E. Hooks
Assistant Administrator for Administration and Resources Management

Mathy Stanislaus
Assistant Administrator for Solid Waste and Emergency Response

TO: Melissa Heist
Assistant Inspector General for Audit

Thank you for the opportunity to respond to the issues and recommendations in the subject draft audit report. Following is a summary of the agency's overall position, along with its position on each of the report's recommendations. For those report recommendations with which the agency agrees, we have provided either high-level intended corrective actions and estimated completion dates to the extent we can or reasons why we are unable to provide high-level intended corrective actions and estimated completion dates at this time. For those report recommendations with which the agency does not agree, we have explained our position and proposed alternatives to recommendations.

Overall Comments

The Assistant Administrators for OSWER and OARM agree in principle to the objectives of this report, which are to improve acquisition planning and oversight and to maximize the use of firm fixed price contracts when appropriate. However, we are not in agreement with some

of the recommendations offered in the OIG's draft Report. OSWER and OARM support the Administration's call to reduce vulnerabilities related to "high risk" contracts by using more fixed rate and fixed price contracts. We are committed to mitigating high risk contracts through improved acquisition planning, management and oversight of the contracts, and we are committed to identifying opportunities to fix price new contracts. Evaluating and proposing the most efficient and appropriate contracting vehicle is a component of the Superfund Remedial program's current effort to implement the Contracts 2010 Strategy effort. The Superfund remedial program is preparing its next generation contracting strategy implementing Contracts 2010, called the Remedial Acquisition Framework. It is currently being developed by a workgroup of program and acquisition representatives as a guide to remedial acquisitions in a reduced budget climate. As part of this effort, EPA is examining its program operations and future workload to identify areas that may yield efficiencies and cost savings. EPA is evaluating the use of fixed price contracts for certain types of work, such as ongoing monitoring of five year reviews. The goals of the Remedial Acquisition Framework will be balanced with the best approach to achieve the Superfund remedial cleanup mission in the most efficient and effective manner. The OIG findings in this report, and the subsequent recommendations, seemed to have ignored the Superfund Program's use of fixed price subcontracts in the remedial construction program. Although Remedial Action Contracts (RACs) may be cost reimbursement at the contract level, the RAC contractor awards subcontracts for construction as fixed price. Additionally, on statements regarding fixed price construction, the cost of federal construction oversight must be factored into any calculations of acquisition effort.

OIG Response 1: As we discuss on page 12 of the report, EPA's RAC contractors award fixed-price type subcontracts to accomplish the remedial actions. The use of fixed-price type subcontracts is one of the reasons we believe that more opportunities exist for EPA to use fixed-price contracts and task orders.

Specific Comments

Our staff conducted an extensive review of the report and has significant concerns about the lack of data supporting the report's assertions and conclusions. The report's title and "At a Glance" section focus on fixed price contracting in the remedial program; however, it only provides anecdotal generalizations regarding one segment of the remedial program, remedial action construction. It ignores significant parts of the remedial program that are components of the contracts examined, namely: Site Assessment/Characterization, Remedial Investigation and Feasibility Studies, Risk Assessment, Remedy Selection, Remedial Design, and Post Construction. In addition, the report only addresses a small portion, not necessarily a representative sample, of the remedial program's universe of existing acquisition vehicles, excluding work performed by the US Army Corps of Engineers and States.

OIG Response 2: Our audit focused on remedial construction activities funded through RAC and site specific contracts, but also looked at other activities that were purchased under the RAC contracts. Our conclusion was that remedial construction had the greatest opportunities for use of fixed-price type contracts. Unless specifically stated in the report, the term remedial action refers to the remedial construction activities.

As a result, OSWER and OARM believe that the draft report fails to provide a balanced portrayal of fixed rate contracting. The report states that fixed price contracts must be used without explaining the benefits, downsides or conditions under which they should be used. Furthermore, the report appears to use varying terms to describe fixed priced contracting, such as firm fixed price type and fixed rate, and thus it is unclear the type of fixed price contract the OIG is recommending. We currently use fixed rate contracts and task orders throughout the program. For example, as mentioned above, the subcontracts for construction under RAC contracts are fixed price. EPA also uses the Emergency and Rapid Response Services (ERRS) contracts, which are fixed rate time and material (T&M) for less complex construction projects.

