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BY THE U.S. GENERAL ACCOUNTING OFFICE
Report To The Honorable Max S. Baucus
United States Senate

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EPA's Use Of Management Support Services

This report provides information on (1) the extent and nature of the Environmental Protection Agency's reliance on contractors to obtain management support services, (2) EPA's contracting methods and procedures followed in procuring such services, (3) contractors' performance, and (4) EPA's use of individual experts and consultants.



GED-82-36
MARCH 9, 1982

520871

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UNITED STATES GENERAL ACCOUNTING OFFICE
WASHINGTON, D.C. 20548

COMMUNITY AND ECONOMIC
DEVELOPMENT DIVISION

B-206136

The Honorable Max S. Baucus
United States Senate

Dear Senator Baucus:

As requested in your August 6, 1980, letter, we reviewed the Environmental Protection Agency's (EPA's) use of consulting services. As agreed with your office, we reviewed a broader spectrum of management support services procured under contracts even though many of these contracts were not classified as consulting services by EPA and did not meet the Office of Management and Budget's (OMB's) definition of consulting services contained in its April 14, 1980, Circular A-120 ("Guidelines for the Use of Consulting Services"). We included them in our samples because EPA's use of consulting-type services may be significantly understated and because our prior reviews of other agencies have shown that other types of management support services are subject to problems and abuses similar to those of consulting services meeting OMB's definition.

We are presenting information on (1) the extent of EPA's reliance on management support service contractors, (2) EPA's contracting methods and procedures followed in procuring such services, (3) contractors' performance, and (4) EPA's use of appointed experts and consultants. As a result of our previous reviews at other civilian agencies and the Department of Defense, OMB and the Congress are considering actions that could tighten management control over Federal agencies' use of management support services. Accordingly, this report contains no conclusions and recommendations. The details gathered by us are contained in appendixes I through IV. A summary follows.

RELIANCE ON MANAGEMENT
SUPPORT SERVICE CONTRACTORS

EPA did not have information that accurately showed the extent of its reliance on management support service contractors. To estimate EPA's reliance on such contractors, we randomly selected and reviewed separate samples from EPA's contracts active as of September 30, 1979, and September 30, 1980, to identify those which met our definition of management support services. As of those two dates, EPA had 1,101 active contracts with total cumulative obligations of about \$495 million and 1,188 active contracts

with total cumulative obligations of about \$704 million, respectively. Our 1979 sample contained 481 contracts with total cumulative obligations of about \$204 million, and our 1980 sample contained 490 with total cumulative obligations of \$349 million.

We determined that 45 percent of the contracts in our 1979 sample and 46 percent of the contracts in our 1980 sample met our definition of management support services. Further, we determined that management support service contracts accounted for 54 percent and 61 percent, respectively, of the obligations incurred for those contracts comprising our samples. Using those percentages, we estimated that EPA had (1) as of September 30, 1979, 497 active management support service contracts with total obligations of \$268 million and (2) as of September 30, 1980, 550 active management support service contracts with total obligations of \$429 million.

The Supplemental Appropriations and Rescission Act, 1980 (94 Stat. 928), approved on July 8, 1980, required that, beginning with the submission of the fiscal year 1982 budget justifications, Federal agencies provide to the House and Senate appropriations committees information on, among other things, the estimated amount of funds requested for consulting services. EPA's submission--prepared in accordance with OMB Bulletin No. 80-13, dated August 4, 1980--showed that it was requesting \$1,375,000 in fiscal year 1982 for consulting service contracts. That is less than 1 percent of the \$217 million that we estimated EPA obligated for management support service contracts in fiscal year 1981.

Pending legislation (S. 719, the Consultant Reform and Disclosure Act of 1981) would require that as a part of the President's annual budget, information be provided to the Congress on each Federal agency's anticipated expenditures for procuring management and professional services, special studies and analyses, and consulting services as defined by OMB. If enacted, this legislation could provide the Congress with a better perspective of EPA's dependence on management support services.

Internal review of requests
for management support services

We estimated that only about 5 percent of EPA's fiscal year 1980 procurement requests for management support services were subject to a required, independent internal review designed to provide limited management control over EPA's use of consulting services. According to these EPA procedures, the review requirement now applies only to those procurement requests for consulting services as defined in OMB's Circular A-120.

In December 1980 EPA changed its procurement procedures to require that program offices prepare a detailed justification for using consulting services. In addition, program offices initiating the requirements must obtain written approvals to procure consulting services.

More importantly, in response to a recommendation made in one of our previous reports, 1/ OMB issued a proposed bulletin in the Federal Register on January 11, 1982, for public and Federal agency review and comment. The proposed bulletin would require that OMB and Federal agency management controls for consulting services, such as EPA's internal review procedures for procurement requests for consulting services, be extended to other management support services.

Basic Government management functions

EPA contractors may be performing work which should be performed by EPA employees, but we could not determine if the contractors' actions were improper because of the lack of criteria to distinguish between assistance and performance. OMB Circular A-76 ("Policies for Acquiring Commercial or Industrial Products and Services Needed by the Government") defines a governmental function as "a function which must be performed in-house due to a special relationship in executing governmental responsibilities." Governmental functions include the discretionary applications of Government authority, such as managing Government programs requiring value judgments.

Although Federal directives governing the use of contractors prohibit them from performing basic Government management functions, these directives allow contractors to assist Federal agencies in carrying them out. OMB, however, does not define assistance or describe at what point contractor assistance ends and performance of basic management functions begins. Accordingly, we could not document instances where EPA contractors were performing basic management functions.

This situation is consistent with information we have developed in previous reviews of the Department of Energy and other agencies. In one report, 2/ we recommended that OMB prepare

1/"Controls Over DOD's Management Support Service Contracts Need Strengthening" (MASAD-81-19, Mar. 31, 1981).

2/"Civil Servants and Contract Employees: Who Should Do What for the Federal Government?" (FPCD-81-43, June 19, 1981).

written guidelines that would better distinguish between contractors' advice on Government functions and their performance of such functions. OMB agreed with this recommendation. On January 11, 1982, OMB also issued in the Federal Register a proposed revision to Circular A-120 that would, among other things, require that basic Government management functions be performed by Government employees.

CONTRACTING METHODS AND PROCEDURES

We examined the contracting methods and procedures followed by EPA in procuring management support services and made the following observations.

Cost-plus-fixed-fee contracts

Of the 444 management support service contracts identified in our 1979 and 1980 samples, 392 contracts, or 88 percent, were cost plus fixed fee. The values of these 392 cost-plus-fixed-fee contracts totaled \$406 million, or 87 percent of the total value of the 444 management support service contracts identified in our samples. Cost-plus-fixed-fee contracts provide minimal incentive for contractors to effectively manage costs. EPA's use of cost-plus-fixed-fee contracts is much higher than the 49-percent usage rate for this type of contract we reported for six other Federal agencies' procurement of consulting services in our 1980 report. ^{1/}

EPA awards most of its cost-plus-fixed-fee contracts on a negotiated, competitive basis. This process involves (1) soliciting offers from several firms, (2) determining which firms are qualified and which offers are considered reasonable, and (3) negotiating a contract with the firm believed to best serve the interests of the Government in performing the desired tasks. Consequently, the firm making the lowest offer may not receive the contract.

EPA's standard justification for making cost-plus-fixed-fee awards was that (1) contracting by this method was likely to be less costly than other methods and (2) securing services of the kind or quality required without using such contracts was impractical. EPA contracting officers classified 80 percent of 444 management support service contracts in our 1979 and 1980 samples as research and development. Federal Procurement Regulations (41 CFR 1-3.405-5 (1980)) state that the cost-plus-fixed-fee

^{1/}"Controls Over Consulting Service Contracts at Federal Agencies Need Tightening" (PSAD-80-35, Mar. 20, 1980).

contract is suitable for use when the contract is for the performance of research, or preliminary exploration or study, where the level of effort required is unknown.

Cost-plus-fixed-fee contracts can take two basic forms, completion and term. The completion form normally requires the contractor to complete and deliver an end product, such as a study report, to earn the fee. To earn the fixed fee under the term form of contract, the contractor need only apply a specified level of effort for various work assignments which the agency submits during the contract period. Federal Procurement Regulations (41 CFR 1-3.405-5 (1980)) state that in the case of research and development, the term form of contract may be preferable to the completion form because it can provide more flexibility.

Of the 392 cost-plus-fixed-fee contracts identified in our 1979 and 1980 samples, 119 contracts, or about 30 percent, were term contracts. These term contracts' values totaled \$169 million, or 42 percent of the values of the 392 cost-plus-fixed-fee contracts identified in our samples.

Contract modifications

EPA's management support service contracts were modified extensively. Contract modifications can add to contract costs, expand the scope of work, and/or extend periods of performance. Many EPA management support service contracts contained option clauses which--under predetermined conditions--allowed EPA to obtain additional contractor efforts beyond those required by the basic contract. Contractors are paid for any such additional work in accordance with option clause provisions.

Of the 444 management support service contracts in our 1979 and 1980 samples, 267 contracts, or 60 percent, had non-option modifications to increase costs, expand the scopes of work, and/or extend periods of performance. Modifications increased the original costs of 256 contracts by \$191.0 million, or 150 percent, from \$126.8 million to \$317.8 million. Because many contracts were still active at the time of our review, additional modifications could be made.

EPA's exercising of option clauses accounted for nearly half of the total increase in contract costs. For fiscal year 1979 contracts, \$47.8 million, or 65 percent, of the contract cost modifications resulted from exercising option clauses. For fiscal year 1980 contracts, exercising option clauses increased contract costs by \$45.2 million, or 38 percent of the total cost increases.

In addition, management support service contracts frequently were not completed within the original period of performance. At the time of our review, of the 444 management support service contracts in our 1979 and 1980 samples, 219 contracts, or 49 percent, had not been completed within the original period of performance. Nineteen percent of the contracts had been extended for more than 1 year. Because 254 of the contracts had not been completed, further time extensions may be made. Time extensions are often associated with modifications to expand the contracts' scopes of work.