OIG Response 3: We agree that fixed-price contracting cannot be used in all circumstances and state that in the report. We revised the report to ensure it did not imply that fixed price contracting must always be used. To avoid any confusion between fixed-price and fixed rate, we changed the reference to a specific Region 7 contract at the end of chapter 2 to state “fixed price per ton.”

The Superfund program utilizes contract vehicles appropriate for the uncertain conditions that exist at its sites. The contract types used are based on many factors, including, but not limited to: resources, site conditions and characteristics, unforeseen risks and site cleanup objectives. While fixed rate and fixed price contracting has a place in the Superfund remedial program, such an approach has significant disadvantages that the report fails to appropriately acknowledge. We recommend that the report include a discussion of the undue risks to the Government and failures (e.g., cost increases from uncertain site conditions, change orders, and claims) of firm fixed priced type contracts with respect to subsurface and under water construction projects. What may work in Region 7, e.g., for above ground projects, may not work for complex projects in other regions, such as ground water sites.

OIG Response 4: We agree that fixed-price contracting is not suitable for all remedial actions. However, we found the types of remedial actions that Region 4 and 7 funded with fixed-price type contracts were similar to activities that other regions funded with other than fixed-price type contracts. Region 4 did fund activities related to the treatment of ground water through fixed-price task orders. Costs can increase beyond what was originally anticipated in both fixed-price and CPFF contracts. For example, both types of contracts can be adjusted if unforeseen site conditions exist. For the 12 RAC contracts that are CPFF, the discussion of whether a fixed-price task order can be used to fund the activities is not occurring because the contract does not allow for fixed-price. With an IDIQ contract, which is what we advocate in recommendation 1, fixed-price task orders can be considered.

Several regions have attempted to replicate the Region 7 site specific model with mixed success. While Region 4 did attempt a fixed price project, additional contamination was uncovered at the site, increased oversight was required to oversee the removal of the additional contamination, and the ultimate price of the project was higher than projected.

Furthermore, remedial funding allocations late in the fiscal year make it extremely difficult to prepare and award fixed price contracts by September 30.

OMB recognized that fixed price contracts might not be appropriate for projects similar to Superfund remedial cleanup work

The purpose of the report states that the OIG conducted the audit in order to determine whether EPA is reducing the amount of high risk contracting activities, which include not only cost reimbursement and time and materials type contracts, but also non-competitive and sole source contracts awarded when only one bid or offer is received. The report identifies the initial OMB memorandum calling for Departments and Agencies to reduce their "high risk" contracting but only mentions the OMB memorandum dated October 27, 2009, entitled "Increasing Competition and Structuring Contracts for Best Results", which acknowledges that, in some cases, where uncertain circumstances are present, it may be appropriate to use a "high risk" contract.

Although OMB issued a caution regarding high risk contracts and directed Federal Agencies to decrease their use by ten percent, OMB did not direct the use of firm fixed price contracts in lieu of cost reimbursement or time and materials contracts.

Conversely, OMB's implementing guidelines, included in the above memorandum, says "The President's Memorandum further states that government contracts should be structured to 'minimize risk and maximize value' for the taxpayer. In most cases, fixed-price contracts will be best suited for achieving this goal because they provide the contractor with the greatest incentive for efficient and economical performance. In circumstances where there is considerable uncertainty regarding the requirements, however, cost-reimbursement contracts or, in more limited circumstances, time-and- materials or labor-hour (T&MILH) contracts may provide for a more effective allocation of risk between the government and the contractor."

EPA selects the most appropriate contracts depending on the risk, in accordance with OMB's guidance. Recommending what would effectively be subjective performance measures for firm fixed price contracting, and holding staff accountable to those measures, is the equivalent of requiring the selection of a contract type irrespective of the judgment of the acquisition staff or the reasonableness of the approach. EPA, therefore, does not agree with the recommendation for performance measures, instead EPA will focus on strengthening the acquisition planning process to ensure the appropriate contract type is properly determined including firm fixed price type contracts where appropriate.

OIG Response 5: We agree that where there is considerable uncertainty regarding the requirements, a cost reimbursement or other high risk contract may be appropriate. We disagree, however, with the Agency's statement that EPA selects the most appropriate contract depending on the risk. We identified RAC contracts with identical statements of work, which according to the EPA's guidance, is a basis for determining contract type. One of these contracts is a CPFF contract, while the other is an IDIQ contract. Because the statements of work are identical, the contract type should also be identical. For CPFF contracts, there is no ability to issue fixed-price work assignments, meaning the discussion of whether to use a fixed-price vehicle for remedial actions cannot occur.