Sole-source awards

Of the 444 management support service contracts identified from our 1979 and 1980 samples, 133 contracts, or 30 percent, having values totaling nearly \$66 million were awarded sole source (without competition). This percentage is significantly lower than the 67 percent reported in our 1980 report on six other Federal agencies' use of consulting services. EPA justifies sole-source contracts on the basis of contractor expertise, previous experience with the contractor, and/or time exigency. Six of eight sole-source contracts which we reviewed had modifications for major time extensions and cost increases.

Draft regulations for dealing with potential organizational conflicts of interest

Neither Federal law nor EPA's contracting procedures require prospective contractors for management support services or other efforts to furnish information concerning (1) current or previous work done for other clients or (2) their affiliations--particularly with regulated industries--that would allow the agency to determine whether a potential "organizational conflict of interest" exists. Our review disclosed information which indicated the existence of many potential organizational conflict-of-interest situations that could have diminished the contractors' ability to give impartial, objective advice. The information used to make these determinations was provided by the contractors in their contract proposals, primarily to help demonstrate their technical qualifications to perform the work.

EPA's current procedures dealing with the avoidance of organizational conflicts of interest (as defined by EPA) were adopted in 1978. Under these procedures, a prospective contractor simply indicates in its response (offer) to a solicitation whether, to the best of its knowledge and belief, the award to the firm of a contract or the modification of an existing contract involves an organizational conflict of interest. These procedures advise offerors of the meaning of the term "organizational conflict of

interest." However, prospective contractors are not required to provide any information on their interests that might represent an organizational conflict of interest.

At the time of our review in June 1981, EPA had drafted proposed regulations that would shift the responsibility for determining the existence of an organizational conflict of interest from the contractor to the contracting officer. A new solicitation provision would require a prospective contractor to (1) disclose relevant facts relating to its interest or (2) certify that, to the best of its knowledge, no such relevant circumstances exist. As of January 11, 1982, EPA was still considering the issuance of these draft regulations as proposed rulemaking.

CONTRACTORS' PERFORMANCE

Of 30 management support service contracts which we reviewed in detail, work products provided under 10 contracts appeared to be of questionable value to EPA. No work product was received under one other contract. Our judgments on the value of the contracts' results were based primarily on comments by internal and external peer reviewers and EPA project officers who managed the contracts.

We did not try to determine the extent, if any, to which these work products influenced environmental regulatory decisions because EPA obtains information for decisionmaking from a variety of sources. In addition, contractor performance can be affected by a variety of factors, including inadequate monitoring and awards to contractors who may not have the best record of or potential for providing high-quality products. Examples of management support service contractors' work products which appeared of questionable value are presented in appendix III.

For the 11 contracts for which we found work products either were not received or appeared to be of questionable value, project officers told us that in four cases insufficient travel funds prevented them from making enough visits to contractors' sites to properly monitor contract performance. In 1980, we reported 1/ that EPA project officers' opportunity to adequately monitor research contracts was hampered by travel fund limitations. In commenting on that report, EPA agreed that travel funds for project officers' visits to contractors' sites required attention. EPA added that it had consistently sought travel funds for this

1/"Promising Changes Improve EPA's Extramural Research; More Changes Needed" (CED-81-6, Oct. 28, 1980).

purpose but the Congress had reduced its requests and OMB had also imposed travel ceilings.

Contracting officers' and project officers' written evaluations of contractor performance often were not prepared in accordance with established agency procedures and/or the evaluations were not sent to a central filing point to establish a record of contractor performance. Therefore, information available from these evaluations on contractor performance, including information on timely project completion, adherence to cost estimates, and quality of products, may not always be available during the contract award process. At the time of our review, EPA's Contract Administration Section was placing greater emphasis on ensuring that contracting officers and project officers prepared and submitted evaluations of contractors' performance as required.

APPOINTED INDIVIDUAL EXPERTS
AND CONSULTANTS

EPA's records showed that agency expenditures for appointed experts and consultants totaled \$3.4 million in fiscal year 1980. We reviewed the use of appointed experts and consultants by three EPA headquarters program offices--Policy Analysis, Pesticide Programs, and Water Program Operations--which accounted for nearly one-third of EPA's fiscal year 1980 expenditures for appointed experts and consultants. Our review of 20 individual experts and consultants used by these three program offices showed that generally they (1) appeared qualified to perform the tasks for which hired, (2) were hired to perform appropriate tasks, (3) performed the tasks for which hired, (4) were compensated at reasonable rates, and (5) had no apparent conflicts of interest that would bias their performances.

EPA's policies and procedures for using experts and consultants are set forth in its September 28, 1973, Order 3110.4A and May 15, 1980, Personnel Management Handbook Notice No. 304-3.

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At your request, we did not obtain written agency comments. However, the matters covered in the report were discussed with agency officials and their comments were considered in its preparation.

As arranged with your office, unless you publicly announce its contents earlier, we plan no further distribution of this report until 30 days from the date of the report. At that time, copies of the report will be provided to the appropriate congressional committees; the Administrator, EPA; the Director, OMB; and other interested parties.

Sincerely yours,

A handwritten signature in cursive script that reads "Henry Eschwege". The signature is written in black ink and is positioned above the typed name and title.

Henry Eschwege
Director

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ABBREVIATIONS

DOD	Department of Defense
EPA	Environmental Protection Agency
GAO	General Accounting Office
OMB	Office of Management and Budget
OPM	Office of Personnel Management

CONSULTING SERVICES: DEFINITIONS, USES,
AND REVIEW METHODOLOGY

Over the past 20 years, we have issued over 30 reports discussing the need for nearly every major Federal agency to better manage its use of consulting services. But problems and abuses persist, and the Federal Government's use of consulting services continues to be of great interest to the President, the Office of Management and Budget (OMB), and the Congress.

In an August 6, 1980, letter, Senator Max S. Baucus, Chairman, Subcommittee on Limitations of Contracted and Delegated Authority, Senate Committee on the Judiciary, ¹/ requested that we review the Environmental Protection Agency's (EPA's) use of consulting services. At that time, the subcommittee was reviewing aspects of selected Federal agencies' use of consulting service contractors and individual consultants. Part of that review focused on EPA. The subcommittee chairman was particularly concerned that EPA might be making questionable use of consulting services. This report responds to the chairman's request for an independent review to address his concern and provide others with insight into EPA's reliance on consulting services.

As agreed with Senator Baucus' office, we reviewed a broader spectrum of contract support services than consulting services as defined by OMB. We did so because we believe EPA's use of consulting-type services may be significantly understated and because prior reviews of other civilian agencies and the Department of Defense (DOD) have shown that other types of management support services are subject to similar problems and abuses as are consulting service contracts meeting OMB's definition. Current OMB efforts and proposed legislation address the previously identified problems and abuses. Our review of EPA disclosed no new issues. Therefore, this report contains no conclusions and recommendations.

DEFINITIONS OF AND WAYS TO
OBTAIN CONSULTING SERVICES

Three definitions are used Government-wide to describe outside sources of advisory services available to Federal agencies--the Office of Personnel Management's (OPM's) definitions of "consultant" and "expert" and OMB's definition of "consulting services."

¹/This subcommittee has been disbanded; however, in a January 8, 1981, letter to us, Senator Baucus reiterated his interest in our completing the review on his behalf.

OPM defines a consultant as a person who serves as an adviser to an officer or agency as distinguished from an officer or employee who carries out the agency's duties and responsibilities. The consultant gives views or opinions on problems or questions based on his/her broad administrative, professional, or technical experience. OPM defines an expert as a person having excellent qualifications and a high degree of attainment in a professional, scientific, technical, or other field which are clearly superior to those of ordinarily competent persons. Whereas a consultant may not perform or supervise the performance of an agency's normal operational functions, an expert may perform such functions. OPM's definitions of consultant and expert apply only when an employer-employee relationship exists.

OMB defines consulting services as "those services of a purely advisory nature relating to the governmental functions of agency administration and management and agency program management." OMB's definition includes the services of appointed consultants as well as consulting services provided by a contractor.

PRIOR CONCERNS ABOUT THE USE OF CONSULTING SERVICES

Our prior reports and the efforts of various congressional committees and Federal agencies' audit organizations have prompted Presidential and congressional actions to improve Federal agencies' use of consulting services.

Presidential actions

On May 12, 1977, President Carter issued a memorandum to Federal agencies declaring that he had "* * * become aware of a need for improved management of the excessively large volume of consulting and expert services used by the Federal Government." He expressed concern that consulting services were being used excessively, unnecessarily, and improperly.

As a result of the President's concerns, OMB issued Bulletin No. 78-11, "Guidelines for the Use of Consulting Services," on May 5, 1978. The bulletin established interim policy and guidelines for agencies. OMB Circular A-120, "Guidelines for the Use of Consulting Services," was issued on April 14, 1980, to provide permanent guidance to Federal agencies. The circular sets forth the basic policy and procedures for agencies to follow in determining and controlling the appropriate use of consulting services under contracts and personnel appointments. Although it contained essentially the same provisions as the bulletin, it included an expanded list of examples of the types of services which OMB considered consulting services. (See app. VI.)

On July 2, 1980, OMB issued a memorandum to Federal agencies entitled "Management Control of Consulting Service Contracts and Improvement of Agency Procurement Practices." This memorandum required that each agency submit to OMB by August 1, 1980, a proposal detailing the agency's management control system for procurement practices relating to consulting services. The proposal was to include specific actions needed to assure effective implementation of the system and a specific schedule for such implementation. EPA submitted its plan in late July 1980.

Congressional actions

During the last 2 years, several congressional committees have held hearings on the Government's use of consulting services and enacted and proposed legislation to deal with the problems and abuses in Federal agencies' use of such services. The Congress has sought to obtain information on the extent and purposes of Federal agencies' use of consulting services through the enactment of the Supplemental Appropriations and Rescission Act, 1980 (94 Stat. 928). (See page 15.) The Congress has concluded, however, that it cannot deal effectively with alleged abuses through the use of across-the-board ceilings on funds appropriated for consulting services or by imposing restrictions, such as prohibitions against awarding contracts to firms having conflicts of interest. In August 1980 hearings before the Senate Governmental Affairs Committee on S. 2880, the proposed Consultant Reform Act of 1980, Senator David Pryor stated that:

"* * * we found that at least in some important cases the problem is not the absence of rules, but the failure to honor them or, by the same token, the creativity employed in finding new ways to evade them. Indeed, it became very apparent that the official response to each wave of consulting scandals is the restatement of existing rules or new rules and a promise of better management. It is now evident that the issuance of new rules as opposed to the enforcement of old rules has become a powerful way of avoiding confrontation with and control of the real problems."

* * * * *

"The bill we have proposed, therefore, is a sunshine bill. It does not try to tell the agencies what they must or must not do in the use of consultants. It simply says to agencies, 'If you do use consultants, we in Congress and the public want to know about it. We want to know whom you use, what you have them do, how you use the work they do for the Government.'"

The Congress did not act on the bill during the 96th Congress, and on March 17, 1981, Senator Pryor introduced a similar bill (S. 719, the proposed Consultant Reform and Disclosure Act of 1981) that would provide, among other things, statutory guidelines not only for procuring consulting services as defined by OMB, but also for procuring certain other management support services requiring tighter management controls. As of December 14, 1981, the bill had not been reported out of the Senate Committee on Governmental Affairs.

EPA's USE OF CONSULTING SERVICES

For fiscal year 1980, EPA reported expenditures of \$4.5 million for consulting services meeting OMB's definition--\$3.6 million to individually appointed consultants and experts 1/ and \$903,500 for contracts. These amounts do not include EPA's expenditures for contracts used to procure the vast majority of the management support services covered by this review.

The Office of Personnel and Organization, under the Assistant Administrator for Administration, 2/ is responsible for overseeing the hiring of individual experts and consultants and monitoring their performance.

EPA's procurement function is centered in the Procurement and Contracts Management Division, Office of Fiscal and Contracts Management under the Assistant Administrator for Administration. 3/ Procurements are made primarily by three procurements operations centers at Washington, D.C., headquarters; Research Triangle Park, North Carolina; and Cincinnati, Ohio. The headquarters center generally handles procurements (in excess of \$10,000) for EPA's 10 regional offices, headquarters program offices, and two field facilities. The Research Triangle Park

 1/Includes \$200,000 for payments to members of advisory committees who provide independent advice to EPA top management on agency programs. As agreed with the Senator's office, these members were not included in the scope of this review.

2/The Personnel Management Division, Management and Agency Services, Office of the Assistant Administrator for Planning and Management, was responsible for this function before a general EPA reorganization in June 1981.

3/The division was a part of Management and Agency Services, Office of the Assistant Administrator for Planning and Management, before the June 1981 EPA reorganization.

center handles procurements for four laboratories operated by EPA's Office of Research and Development, the Office of Air Planning and Standards, and the Office of Administration at Research Triangle Park. The Cincinnati center handles procurements for four research laboratories and the Office of Administration at Cincinnati, as well as seven other research laboratories and various other agency facilities across the country.

OBJECTIVES, SCOPE, AND METHODOLOGY

As agreed with Senator Baucus' office, the objective of this review was to examine EPA's use of management support services provided by contractors and individual experts and consultants and to determine whether these activities were being managed in ways that would most effectively contribute to accomplishing EPA's mission. More specifically, our objectives were to determine whether EPA had:

- Accurate information on the number and value of its management support service contracts active as of September 30, 1979, and September 30, 1980.
- Procedures for reviewing and approving justifications for management support service contracts.
- Methods and procedures for procuring, monitoring, and evaluating management support services to ensure (1) competition, (2) unbiased performance, and (3) timely submission of quality products.
- Procedures for hiring, determining appropriate compensation for, and monitoring the tenure and performance of individual consultants and experts.

To meet these objectives, we:

1. Determined the universes and values of all active EPA contracts as of September 30, 1979, and September 30, 1980.
2. Randomly sampled and reviewed 481 and 490 contracts from the universes of active EPA contracts as of September 30, 1979 (1,101 contracts), and September 30, 1980 (1,188 contracts), respectively, to identify and determine the value of those contracts which, in our opinion, were management support service contracts. This information was used to project the total number and value of active management support service contracts within the universes as of the given dates.

During fiscal year 1981, EPA's level of contracting was similar to that experienced in fiscal year 1980. In fiscal years 1980 and 1981, EPA obligated \$362 million and \$356 million, respectively, for contracts. As a result, the number and value of all active EPA contracts as of September 30, 1981, should not be drastically different from those as of September 30, 1980. Therefore, we believe our projections of the relative value and number of management support service contracts in EPA's universe of all active contracts as of September 30, 1979, and September 30, 1980, continue to represent a reasonable perspective (1) of the extent to which EPA relied on management support service contractors in fiscal year 1981 and (2) for our other observations, such as the percentages of cost-plus-fixed-fee contracts, sole-source awards, and modifications to contracts used by EPA to procure management support services.

3. Gathered information on management support service contracts in our samples and evaluated established methods and procedures, as appropriate, that would permit our determining whether
 - justifications for management support service contracts were adequately reviewed with respect to (a) need, (b) the availability of in-house capability to perform the tasks, and (c) if the tasks appeared to be of the type that should be performed by Federal employees;
 - the types of awarded contracts offered contractors maximum incentives to minimize costs;
 - adequate procedures existed for identifying and resolving possible conflict-of-interest situations; and
 - contractors' performances were being adequately monitored and evaluated.
4. Selected for detailed review 30 management support service contracts from those active as of September 30, 1979, primarily to determine the value of the contractors' work products in terms of EPA's needs and expectations. We structured our sample to include 10 contracts awarded by each of EPA's three procurement centers.

At each location, we identified the program offices that appeared to provide the best mix of contracts from which to make our individual selections for detailed review, considering with respect to each program office's active contracts (a) the number and total values, (b) the range

of values, and (c) the type of award (negotiated competitive or sole source). Another criterion used to select these 30 contracts was whether work products had been completed. We interviewed project officers and other program officials responsible for managing these projects to obtain their comments on, among other things, the usefulness of work products provided by the contractors and the adequacy of their opportunity to monitor the contractors' performance. We did not try to determine the extent of EPA's reliance, in its decisionmaking, on the work products produced under these contracts because EPA obtains information for decisionmaking from a variety of sources. Because we reviewed in detail only 30 contracts, we are unable to project the extent of our observations with respect to these contracts to the total universes of EPA's management support service contracts active as of September 30, 1979, or September 30, 1980. We are not aware, however, of any reasons why the results of our review would not be indicative of EPA's management support service contracting activities.

5. Determined the number of individually appointed experts and consultants working in three EPA headquarters program offices (Office of Planning and Evaluation, Assistant Administrator for Planning and Management; 1/ Office of Water Program Operations, Assistant Administrator for Water and Waste Management; 2/ and Office of Pesticide Programs, Assistant Administrator for Pesticides and Toxic Substances) as of January 23, 1981, January 30, 1981, and March 4, 1981, respectively. These three offices accounted for nearly one-third of EPA's fiscal year 1980 expenditures for appointed experts and consultants.

We reviewed personnel records relating to the hiring, compensation, duties, and tenure of 20 individual experts and consultants. Our selection was made considering (a) duties performed, (b) the potential availability of completed work products from the beginning of their tenure, and (c) total compensation. We examined EPA's policies and procedures for hiring experts and consultants and periodically reviewing their performances.

1/The functions of this office were assumed by the Office of Policy Analysis, Associate Administrator for Policy and Resource Management, as a result of a general EPA reorganization in June 1981.

2/This office was realigned under the Assistant Administrator for Water as a result of the June 1981 reorganization.

Our review was conducted from December 1980 through July 1981 at EPA's three procurement centers and selected program offices in Cincinnati, Research Triangle Park, and Washington, D.C., and at EPA's Office of Personnel and Organization, Assistant Administrator for Administration, in Washington, D.C. We reviewed and analyzed OMB, OPM, and EPA regulations, bulletins, circulars, and memorandums; reviewed work products prepared by contractors and individual experts and consultants; reviewed pending and enacted legislation concerning management controls for Federal agencies' use of consulting and other management support services; and interviewed EPA procurement, personnel, budget, and program officials at EPA headquarters and field locations. We also interviewed three consultants and three experts at EPA headquarters to discuss their duties and responsibilities. We then discussed the performance of consultants and experts with supervisors and management officials in the three program offices.

As a result of our prior reviews and Presidential and congressional interest, OMB and the Congress are considering actions that could tighten management control over Federal agencies' use of management support services. Situations existing at EPA relative to its use of management support services were not unlike those found during our prior reviews of other civilian agencies and DOD. Accordingly, this report contains no conclusions and recommendations.

As requested by Senator Baucus' office, we did not obtain written comments on this report; however, we discussed the matters in the report with agency officials and their comments were considered in its preparation.

EPA'S RELIANCE ON MANAGEMENTSUPPORT SERVICE CONTRACTORS

EPA relies heavily on management support service contractors to help accomplish its mission. However, no provision has been made to fully disclose, to the Congress and others, the extent of EPA's reliance on these contractors. Further, most EPA program office requests for management support services to be procured under contract are not subject to agency procedures that could tighten management control over their use.

These problems exist because statutory reporting requirements and special EPA internal procedures for reviewing procurement requests apply only to consulting services as defined by OMB. Both problems could be eliminated by making such reporting requirement and review procedures applicable to other management support services, as well as consulting services meeting OMB's definition. These issues are being addressed by pending legislation and changes under consideration by OMB to its guidance to Federal agencies.

Many EPA management support service contracts appear to give contractors sufficient latitude to perform some basic Government management functions which should normally be performed by Federal employees. However, we could not determine if contractors were, in fact, performing basic management functions because of the need for criteria to determine where contractor assistance ends and performance begins. Changes being considered by OMB to its guidance to Federal agencies would also require additional management controls to assure that basic management functions are performed by Government employees.

EPA'S ACTIVE MANAGEMENT
SUPPORT SERVICE CONTRACTS VALUED
AT SEVERAL HUNDRED MILLION DOLLARS

EPA did not have information that accurately showed the extent of its reliance on management support service contractors. To provide a perspective of EPA's dependence on management support service contractors, we randomly selected and reviewed separate samples from EPA's contracts active as of September 30, 1979, and September 30, 1980, to identify those which, in accordance with our definition (see p. 13), were awarded to procure management support services. As of these two dates, EPA had 1,101 active contracts with total cumulative obligations of about \$495 million and 1,188 active contracts with total cumulative obligations of \$704 million, respectively.