Benchmarking against the initial Contracts 2000 Strategy rather than the revised strategy is erroneous, and stating that revisions were due to a lack of leadership is subjective.

References to the first Contracts 2000 Strategy and statements that a lack of leadership prevented EPA from moving away from high risk contracts are subjective. Although the initial Contract 2000 Strategy recommended dividing Superfund design, construction and oversight activities into two types of functional contracts, the strategy was amended with the Contracts 2000 – Design Construction Decision. This is the document to which the OIG should refer when referencing Contracts 2000. In the amendment EPA clearly states the rationale for implementing a menu approach-"centered around the Agency's limited experience base to directly contract for and manage construction projects, and the in-house resources that would be needed to place and manage construction projects". A workgroup of EPA employees evaluated options and presented them for senior management's consideration and decision. The draft report improperly and without support characterizes that process as "management

OIG Response 6: Our conclusions regarding the past lack of leadership are supported by adequate evidence, including numerous interviews, and past management action or inaction. When the Contract 2000 report was issued in 1999, it stated that there were opportunities for the use of fixed-price, completion form, and performance-based contracting in the Superfund program. The decision to allow a menu approach, as described in the Contracts 2000 – Design/Construction Contracts memorandum was premised on all contracts being structured to encourage the increased use of completion form, fixed-price, and performance based approaches to ordering work. The 2004 Superfund study recommended that OAM and OSWER work together to encourage the use of alternative contract types, such as performance based and site specific contracts. Despite these recommendations, our report found the EPA has generally continued to rely upon cost reimbursable type contracts and task orders for remedial actions.

allowed the plan to be changed" or as a lack of leadership.

The report creates an unsubstantiated correlation between firm fixed price contracts and increased competition, achieving socioeconomic goals, and cost savings.

All contracts that are competed, including cost reimbursement contracts, can be structured to encourage small businesses' proposals and enhance competition. We encourage the OIG to be less definitive about the link between firm fixed price contracts and increased competition and the achievement of socio economic goals as other contracts types, e.g., the time and materials ERRS contracts, have achieved socioeconomic goals. Although certain fixed price contracts might make it easier to achieve competition or socioeconomic goals, all contract types can achieve these results.

OIG Response 7: Since 2006, Region 7 has continually had the highest percentage of contracts awarded as "small business." Region 7 staff informed us that the region's use of site-specific contracting is a major contributor to its small business achievements. EPA headquarters staff told us that Region 7 is instrumental in helping EPA achieve its small business goals.

There is risk associated with any type of contract, and this report does not provide an accurate picture of the risks associated with using a fixed price contract or other type of contract vehicle. When competing work that is well defined, using fixed-price contracts may result in lower cost. Many of the projects addressed in Region 7 as site specific contracts are in this category. Uncertainty in site conditions, inherent at certain Superfund sites, may lead to uncertainty in project scope and higher costs under a fixed price scenario due to the contractor building in costs associated with the higher risk.

Projects that involve subsurface and underwater actions, including groundwater remediation and sediment remediation, are difficult to characterize and uncertainties and findings of additional contamination may lead to more expensive cleanups if performed fixed price as contractors increase price to account for these uncertainties. While the Superfund program has performed site cleanups for over thirty years, each site and its unique topography and contaminant characteristics means that each remedial action (RA) project is different and does not fit the mold of repetitive type work that is typical of fixed price contracts. In addition, change orders and claims may affect the final price of a contract, obviating potential cost savings anticipated at the beginning of the project. Region 4 encountered this at the Tower Chemical site, where the final costs after accounting for increased quantities and contaminants found onsite, in addition to the costs of the oversight contractor, resulted in costs similar to what had originally been anticipated under the RAC contract.

Given the constrained budget facing the Superfund Remedial program, the funding requirements related to fixed price contracting presents a significant obstacle. An additional disadvantage to using fixed price contracts in a fiscally constrained environment is that fixed price contracts must be funded up front. When EPA awards direct construction contracts, such as Region 7's site specific contracts, EPA must set aside the full value of the contract and is unable to leverage the funding. That is, in many situations, because of the manner in which funding is allocated to the Agency (e.g. under a continuing resolution), the Superfund Remedial program must incrementally fund construction projects. Funding remedial action construction cost reimbursement type contracts allows for incremental funding which stretches the limited Superfund dollars available for cleanup.