We determined that 444 contracts met our definition of management support services--217 contracts, or 45 percent, of the 481

contracts comprising our 1979 sample and 227 contracts, or 46 percent, of the 490 contracts comprising our 1980 sample. Further, we determined that management support service contracts accounted for 54 percent and 61 percent, respectively, of the obligations incurred for those contracts comprising our 1979 and 1980 samples. Details are shown in the following tables.

1979 Sample Contracts Determined
by Us to Be for Management Support Services (note a)

Procurements operations center	Contracts in sample		Management support service contracts			
	Number	Cumulative obligations (millions)	Number	Percent of sample	Cumulative obligations (millions)	Percent of sample
Cincinnati	150	\$ 43.3	74	49	\$ 29.1	67
Research Triangle Park	154	71.6	56	36	37.6	53
Washington	<u>177</u>	<u>89.0</u>	<u>87</u>	49	<u>43.6</u>	49
Total	<u>481</u>	<u>\$203.9</u>	<u>217</u>	45	<u>\$110.3</u>	54

a/Initially, we randomly selected for review 500 contracts from those active as of September 30, 1979. However, we could not locate four contract files from those selected. In addition, we excluded 15 basic ordering agreements from our sample. (Basic ordering agreements are "dummy" contracts under which separate new contracts are awarded for work to be performed.)

1980 Sample Contracts Determinedby Us to Re for Management Support Services (note a)

Procurements operations center	Contracts in sample		Management support service contracts			
	Number	Cumulative obligations (millions)	Number	Percent of sample	Cumulative obligations (millions)	Percent of sample
Cincinnati	136	\$ 55.5	71	52	\$ 36.9	66
Research Triangle Park	150	127.2	67	45	83.7	66
Washington	<u>204</u>	<u>166.6</u>	<u>89</u>	44	<u>92.2</u>	55
Total	<u>490</u>	<u>\$349.3</u>	<u>227</u>	46	<u>\$212.8</u>	61

a/Initially, we randomly selected for review 500 contracts from those active as of September 30, 1980. However, we could not locate seven contract files from those selected. In addition, we excluded three basic ordering agreements from our sample.

Using the average percentage of contracts and cumulative obligations from our 1979 and 1980 samples, we estimated the total number and value of management support service contracts in EPA's universes of active contracts at September 30, 1979, and September 30, 1980. As shown below, we estimated that as of these dates, EPA had 497 and 550 management support service contracts, with cumulative obligations of \$268 million and \$429 million, respectively.

Estimates of the Number and Value
of Active EPA Management Support Service Contracts

<u>As of</u>	<u>Universes of active contracts</u>		<u>Percent considered management support services</u>		<u>Estimates of total universes of management support service contracts</u>	
	<u>Number</u>	<u>Cumulative obligations</u>	<u>Number</u>	<u>Cumulative obligations</u>	<u>Number</u>	<u>Cumulative obligations</u>
		(millions)				(millions)
September 30, 1979	1,101	\$ 495	45	54	497	\$ 268
September 30, 1980	1,188	\$ 704	46	61	550	\$ 429

OMB Circular A-120 makes the agencies' contracting officers responsible for determining whether a requested solicitation or procurement action is for consulting services. Federal Procurement Regulations (41 CFR 1-4.803 (August 1980)), promulgated to implement this provision, provide that the contracting officers' determinations shall be final. EPA contracting officers classify most agency procurement actions as research and development. The following table shows how EPA contracting officers classified the 444 management support service contracts identified in our 1979 and 1980 samples.

EPA Classification of Contracts
Which We Considered To Be for Management Support Services

Classification category	1979 sample				1980 sample			
	Number	Percent of total	Original dollar value (millions)	Percent of total	Number	Percent of total	Original dollar value (millions)	Percent of total
Research and development	171	79	\$ 93.5	90	185	82	\$114.9	90
Services	27	12	7.2	7	14	6	7.4	6
Other technical services	14	7	2.4	2	16	7	3.0	2
Consulting services	-	-	-	-	4	2	0.6	1
Other (note a)	<u>5</u>	<u>2</u>	<u>0.6</u>	<u>1</u>	<u>8</u>	<u>3</u>	<u>1.3</u>	<u>1</u>
Total	<u>217</u>	<u>100</u>	<u>\$103.7</u>	<u>100</u>	<u>227</u>	<u>100</u>	<u>\$127.2</u>	<u>100</u>

a/Includes contracts for automatic data processing, architects and engineers, and those which were unclassified.

EPA's reliance on management support service contractors is much greater than its records indicate for consulting services. The difference in our definition of management support services and EPA's interpretation of consulting services is discussed in the following section.

OUR DEFINITION OF MANAGEMENT
SUPPORT SERVICES AND EPA'S
INTERPRETATION OF CONSULTING SERVICES

Our earlier reviews of consulting service contracts at several civilian agencies and DOD 1/ showed that the agencies were having difficulty in reporting consulting service contracts. We have previously reported that the fundamental problem with OMB's definition, as contained in OMB Circular A-120, was that it is vague and subject to interpretation and judgment.

1/"Controls Over Consulting Service Contracts at Federal Agencies Need Tightening" (PSAD-80-35, Mar. 20, 1980) and "Controls Over DOD's Management Support Service Contracts Need Strengthening" (MASAD-81-19, Mar. 31, 1981).

EPA's interpretation of OMB's definition

EPA's definition of consulting services as presented in its December 12, 1980, Procurement Information Notice 1/ states in part that:

"Consultants provide only analysis or advice regarding agency or program policy, strategy, performance or organization. Consultants do not perform operating functions or supervise the performance of operating functions. Operating functions involve work that contributes directly to the achievement of the fundamental goals of the organization, whereas staff or advisory functions contribute indirectly to the achievement of these goals." (Underscoring supplied.)

The first example the notice provides of services which should not be considered consulting services is:

"Regulatory impact analyses, including economic impact analyses, of effluent guidelines on specific industries, such as the organic chemicals industry."

The Acting Director of the Procurement and Contracts Management Division told us that such services are not considered consulting services because "the contractor is not asked to make recommendations" on which pollution control technology option should be imposed by regulation on the studied industries. However, the Acting Director noted that if EPA awarded a contract to assess the adequacy of the methodology and performance of "regulatory impact analysis," EPA would consider that contract to be for consulting services because the contractor would render advice on a matter (regulatory impact analysis) which is an operating function of the agency.

Broader definition used for our determinations

Our estimate of EPA's universes of management support service contracts, as presented on pages 11 and 12, is based on a much broader definition of consulting services than that used by EPA. Our definition of management support services includes the types of services, studies, and analyses which our prior reviews of other civilian agencies and DOD have shown to be subject to problems and abuses similar to those of consulting services.

1/Procurement information notices are issued by the Procurement and Contracts Management Division to provide interim guidance until permanent changes can be incorporated into EPA's Contracts Management Manual.

We considered any contract to be for management support services if it was awarded largely to provide EPA with advice, evaluation, analysis, conclusions, and/or recommendations on agency or program management, functions, responsibilities, and operations relating to the accomplishment of the agency's mission. This differs significantly from OMB's definition of what constitutes a consulting service contract. For example, as indicated above, pursuant to its interpretation of OMB's definition, EPA does not include, in its definition of consulting services, contracts for what it considers operating functions, such as those to perform economic impact analysis of technology options for controlling wastewater discharges by the industries which it regulates. We have included such contracts in our definition of management support services because EPA is seeking the contractors' "advice and/or analysis" of the impact of alternatives available for controlling pollution. In our opinion, it is irrelevant whether or not the contractor specifically makes recommendations. Recommendations could be implied.

Conversely, our definition excluded most contracts for such services as automatic data processing, architects and engineers, financial audits, and construction. However, we considered contracts that EPA classified as research and development as meeting our definition of management support services when the contracts were awarded by EPA to obtain advice, evaluation, analysis, conclusions, and/or recommendations.

DISCLOSURE OF RELIANCE ON MANAGEMENT
SUPPORT SERVICE CONTRACTORS

The Supplemental Appropriations and Rescission Act, 1980, required that beginning with the submission of the fiscal year 1982 budget justifications, Federal agencies annually provide to the House and Senate appropriations committees information on (1) the estimated amount of funds requested for consulting services, (2) the appropriations accounts in which these funds are located, and (3) a brief description of the need for these services, including a list of major programs requiring them. EPA's submission--prepared in accordance with instructions contained in OMB Bulletin No. 80-13, dated August 4, 1980--showed it was requesting \$1,375,000 in fiscal year 1982 for consulting service contracts. This estimate did not provide the Congress the proper perspective of EPA's anticipated reliance in fiscal year 1982 on contracts subject to the abuses and problems generally associated with consulting services.

In fiscal year 1981, EPA obligated \$356 million for contracts. As shown on page 12, we estimated that 61 percent of the obligations incurred for all EPA contracts active as of

September 30, 1980, were for management support service contracts. Using that percentage, we estimated that EPA obligated about \$217 million for such contracts in fiscal year 1981. As of January 12, 1982, it appeared that EPA's contract funding for fiscal year 1982 could be less than that available for 1981. Nevertheless, EPA's obligations for management support service contracts could reasonably be expected to be many times the \$1,375,000 which EPA indicated it was requesting for consulting services in fiscal year 1982.

Previous efforts to require
budgetary identification of requests
for management support services

In the draft of our report entitled "Controls Over DOD's Management Support Service Contracts Need Strengthening" (MASAD-81-19, Mar. 31, 1981), we proposed that the Congress consider legislation to require budgetary identification of funds being requested for certain management support services. In its February 27, 1981, comments on that draft report, OMB stated that it did not believe that a specific entry (budget line item) for such services within the object classification schedules for each agency account in the budget was necessary, appropriate, or practicable. In responding to OMB, we stated that our proposal did not require information for management support services in the detail which OMB described in its comments.

We noted that the concept has already been implemented. First, as noted earlier, in August 1980 OMB had issued Bulletin No. 80-13 which instructed Federal agencies how to submit--pursuant to Section 307 of the Supplemental Appropriations and Rescission Act, 1980--the estimated amount of funds for consulting services included in their fiscal year 1982 budget requests. Also, OMB Bulletin No. 81-8, dated January 24, 1981, instructed executive agencies in submitting plans to reduce by 5 percent their planned obligations for fiscal year 1981, not only for consulting services as determined pursuant to OMB's definition, but also for management and professional services and special studies and analyses as identified by specific codes of the Federal Procurement Data System. This system was implemented on October 1, 1978, by the Office of Federal Procurement Policy, a part of OMB. The office is responsible for, among other things, collecting and disseminating Federal agencies' procurement data needed by the Congress, the executive branch, and the private sector. Under this system, all Federal agencies are required to report individual contract actions over \$10,000. A contract must be coded to indicate (1) whether it is a consultant-type award and (2) the type of principal product or service it will provide, such as various management support services.

Thus, as pointed out in our March 1981 report, with the implementation of the Supplemental Appropriations and Rescission Act, 1980, by OMB Bulletin 80-13, budgetary identification of consulting services is already required. The agencies' compliance with OMB Bulletin 81-8 demonstrated the feasibility of expanding that identification to other management support services. Accordingly, we believe that OMB could have adopted the essence of our proposal by extending the requirements of its Circular 80-13 to include these management support service contracts which are not now generally classified as consulting services and furnish this information to the Congress as a part of the budget review process.

Section 206 of S. 719, the Consultant Reform and Disclosure Act of 1981 (see p. 4), would require, among other things, the President's budget transmitted to the Congress each fiscal year to set forth separately, within each subfunctional category, the amount of funds being requested for (1) the procurement of consulting services, management and professional services, and special studies and analyses and (2) all other procurement activities.

INTERNAL REVIEW OF REQUESTS FOR
MANAGEMENT SUPPORT SERVICES

We estimated that only about 5 percent of EPA's fiscal year 1980 procurement requests for management support services were subject to a required, independent internal review designed to provide limited management control over EPA's use of consulting services. According to these EPA procedures, the review requirement now applies only to those procurement requests for consulting services as defined in OMB Circular A-120.

Of the 89 management support service contracts in our 1980 headquarters sample, 16 of the proposals or procurement requests were initiated in fiscal year 1980. Our review of EPA headquarters files disclosed that only 2 of these 16 proposals were submitted to the Management and Organization Division for review. In addition, we examined files for 10 1980 management support service contracts awarded by each of the Cincinnati and Research Triangle Park procurements centers. We found that none of the 20 requests were submitted for internal review before the procurement action was started.

At the time these contracts were awarded, EPA's Contracts Management Manual required that headquarters program and staff offices, regional offices, and field installations proposing to contract for consulting services prepare a memorandum describing the management problem needing attention, including its nature and dimensions. The memorandum also had to identify, if possible, the type, extent, and sources of assistance needed to solve the

problem. The memorandums were to be sent to the Director of the Management and Organization Division, Office of Personnel and Organization, Assistant Administrator for Administration. 1/ The Division was responsible for determining whether the requirement could be met in-house or through other Federal sources.

New review procedures

In its plan submitted in response to OMB's July 2, 1980, memorandum, EPA indicated that new procedures would be established for program offices' use in justifying consulting service procurements. (See p. 3.) On December 12, 1980, EPA issued Procurement Information Notice 80-41-1 to advise agency procurement personnel of procedural changes in contracting for consulting services. According to that notice, program offices must prepare a justification for the use of all consulting services, including:

- Why the services are needed and how they will enhance the accomplishment of the agency's mission.
- The need to contract for these services in lieu of using in-house capabilities. (The Management and Organization Division shall continue to determine and document whether the requirement can be met in-house.)
- A certification that the services do not unnecessarily duplicate any previously performed work, including an explanation of the basis upon which such certification is made.

The program office initiating the requirement must obtain written approvals to procure consulting services from various organizational levels as follows:

- For consulting services expected to cost less than \$50,000, approval from an official at a level above the organization initiating the requirement (during the fourth fiscal quarter, from an official at the second level above the organization initiating the requirement).
- For consulting services expected to cost \$50,000 or more, approval from the assistant administrator or regional administrator to whom the initiating program office is responsible.

These approvals, as well as the approval of the Management and Organization Division, must be included as part of the procurement package submitted by a program office to the Procurement and Contracts Management Division.

1/See footnote 3 on page 4.

In addition, these changes require that, for a noncompetitive procurement of consulting services that could result in obligations of \$50,000 or more, a justification be submitted to the Director, Procurement and Contracts Management Division, for approval before the request for proposals is issued. Previously, the Director was required generally to review and approve only those justifications for noncompetitive procurements expected to exceed \$250,000. As of January 11, 1982, these changes were under review within EPA and had not been formally incorporated into its Contracts Management Manual.

Many of the procurements meeting our definition of management support services would not be subject to these procedures. In our report entitled "Controls Over Consulting Service Contracts at Federal Agencies Need Tightening" (PSAD-80-35, Mar. 20, 1980), we recommended that the Director of OMB work with the Congress to achieve a better and more uniform understanding of the consulting service definition in terms of coverage, clarity, and congressional needs. We restated that position in our March 1981 report, "Controls Over DOD's Management Support Service Contracts Need Strengthening," and suggested that one way to accomplish it was to use the existing procurement coding structure developed by the Office of Federal Procurement Policy.

In a February 27, 1981, letter to us, OMB stated that it agreed with our recommendation and was considering the issuance of a bulletin to extend the management controls for consulting services to certain management and professional services, special studies and analyses, and comparable management and support services for research and development as identified by the Office of Federal Procurement Policy codings. On January 11, 1982, OMB issued a proposed bulletin for public and Federal agency review and comment that would require that OMB and Federal agency management controls, such as EPA's internal review procedures for procurement requests for consulting services, be extended to other management support services.

DIFFICULTY IN DISTINGUISHING BETWEEN
MANAGEMENT SUPPORT SERVICE CONTRACTORS'
ASSISTANCE AND PERFORMANCE OF
GOVERNMENTAL FUNCTIONS

EPA contractors may be performing work which should be performed by EPA employees, but we could not determine if the contractors' actions were improper because of the lack of criteria to distinguish between assistance and performance.

OMB Circular A-76, "Policies for Acquiring Commercial or Industrial Products and Services Needed by the Government," revised March 29, 1979, ^{1/} defines a governmental function as "a function which must be performed in-house due to a special relationship in executing governmental responsibilities." The circular states that "certain functions are so inherently governmental in nature, being so intimately related to the public interest, as to mandate performance by Federal employees." According to the circular, governmental functions can fall into several categories, including the discretionary application of Government authority as in managing Government programs requiring value judgments, directing national defense, selecting program priorities, or directing Federal employees.

OMB Circular A-120 also prohibits agencies from contracting out inherently governmental work by emphasizing that "consulting services" will not be used in performing work of a policy decision-making or managerial nature which is the direct responsibility of agency officials." This same policy was stated earlier in OMB Bulletin 78-11, dated May 5, 1978.

Although this criteria is specific and leaves little room for doubt, EPA and other agencies have used consulting or management contractors for what appeared to be basic management functions. This happens because OMB guidance allows Federal agencies to hire contractors to assist or advise them in performing their administrative or management activities. OMB, however, does not define assistance or describe at what point contractor assistance ends and performance of management functions begins. Thus, during this review, we found it difficult to document instances where EPA contractors were performing basic management functions.

We found many cases where contractors may have been involved in managing EPA programs and projects. Of the 444 consulting service-type contracts included in our samples, 408 appeared to have been at least partially for the performance of governmental functions. Several examples of these contracts follow.

--A contract for \$68,442 was awarded for studies relating to toxic substances enforcement proceedings and compliance. The work included gathering data, assessing the data to determine whether environmental regulations had been violated, and helping EPA take necessary enforcement

^{1/}Since 1955 the executive branch's policy has been to rely on the private sector to provide the goods and services it needs to act on the public's behalf. This policy was expressed in temporary bulletins issued as early as 1955 and was made more permanent when OMB issued Circular A-76 in 1966.

actions. A modification increased its value to \$193,636. Determining whether a regulation has been violated and taking enforcement action are activities which appear to be inherently of a governmental nature and which should be performed by EPA personnel.

- A \$375,346 award was made to assist the Toxic Substances Control Act Interagency Testing Committee. Among other things, the contractor was responsible for identifying, for Committee review, chemicals needing testing and the priority for such testing. These functions appear to be of a policy-decisionmaking and program priority-determining nature that require judgment and demand accountability of EPA employees. Because EPA exercised an option clause, the contract's value was increased to \$773,434.
- EPA awarded a 5-year contract originally valued at \$3.6 million for work associated with developing new-source performance standards for five industrial source categories of hazardous air pollutants. The contractor was required to, among other things, (1) identify emission problems which might be effectively controlled by a standard of performance; specify the facilities and types of pollutants that are suitable candidates for standards of performance and explain the rationale for selection; identify processes, facilities, or pollutants which should be candidates and give the reasons, (2) recommend the processes and pollutants, if any, in these categories for which standards should be developed, and explain the rationale for the recommendations, (3) solicit comments from knowledgeable parties, such as Government agencies, industry groups, and public interest groups, during the data gathering process and be available for meetings with such groups, and (4) prepare the draft regulation for the process under consideration as it would appear in the Federal Register when the new-source standard was proposed. These functions appear to be governmental in nature because they required determining priorities and making value judgments.

In a June 30, 1980, memorandum to the EPA Administrator, the Deputy Assistant Administrator for Management and Agency Services explained in general the agency's rationale for using contractors to perform so much of its work. According to the memorandum, contractors are used primarily to purchase technical and analytical support for the agency's research and regulation development programs, which are largely made up of discrete, time-limited tasks associated with developing environmental guidelines requiring concentrated efforts by teams of highly skilled scientists and engineers.

The Deputy Assistant Administrator offered the following reasons for EPA's historically having used contractors to help accomplish these tasks:

- EPA employees are allowed to concentrate on the actual policymaking functions that require judgment and demand accountability on the agency's part.
- The alternative of hiring Federal employees probably is not feasible even if the Congress authorized the necessary additional positions because Federal personnel regulations make it difficult or impossible to release permanent employees when a project is completed. It would be extremely difficult to hire qualified managers and staff if EPA offered only temporary or term appointments.
- In some instances, the agency needs information and expertise that can be found only in industry.