Direct construction using fixed price contracts may require additional resources for EPA to oversee construction and handle change orders and claims. Region 7 designed and followed a human resource acquisition and development strategy that could be difficult for other Regions to implement. Region 7 uses its On Scene Coordinator's (OSCs) to assist the Remedial Project Managers (RPMs) in performing construction oversight. These resources to perform construction oversight may not be available in other Regions with multiple large, complex projects, such as Region 2 or 8. Current EPA full time equivalents (FTE) resources constrain hiring of sufficient RPMs and Contracting Officers for EPA to perform a high volume of fixed price construction projects. Given current budget constraints and likely reductions in FTEs, it will be difficult, if not impossible for other Regions to achieve Region 7's level of technical capability and technical experience. Limited resources were one rationale behind the change in implementation of the Contracts 2000 Strategy.

OIG Response 8: Our report does not recommend that EPA Regional offices adopt the Region 7 model, but does recommend that EPA look for increased opportunities to use fixed-price type contracts and assess the resources needed to achieve that goal. In fact, the Design/Construction Contracts Decision Memorandum stated that all contracts would be structured to encourage the use of fixed-price approaches when ordering work.

RAC construction contracting and Site-Specific contracting are not equal and should not be compared.

Statements in the report indicate a lack of understanding of how Superfund performs its remedial action construction and the Region 7 Site Specific approach. EPA uses the Remedial Action Contracts (RACs) to purchase the services of a contractor to serve as the construction manager of a project. Region 7 has developed the capability to perform construction management in-house, and thus like the RAC contractor, procures the remedial action construction contracts directly. Region 7 provides all of the oversight capabilities with Region 7 staff, including staff that perform field oversight, address contract change orders and handle contract claims. In order to provide an equal comparison between site specific contracts and RACs, the costs associated with construction oversight must be considered when site specific contracts are utilized. Furthermore, the report should recognize that construction, either subcontracted by a RAC or procured directly under a site specific contract are procured predominantly as a firm fixed price (under RACs) or a fixed unit price (under a site specific contract). So in many respects the Superfund Remedial program is benefiting from and using a fixed-price approach, albeit at a Subcontractor level.

While Region 7 is to be commended for its success in developing the infrastructure to conduct direct construction contracting, their practices should not be used as a basis to apply it nationwide. The development of the infrastructure to perform direct construction activities is intensive and requires extra resources, training and FTE. Lessons gained from other regions' attempts to firm fix price construction projects indicate that it takes more than adjusting the contract type to be successful. We must also have the proper infrastructure and available funding to fully fund the contract. In fact, the decision to not develop a nationwide direct construction infrastructure at EPA was made at the inception of program in 1980; instead, EPA chose to collaborate with the USACE and use their existing infrastructure for cleaning up Superfund remedial projects. Although EPA may not be able to achieve a nationwide shift to fixed price construction contracting, we do anticipate more fixed price projects. Many of the five-year review projects are being performed via fixed rate task orders, and Regions are examining their work type and oversight workload to determine if other types of projects, such as long-term remedial projects, might have components of the work that can be fixed price. EPA anticipates that the guidance provided from both the program and OAM will continue a shift to fix pricing work where possible and appropriate.

Data Analysis Approach is flawed

The "judgmental sample methodology" approach calls into question the validity of the data sample selected. It is not clear what "judgmental" means and how or why the additional projects were selected. The OIG reviewed half of EPA's Regions using judgmental

sampling. Both the random sample and sample methodology bring into question statements the OIG makes in the next chapter that "only" one Region is performing any particular activity. Without the data to support these statements, the OIG should be consistent and not make broad conclusions based on interviews covering 50% of the universe. Region 7 has two RAC contracts called Architect and Engineering Services (ACE). For consistency, it would have been appropriate to collect data from these contracts, when other Regions' RACs were being evaluated for activities other than remedial action.

OIG Response 9: A judgmental sample is a nonrandom sample selected based on the opinion of auditors. As discussed in the Scope and Methodology, we reviewed contracts and task orders from Regions 1, 4, 7, 8, and 9. We surveyed other regional offices and received survey responses from Regions 2, 3, 5, 6, and 10. We also reviewed data on fixed-price site specific contracts and RAC contracts awarded across all regions. Our goal was to gain a broad perspective of contracting for remedial actions across the country, and we believe that was accomplished via our methodology. In our opinion, our methodology and conclusions ensure compliance with the Inspector General Act of 1978 and the December 2011 revision of the *Government Auditing Standards*.