This situation is consistent with information we have developed in previous reviews of other agencies. In our June 19, 1981, report (FPCD-81-43) referred to previously, we recommended that the Director, OMB, prepare written guidelines that will better distinguish between contractors' advice on Government functions and their performance of such functions. We added that these guidelines should clearly indicate where advice stops and performance begins. In commenting on the report, the Deputy Director, OMB, stated that OMB concurred in the recommendation and was in the process of proposing changes to OMB Circular A-120 that would, among other things, require additional management controls to ensure that governmental functions are not performed by contractors. On January 11, 1982, OMB issued in the Federal Register a proposed revision to Circular A-120 for public and Federal agency review and comment. The proposed revision would require that governmental functions be performed by Government employees.

Also, in responding to our March 1981 report on DOD's use of consulting services, OMB said that aggressive implementation of Circular A-76 with respect to nongovernmental functions (finding out that it may be less expensive to have these functions performed by contractors) will release additional personnel to help perform governmental tasks now being performed by contractors.

CONTRACTING METHODS AND PROCEDURESUSED TO PROCURE MANAGEMENT SUPPORT SERVICES

EPA procures most management support services under contracts. Our review of the contracting methods and procedures used by EPA to award the 444 management support service contracts identified from our samples showed:

- Eighty-eight percent were cost-plus-fixed-fee contracts of which about 30 percent of were term contracts.
- Sixty percent were modified to increase costs, expand the scopes of work, and/or extend the periods of performance.
- Thirty percent were awarded sole-source (without competition).

Work products provided under 10 of 30 management support contracts which we reviewed in detail appeared to be of questionable value to EPA. No work product was received under one of the 30 contracts. Also, EPA's contract review and award procedures did not require prospective contractors to provide adequate information for identifying and dealing with potential organizational conflict-of-interest situations. However, EPA had drafted proposed regulations that would strengthen its procedures for considering such situations.

COST-PLUS-FIXED-FEE CONTRACTS

EPA awarded about 88 percent of the management support service contracts in our 1979 and 1980 samples as negotiated cost-plus-fixed-fee contracts. A cost-plus-fixed-fee contract is a cost-reimbursement type of contract which provides for the payment of a fixed fee to the contractor regardless of the costs it incurs. Under a cost-plus-fixed-fee contract, the reimbursable costs as well as the fee are determined separately as a part of the negotiation process. Once negotiated, the fixed fee does not vary on the basis of actual costs incurred by the contractor. The fixed fee changes only when the contract's scope of work changes pursuant to a modification that would also generally involve the contractor's incurring additional costs. However, it is not unusual for cost-plus-fixed-fee contracts to be modified to authorize contractors to be reimbursed for more costs than initially negotiated (cost overruns). Because the fixed fee does not vary in relation to the contractor's ability to control costs, the cost-plus-fixed-fee contract provides the contractor with only a minimum incentive for effective management control of costs.

Usually the cost-plus-fixed-fee contract is used where dollar amounts are large, the scope of work cannot be precisely determined, and the uncertainty involved in performance is so great that neither a firm price nor an incentive arrangement can be established during the life of the contract. EPA contracting officers classified about 80 percent of the management support service contracts identified in our 1979 and 1980 samples as research and development. Federal Procurement Regulations (41 CFR 1-3.405-5 (1980)) state that the cost-plus-fixed-fee contract is suitable for use when the contract is for the performance of research, or preliminary exploration or study, where the level of effort required is unknown. EPA's standard justification for making cost-plus-fixed-fee awards was that

--contracting by this method was likely to be less costly than other methods and

--securing services of the kind or quality required without using such contracts was impractical.

There are two basic forms of cost-plus-fixed-fee contract, completion and term. The completion form normally requires the contractor to complete and deliver an end product, such as a report, to earn the fixed fee. The basic term contract describes the scope of work to be done in general terms and obligates the contractor to devote a specified level of effort for a stated period of time. As the agency needs work done, it issues a work assignment to the contractor. Under the term form of contract, the contractor can earn the fixed fee by applying the specified level of effort to work assignments submitted by the agency during the contract period.

One reason term contracts are used is that they require less time in getting a contractor started on work needed by the agency. The basic term contract is already in existence, and all that is required is issuing a work assignment without having to solicit and evaluate proposals. If properly used, term contracts can (1) increase the efficiency of procurement operations and (2) reduce contract personnel workload. Further, Federal Procurement Regulations (41 CFR 1-3.405-5 (1980)) state that in the case of research and development, the term form of contract may be preferable to the completion form because it can provide more flexibility for performing the work.

A term contract may call for substantial contractor effort, as well as subcontractors' efforts, over an extended period. For example, in September 1979 EPA awarded a cost-plus-fixed-fee term contract with an initial value of \$1.5 million to support EPA's Economic Analysis Division in determining the economic

impact of environmental regulations and policies. The contract's original term was about 13 months, with two 1-year options, and committed the contractor to 48,000 staff hours of effort. By exercising options, EPA increased the value of the contract to \$4.8 million and committed the contractor to provide 144,000 staff hours of effort through September 30, 1982. Because of the very diverse areas in which work was expected to be performed, EPA authorized the prime contractor to subcontract with 17 firms for a total amount not to exceed \$3.3 million. In addition, EPA approved the prime contractor's possible use of 22 individual consultants for from 6 to 350 hours each at hourly rates of pay ranging from \$12.50 to \$70.

Extent of EPA's reliance on
cost-plus-fixed-fee contracts

As indicated earlier, EPA relies extensively on cost-plus-fixed-fee contracts to procure management support services. The following table shows for the 444 management support service contracts identified from our 1979 and 1980 samples, the number and types of contracts awarded and the total contract values.

Number and Value of Management
Support Service Awards in Our 1979 and 1980
Samples by Different Contract Types

<u>Contract type</u>	<u>Number of contracts</u>	<u>Percent of total</u>	<u>Total values</u> (millions)	<u>Percent of total</u>
Cost-plus- fixed-fee	392	88	\$406.0	87
Cost- reimbursable	20	5	7.8	2
Fixed-price	18	4	4.2	1
Cost-plus- award fee	8	2	41.6	9
Other (note a)	<u>6</u>	<u>1</u>	<u>5.1</u>	<u>1</u>
Total	<u>444</u>	<u>100</u>	<u>\$464.7</u>	<u>100</u>

a/Includes time and materials and cost-sharing contracts.

EPA's use of cost-plus-fixed-fee contracts in 88 percent of its awards for management support services is much higher than the 49 percent cost-plus-fixed-fee usage rate we reported for six other Federal agencies in our 1980 report referred to earlier. ^{1/} In addition, of the 392 active cost-plus-fixed-fee management service contracts identified in our 1979 and 1980 samples, 119 contracts, or about 30 percent, having total values of \$169 million were term contracts.

EPA awards most of its cost-plus-fixed-fee contracts on a negotiated, competitive basis, which involves (1) soliciting offers from a number of firms, (2) determining which firms are qualified and which offers are considered reasonable, and (3) negotiating a contract with the firm believed to best serve the interests of the Government in performing the desired tasks. Consequently, the firm making the lowest offer may not receive the contract.

1/"Controls Over Consulting Service Contracts at Federal Agencies - Need Tightening" (PSAD-80-35, Mar. 20, 1980).

MODIFICATIONS TO CONTRACTS INCREASE
COSTS, EXPAND SCOPES OF WORK, AND
EXTEND PERIODS OF PERFORMANCE

EPA management support service contracts were modified extensively. Contract modifications can add to contract costs, expand the scopes of work, and/or extend the periods of performance. Also, many EPA management support service contracts contain option clauses which--under predetermined conditions--allow EPA to obtain additional contractor efforts beyond those required by the basic contract. Contractors are paid for any such additional work in accordance with provisions of the options.

Of the 444 management support service contracts included in our 1979 and 1980 samples, 267 contracts, or 60 percent, had non-option modifications to increase costs, expand the scope of work, and/or extend the periods of performance. The following table shows the extent and reasons for contract modifications.

Categories of Modifications
to Management Support Service Contracts
Included in Our Samples (note a)

<u>Category</u>	<u>1979 sample</u>		<u>1980 sample</u>	
	<u>No. of contracts</u>	<u>No. of modifications</u>	<u>No. of contracts</u>	<u>No. of modifications</u>
Work scope, cost, and period of performance	41	76	35	83
Work scope	49	102	47	138
Cost	74	153	55	148
Period of performance	108	158	57	98

a/Figures may be duplicated because a contract may have been modified in more than one category.

Modifications increased the original costs of 256 management support service contracts that were modified to increase costs by 150 percent as shown on the next page.

Cost Modifications to Management Support Service Contracts
Included in Our Samples (note a)

	<u>1979 sample</u>	<u>1980 sample</u>	<u>Total</u>
Contracts with cost modifications	125	131	256
Original values of contracts modified to increase costs (millions)	\$53.8	\$73.0	\$126.8
Total values of modifications (millions)	\$73.0	\$118.0	\$191.0
Total cumulative values of contracts modified to increase costs (millions)	\$126.8	\$191.0	\$317.8
Percent of dollar increase in contract value	136	161	150

a/Information on modifications was compiled over several months early in calendar year 1981 at the three EPA procurement centers which we visited. Because many of the contracts were still active at the time of our review, additional modifications might have been made since our review and may yet be made before completion of the contracts.

EPA's exercising of option clauses accounted for significant portions of the total increase in contract costs. For fiscal year 1979 contracts, \$47.8 million, or 65 percent, of the contract cost modifications was the result of exercising option clauses. For fiscal year 1980 contracts, the exercising of option clauses increased contract costs by \$45.2 million, or 38 percent of the total cost increases.

Management support service contracts frequently were not completed within the original periods of performance. Of the 444 contracts reviewed, 219, or 49 percent, were not completed within the original time frame as shown in the following table.

Months Period of Performance Extended for Management
Support Service Contracts in Our Samples

<u>Months of extension</u>	<u>Number of contracts</u>		<u>Total</u>
	<u>1979 sample</u>	<u>1980 sample</u>	
0	85	140	225
1 through 6	51	33	84
7 through 12	36	15	51
13 through 18	18	9	27
19 through 24	11	11	22
25 through 30	5	7	12
31 through 36	6	5	11
37 and Over	<u>5</u>	<u>7</u>	<u>12</u>
Total	<u>217</u>	<u>227</u>	a/ <u>444</u>

a/Includes 92 1979 contracts and 162 1980 contracts for which the initial or modified periods of performance had not expired at the time of our review. Consequently, we do not know whether initial or additional extensions will be experienced on any of these contracts.

The extent and effect which modifications can have on contracts is illustrated by the following example.

--In October 1977, EPA awarded a \$273,071 cost-plus-fixed-fee contract to help select and evaluate tests procedures for toxic pollutants in wastewaters. Although the contract was initially negotiated competitively, it was subsequently modified 13 times in a sole-source environment to increase contract costs, expand the scope of work, and/or extend the period of performance. Five of the 13 modifications were for changes in two or more of the categories (cost, scope, period of performance). As part of the negotiation process for the last modification, EPA's Office of General Counsel questioned the continued awards of sole-source modifications to extend the contract for additional work. Further, there were seven modifications totaling \$1,257,119, including \$129,000 in overruns, which increased the total costs of the contract by over 460 percent. Due to scope of work changes as well as to technical problems, the period of performance was extended to early 1982, or 33 months after the originally scheduled completion.

The Acting Director, Procurement and Contracts Management Division, said he was unaware that contract modifications were made to the extent our review indicated. However, he said that he would have to closely examine our statistics before commenting on their significance, if any.

SOLE-SOURCE AWARDS

Of the 444 management support service contracts identified from our 1979 and 1980 samples, 133 contracts, or 30 percent, having values totaling nearly \$66 million were awarded sole source (without competition). This percentage is significantly lower than the 67 percent reported in our earlier report on six other Federal agencies' use of consulting services.

EPA justifies sole-source contracts on the basis of contractor expertise, previous experience with the contractor, and/or time exigency. Although these factors may have been used to justify sole-source awards, sole-source contractors did not necessarily produce more timely results. We found that six of eight sole-source contracts reviewed in detail were plagued with modifications for major time extensions and cost increases. Examples of time extensions and cost increases which we observed with sole-source awards are presented in the following section.

CONTRACTORS' PERFORMANCE

Of the 30 management support service contracts which we reviewed in detail, work products provided under 10 contracts appeared to be of questionable value to EPA. No work product was received under another of these 30 contracts. Our judgments on the value of the contracts' results were based primarily on comments by internal and external peer reviewers and EPA project officers responsible for contract management. We did not try to determine the extent, if any, to which these work products influenced environmental regulatory decisions because EPA obtains information for decisionmaking from a variety of sources. The nature of the 30 management support service contracts reviewed in detail and our evaluations of related work products are summarized in the following table.

Nature of Contracts Reviewed and
Our Evaluation of Work Products

<u>Description of contracts</u>	<u>Number in sample</u>	<u>Products appeared to be of ques- tionable value</u>	<u>No end product</u>
Completion:			
Sole-source	8	5	1
Negotiated competitive	10	2	-
Term (negotiated competitive)	<u>12</u>	<u>3</u>	<u>-</u>
	<u>30</u>	<u>10</u>	<u>1</u>

Examples follow of management support service contracts which resulted in work products that appeared to be of questionable value.

Example A

EPA awarded a \$213,831 sole-source, cost-plus-fixed-fee contract in September 1977 to analyze the costs and economic impacts of five alternative new-source policies in two air quality control regions where compliance with national ambient air quality standards might not be attainable. In justifying the project, EPA stated that the standards were being violated in many areas of the country. Also, the standards were reportedly causing extremely difficult problems for industrial expansions because of explicit restrictions in the Clean Air Act on the introduction of new emission sources in areas where they would cause or exacerbate violations of the national standards. The justification added that EPA and the Congress were actively engaged in developing legislation and policy to facilitate growth in such areas and needed an analysis of the potential economic impacts of alternative actions.

This analysis was to be a part of a series of studies supporting the development of legislation and policy. The justification for noncompetitive procurement stated that no contractor other than the one requested possessed the expertise essential to successfully complete the study within the necessary time frame (the final study had been promised to the Congress by January 1978). However, the contract was not awarded until September 1977, only 4 months before the date promised to the Congress, and the originally scheduled completion date was July 1978, 7 months after the promised date. A final product fully responsive to the contract's original scope was never received, but EPA received a March 1979 draft document on analytical

procedures for (1) estimating pollution control costs and (2) simulating markets for pollution rights in nonattainment areas. According to one project officer, the document has been more useful to consultants doing work for others than it has been to EPA.

Modifications to the contract increased its value by \$313,017, adding tasks of marginal relationship to its original purpose. For example, one modification was for a \$49,947 study of four schemes for controlling air emissions in areas where air quality exceeded national standards so as to prevent significant deterioration. The project officer told us it was a "quick, ill-conceived effort which resulted in a product that added little or no knowledge of the subject."

As of June 1981, nearly 3 years after the originally scheduled completion date, the contractor was continuing work to, among other things, improve a computer-assisted model for developing cost-effective regional air pollution control strategies. This task--expected to cost \$106,700--was added by modification to the contract's original scope of work. According to the current project officer for this task, this model has been the contract's most useful product.

One of several EPA project officers for this contract told us that problems in accomplishing the basic contract tasks included that (1) the contractor had difficulty obtaining data, some of which was to have been gathered by other contractors, (2) initially EPA did not adequately monitor the project, and (3) the contractor had more work underway than it could effectively perform. That project officer said that EPA did not receive products worth the nearly \$527,000 spent for this contract.

Example B

EPA awarded a \$149,000 cost-plus-fixed-fee contract on a negotiated, competitive basis to evaluate the economic impact of environmental regulations on plants threatened with closure. More specifically, the contractor was to (1) develop a methodology which could be used by EPA staff in evaluating plants' claims that they would be forced to close because of environmental requirements, (2) explore possible types of financial assistance and determine their effectiveness in averting plant closures, and (3) examine the economic effects on threatened plants of alternative compliance schedules or standards.

The basic contract required the contractor to perform about 13 plant evaluations and summarize, in an overview report, its findings and conclusions with respect to the project's

objectives as discussed above. The contract's original term was 14 months, but modifications extended the period of performance to over 4 years, increased the number of plants to be evaluated to about 27, and increased the contract costs to \$348,585.

According to the EPA project officer, the contractor never provided the required overview report on the project's results and completed only 10 plant evaluations. The 10 evaluations cost a total of about \$258,000. The project officer said that the individual studies cost more than the \$15,000 initially estimated. According to her, in-house performance of similar studies supported the propriety of the contractor's costs and it would have been impossible to do defensible studies for less.

The project officer said that her office used individual plant evaluations to recommend to EPA's Office of Enforcement alternatives to environmental requirements that threatened those plants with closure. The recommendations included (1) extending requirements for compliance with environmental regulations, (2) reducing penalties for violations of standards or regulations, and (3) a variance from a pollution standard.

The project officer said that the Office of Enforcement generally accepted the recommendations made and, as their value was demonstrated, became progressively more receptive to using the results of threatened plant evaluations in determining the nature of their enforcement actions. Further, the project officer said that the methodology developed by the contractor for performing these evaluations had become a part of how EPA accomplished its mission.

An August 1980 draft study, prepared by the program office that sponsored this contract, discussed the policy issues raised by the evaluations that had been performed of individual plants and examined the methodologies used. That report stated that five of the evaluations, costing \$136,000, were of questionable quality because of flaws in methodologies or unresolved issues. It also questioned whether three additional plant evaluations, which cost \$67,000, should have been funded because (1) a brief examination of the companies' financial situations could have given EPA the necessary information to decide on a course of action or (2) it was not possible to evaluate the accuracy of company forecasts. The report added that one plant evaluation, also described as having quality problems, was unnecessary because the plant was not threatened with closure.

In summary, it appears that \$203,000, or 58 percent of the contract value, was spent on plant evaluations that were of uncertain quality or need.

Example C

A \$1,585,000 cost-plus-fixed-fee contract was awarded on a negotiated, competitive basis to develop information needed to accelerate physical coal cleaning as a cost-effective method of pollution control. Three of 15 contract modifications added new tasks totaling \$448,113.

During the period of performance, the priority of work to be accomplished was changed. Subsequently, EPA terminated some projects being performed under this contract. The project officer told us that EPA intended to complete the unfinished work on several preliminary reports submitted by the contractor, but a reduction in funds allocated to the coal cleaning program prevented EPA from doing so. Before work was suspended, EPA had incurred costs totaling \$231,300 for these preliminary reports, which would have required extensive revision before they could be published.

Three other reports costing \$617,000 were reviewed in accordance with a formal peer system that had been recently established by EPA's Office of Research and Development. EPA's project officer told us that these reports generally did not receive favorable reviews. Peer reviewers generally believed that the reports made no significant contribution to new knowledge. He offered several possible reasons for this, including that the contractor had not been well suited to perform the work or had not done its best job. In any case, \$848,300, or more than 50 percent of the original contract value, was spent on six reports that (1) could not be published or (2) did not make any significant contribution to knowledge in the area.

Example D

EPA awarded a \$180,050 cost-sharing, sole-source contract to determine the technical and economic feasibility of composting sludge while transporting it on a barge to a disposal site. The contract resulted from an unsolicited proposal and provided for the contractor to contribute \$35,000, or about 19 percent, to the total estimated project cost.

EPA's project officer told us that the project results were not useful. Several peer reviewers questioned the contractor's assumption that sludge could be composted in 4 to 7 days. The reviewers said that the average time required to compost sludge was 21 days. According to the project officer, who agreed with the observation, this made the concept economically infeasible.

Performance by management support service contractors can be affected by a variety of factors, including inadequate monitoring and the awarding of contracts to performers who may not have the best record or potential for providing high-quality products. Also, as noted earlier, EPA contracting officers classified 80 percent of the management support service contracts identified in our samples as research and development. EPA's monitoring and evaluation of management support service contractors' performance are discussed in the following sections.