The use of opinions instead of data to explain how fixed price contracts are used in the Superfund Program is flawed.

The initial Contracts 2000 strategy for design and constructions was not implemented; it is disingenuous to state that it is not successful when it was amended and not used. Furthermore, the change to the Contracts 2000 strategy is not an example of the Regions' resistance to change. The Regions were legitimately concerned about funding uncertainties and the lack of necessary infrastructure to directly procure and manage multi-million dollar projects. Although the expertise to conduct direct procurement and management of construction contracts could be developed, it would cost more in funding, FTE, and time than the Agency had at that time, especially in light of the resources available through the USACE. The federal government has come to recognize these alliances through strategic sourcing initiatives, and OMB has issued directives to not recreate what is already available elsewhere in the government. Referring to the original report and stating that it was rejected and management allowed the plan to be changed dismisses the work performed in evaluating the possibility of implementing the plan and the rationale for why it was not.

The RAC contracts were awarded several years prior to the President's and OMB's emphasis on reducing the use of high risk contracts, thus they should not be measured against an initiative that was not in place when they were awarded. In addition the statement that only Regions 4 and 7 have reduced high risk contracting activities in the remedial program is not based on fact. Without having looked at all Regions, it is not accurate to say "only" as the data is for 50% of the universe. In addition, the OIG looks only at remedial actions when referring to the remedial program, a much broader universe.

The statement "most EPA Regional offices have resisted the use of fixed price" is subjective. Regional offices have not rejected the use of fixed pricing per se, but rather have

chosen not to pursue firm fixed price approaches under direct construction contracting vehicles for the reasons cited previously.

The statements that EPA "hands over responsibility" and "simply oversees" are a gross misstatement. Remedial Project Managers (Remedial Project Manager) and Contracting Officers hold the ultimate responsibility for each project and ensure that the outcome of the project protects the public from the harm of hazardous materials. Projects are not "simply overseen" by the RPM, but monitored on a daily basis to ensure that all components of the project are proceeding appropriately.

OIG Response 10: We changed the language regarding the responsibilities of EPA Remedial Project Managers.

Points Requiring Clarification

On page 4, the first paragraph. This paragraph needs additional language to differentiate the discussion from Contracts 2010. This is the EPA's response to OMB's directive in 2009 to reduce high risk contracts by 10%.

OIG Response 11: We identified this language in the Contracts 2010 Strategy Report, page 20 (Intended Result), and page 21 (Examples of How to Get There).

On pag12, we are unfamiliar with the references to the April 2004 Superfund study. Please provide citations.

OIG Response 9: U.S. EPA Study: SUPERFUND: Building on the Past, Looking to the Future; April 22, 2004. Page 92 (bottom of page), and Page 93 (2nd full paragraph). We provided EPA a copy of the study.

In the attached tables clarify if the contract or task order was site specific, RAC or ERRS.

Responses to Recommendations

2-1 Replace all current cost-reimbursement RAC contracts at the end of the current base or option period with IDIQ contracts to allow the use of fixed-price task orders when appropriate.

2-1 The Agency does not fully agree with this recommendation. Per FAR 16.1, selecting contract type is a matter for negotiation and requires the exercise of sound judgment. Factors that should be considered in this negotiation are risk, complexity of the requirement, expected price competition, urgency of the requirement, period of performance of the requirement (the longer the more risk), and the contractor's technical capability and financial responsibility. The FAR also states the objective is to negotiate a contract type and price that

will result in reasonable contractor risk and provide the contractor with the greatest incentive for efficient and economical performance. President Obama's March 4, 2009, memorandum is not intended to supersede either the afore-mentioned regulatory guidance or the contracting officer's business judgment in selecting the appropriate contract type. However, the Agency does agree that contract files should reflect appropriate analysis and contain adequate support and justification for the contract type selected.

Accordingly, as the Agency's current cost reimbursement remedial action contracts were in place prior to the issuance of the President's and OMB 2009 memoranda, EPA does not intend to modify our existing cost reimbursement remedial contracts at this time, before performing the analysis set forth in FAR 16.1. However, the Assistant Administrators for OARM and OSWER agree that the Agency should endeavor to decrease the number of cost-reimbursement contracts to the maximum extent possible, where appropriate, and will implement processes to ensure the required analysis is conducted to determine the appropriate contract type, and the results of that analysis are documented in the contract file. To that end, OAM recently published Interim Policy Notice (IPN) 12-03 on Acquisition Planning. The processes, procedures, and oversight associated with this IPN are intended to institutionalize more informed and collaborative decision making throughout the acquisition planning process, which includes the decision on contract type. Additionally, as anticipated by the requirements of the recently established Remedial Acquisition Framework, the Agency plans to review all of the Agency's contracts in support of the Superfund Remedial program in order to determine the appropriate time to re-compete under the new proposed remedial model described in the framework. The Agency has targeted completion of this review by June 2013.

2-2 Develop performance measures for each region for the use of fixed-price contracts and task orders for remedial actions. The performance measures should be implemented in a way that holds the regions accountable (both the Superfund program staff and contracting staff) for decreasing the use of high risk contracts and task orders.

2-2 The Assistant Administrators of both OARM and OSWER agree that there may be opportunities to replace existing contracts to allow for more fixed price vehicles within the Remedial program. It should be noted that President Obama's March 4, 2009, memorandum is not intended to supersede either the regulatory guidance or the contracting officer's business judgement in selecting the appropriate contract type. The Agency cautions the OIG against assuming that all cost-type contracts impose greater risk on the Government than other contract types, including firm fixed price type contracts in certain situations. In order to reduce the risk associated with contracts other than fixed price, the Agency is currently implementing a process to improve acquisition planning, practicing due diligence in terms of identifying the best contract type for the work required and documenting the basis for determining the contract type selected. To that end, OSWER and OARM will develop guidelines for use when selecting the most appropriate type of contract and task order, as applicable, considering results from the Acquisition Planning process, the Remedial Acquisition Framework, and the Centers of Expertise Study. Given the significant effort this

will entail, OSWER and OARM have targeted completion of effort this by September 30, 2013.

2-3 As part of the implementation of the Contracts 2010 Strategy, provide training to both Superfund program and contracting staff on how and when less risky contracts and task orders should be used in the Superfund remedial program.

2-3 The Assistant Administrators of OARM and OSWER agree that additional training is necessary and are committed to providing that training to both Superfund program and contracting staff. Training developed will consider results from the Acquisition Planning process, the Remedial Acquisition Framework, and the Centers of Expertise Study, and will include when and how less risky contracts and task orders should be used, including how to document the analysis leading up to the contract type selection, in the Superfund Remedial Program. OARM and OSWER have targeted completion of this effort by November 30, 2013.

2-4 Determine whether staffing changes are needed in each region to ensure that staff have the skills to manage the increased use of fixed-price contracts and task orders, and develop a plan for addressing the staffing needs.

2-4 as indicated in 2-3 above, the Assistant Administrators of both OARM and OSWER agree to continue to ensure that staff possesses the skills necessary to manage all types of contracts ranging from cost reimbursement to firm fixed price. A recently initiated and ongoing Centers of Expertise study is assessing staffing needs associated with implementation of new business processes such as prescriptive Acquisition Planning requirements. OARM and OSWER will monitor progress on these efforts on an ongoing basis through a robust training program and regular Contracts Management Assessment Team (CMAT) MAT reviews.

3-5 Develop and implement a data quality plan for EAS to ensure the adequacy of data across all regions. The plan should include detailed instructions for ensuring contract types and task order pricing arrangement are input in EAS correctly and that procedures are established to verify the accuracy of the information.

3-5 The Assistant Administrator for OARM agrees that data quality is important for effective contract management. OARM will evaluate the source of the discrepancies in the EAS data and, depending on the evaluation results, the Agency will implement appropriate corrective action to address proper coding on contract and task order pricing arrangements in EAS. The OARM will complete this by June 2013.

3-6 Ensure that Region 1 has an approved QAP and members of Region 1's contracting staff are aware of the QAP's contents and requirements.

3-6 Region 1's August 2012 QAP has been approved and posted on the OAM policy website, and staff are aware of the QAP's contents and requirements.

Thank you for your review. If you have questions regarding these comments, please contact John Bashista in OARM or James Woolford in OSRTI.

cc: John Bashista, OARM/OAM
James Woolford,
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