Monitoring of management support service contracts

Project officers generally monitor the progress of contractors' performance in several ways, including (1) visits to contractors' sites, (2) periodic telephone contacts, (3) review of written contractor progress reports, and/or (4) contractors' visits to EPA. The extent to which these individual techniques are used in monitoring contractor performance is left mostly to the project officers' discretion, except that contractors are normally required to submit written progress reports.

Project officers responsible for 29 of the 30 contracts we reviewed in detail told us that available techniques for monitoring contractors' performance were generally adequate, but that some techniques were more effective than others. Nine of these project officers rated periodic telephone contacts with contractors as the most effective monitoring technique, eight rated periodic visits to contractor sites as most effective, and eight others rated their review of written contractor progress reports as most effective.

For the 11 contracts (out of the 30 contracts reviewed in detail) for which we found work products either were not received or appeared to be of questionable value, project officers told us in followup interviews that in four cases additional visits to the contractors' sites were needed. These project officers stated, however, that the visits were not made because of travel fund limitations. In addition, for 8 of the remaining 19 contracts reviewed in detail where we did not question the value of the work products, the project officers told us that they were unable to make all the site visits which they believed necessary to properly monitor the contractors' performances.

In 1980, we reported 1/ that EPA project officers' opportunity to adequately monitor extramural research projects was hampered because travel fund limitations did not permit enough visits to make sure that projects were being properly conducted. In commenting on that report, EPA agreed that travel funds for project officers' visits to contractors' site required attention. However, EPA stated that relief was not wholly at the discretion of EPA management. EPA added that in the past it had consistently sought travel funds for this purpose, but the Congress reduced EPA's travel request by \$2 million for fiscal year 1980 and the House Appropriations Committee had proposed a cut of \$250,000 for fiscal year 1981. 2/ In addition, EPA noted that OMB imposes travel ceilings.

Contractors' performance evaluations

EPA's Contract Management Manual establishes procedures for evaluating contractors' performance. These procedures call for both the contracting officer and the project officer to evaluate the contractor's performance at the end of each completed contract valued at \$25,000 or more. Procedures further require that the original of each evaluation be sent to the Contractor Relations Section at EPA headquarters to establish a record of a contractor's performance at a central filing point to provide a means for considering that performance in future procurement actions.

Our review showed that often EPA contracting and project officers were either not evaluating contractors' performance or not sending those evaluations to the central filing point as required. Of the 444 management support service contracts in our 1979 and 1980 samples, 31 contracts were completed as of May 15, 1981. For these 31 contracts, we found that as of June 16, 1981:

- Neither the contracting officers' nor the project officers' evaluations were available for 16 contracts (52 percent).
- Only the project officers' evaluations were available for 8 contracts (26 percent).

1/"Promising Changes Improve EPA's Extramural Research; More Changes Needed" (CED-81-6, Oct. 28, 1980).

2/EPA's fiscal year 1981 travel budget request was reduced \$850,000 by the Congress. However, the agency still received \$16,864,000, an increase of \$745,000 above its fiscal year 1980 level.

--Only the contracting officers' evaluations were available for 2 contracts (6 percent).

--Both the contracting officers' and the project officers' evaluations were available for 5 contracts (16 percent).

EPA's Contract Management Manual also requires that evaluations be accurate and complete. Instructions call for the evaluator to give contractors ratings--excellent, very good, average, poor, or unsatisfactory--on the performance of various functions. Contracting officers must rate contractors on their (1) ability to initially estimate realistic costs and (2) business management efficiency. Project officers must rate contractors on (1) technical and business aspects of their performance and (2) the quality of the delivered end product. Both officers must provide written recommendations and advice to personnel who might later be considering the contractor for future awards and provide a detailed narrative explaining the basis for each function rating.

For the 13 contract evaluations available from project officers, we found that four evaluations did not include all required narrative comments. For example, the project officers did not explain their basis for evaluating the contractors' delivered end product as average or very good. Similarly, in the case of the seven contract evaluations available from the contracting officers, three evaluations did not include required narrative comments. For example, the contracting officers did not offer any insight into why a contractor was rated as average in terms of its business management proficiency.

EPA's poor implementation of its established procedures for evaluating contractors' performances resulted from EPA's Procurement and Contracts Management Division not placing enough emphasis on the evaluation function. Within the past year, however, EPA has taken actions to improve contracting officers' and project officers' compliance with the established agency procedures for evaluating contractors' performance.

The December 1980 EPA Procurement Information Notice referred to earlier makes the contracting officer responsible for assuring that EPA Form 1900-27 (Project Officer's Evaluation of Contractor Performance) is completed for each consulting service contract regardless of dollar value. Also, the Chief, Contract Administration Section, Procurement and Contracts Management Division, told us in December 1981 that EPA planned to automate its system for requesting and following up on the submission of the evaluations required of contracting officers and project officers. She said that in the meantime her section has placed more emphasis on manually performing the function.

Section 204 of S. 719 would require that within 120 days after the completion of any contract for consulting services, management and professional services, or a special study or analysis valued at more than \$50,000, the sponsoring agency prepare a written evaluation of the contractor's performance. In our September 17, 1981, testimony before the Subcommittee on Federal Expenditures, Research, and Rules, Senate Committee on Governmental Affairs, we endorsed the need for such evaluations. However, we pointed out that Federal agencies often do not fully use reports prepared under Federal consulting service contracts. Accordingly, we suggested that the scope of section 204 of S. 719 be expanded to require that agencies evaluate the actions they take in response to any consultant's report containing recommendations. We further suggested that if no action was taken on the recommendations, the reasons should be stated in the evaluation. Finally, we stated that, in our opinion, the evaluations should be approved by an agency official at least two levels above that of the program manager responsible for monitoring the consulting service contractor's performance to help assure the objectivity and quality of the evaluations.

DRAFT REGULATIONS FOR DEALING WITH
POTENTIAL ORGANIZATIONAL CONFLICTS OF INTEREST

Some management support service contractors have interests that could conflict with EPA's interests. Neither Federal law nor EPA's contracting procedures require prospective contractors for management support services or other efforts to furnish information concerning (1) current or previous work done for other clients or (2) their affiliations--particularly with regulated industries--that would allow the agency to determine whether a potential "organizational conflict of interest" exists.

Our review of the files for the 217 management support service contracts identified in our 1979 sample disclosed information in 84 cases which could raise questions about potential organizational conflicts of interest that could diminish the contractor's ability to give impartial, objective advice. The information which could raise the questions was provided by the contractors in their proposals primarily to help demonstrate their technical qualifications to perform the work. The following example illustrates a situation where at least some concern could be raised about a potential organizational conflict of interest.

--A chemical company was awarded a 3-year term contract to support certain EPA functions; including options, it was valued at \$2.6 million. Part of the chemical company's work was to provide data to support EPA's enforcement cases against two other companies for polluting a Lake

Michigan harbor. One of the companies is in the same line of business as the contractor--making chemicals.

The enforcement case data being developed by the contractor was to be used to (1) show that the harbor has a serious pollution problem, (2) demonstrate that remedial or cleanup action is necessary, and (3) ascertain how much pollution must be removed in order to be within safe limits. The question is whether the contractor could be completely objective in providing pollution control data which might be used in taking enforcement action against another chemical company.

Current procedures

EPA's current procedures dealing with the avoidance of organizational conflict of interest (as defined by EPA) were adopted in 1978. Under these procedures, a prospective contractor must simply indicate in its response (offer) to a solicitation whether, to the best of its knowledge and belief, the award to the firm of a contract or the modification of an existing contract involves an organizational conflict of interest. These procedures advise offerors that the term "organizational conflict of interest" means:

"* * * a relationship * * * whereby an offeror or contractor (including his chief executives, directors, proposed consultants or subcontractors) has interests which (1) may diminish his capacity to give impartial, technically sound, objective assistance and advice or may otherwise result in a biased work product or, (2) may result in an unfair competitive advantage. Such interests include, but are not limited to, present or proposed contractual arrangements with an industry to be studied, present or proposed contractual arrangements with a firm which manufactures or sells any item or substance to be studied, present or proposed manufacture or sale of any item or substance to be studied, and present or proposed manufacture or sale of any item or substance in competition with an item or substance to be studied under the proposed contract with EPA. It is not relevant that the offeror has either the reputation of being able to resist the temptation to give biased advice or the ability to resist such temptation."

The prospective contractors are not required to provide any information on their interests that might represent an organizational conflict of interest.

Proposed regulations

In its plan submitted to OMB in late July 1980 for improving management control of procurements, EPA stated that it would strengthen its system for avoiding organizational conflicts of interest. At the time of our review in June 1981, EPA had drafted regulations that would shift the responsibility for determining the existence of an organizational conflict of interest from the contractor to the contracting officer. A new solicitation provision would require a prospective contractor to (1) disclose relevant facts relating to its interest or (2) certify that, to the best of its knowledge, no such relevant circumstances exist.

Under the proposed regulations, if a prospective contractor discloses information in an offer indicating a possible organizational conflict of interest, the contracting officer would be responsible for evaluating the information and determining (with Office of General Counsel concurrence) whether an actual or apparent organizational conflict of interest exists. Further, the contractor would be required to confirm at award that it has disclosed all relevant facts relating to the possible existence or appearance of an organizational conflict of interest.

As guidance, these proposed regulations contain examples of situations and relationships which contracting officers could normally consider to be indicative of organizational conflicts of interest. One of these examples stated that:

"Company A, in response to an RFP [request for proposal], proposes to undertake an economic analysis of one segment of the chemical industry. Company A is one of several firms considered to be technically well qualified. In response to the inquiry in the RFP, company A advises that it derives a substantial portion of its income from clients who are members of the subject segment of the industry to be studied."

The draft guidance states that this would constitute an organizational conflict of interest; and a contract would not be awarded to Company A because

"* * * its judgment could be biased in relation to its work for EPA. Should award be made to company A, the appearance of an OCI could undermine the credibility of the data generated under the contract, and render such data useless for its intended purpose, regardless of whether a bias is actually reflected in the data."

As of January 11, 1982, EPA was still considering the issuance of these draft regulations as proposed rulemaking.

USE OF APPOINTED EXPERTS AND CONSULTANTS

Our review of 20 experts and consultants used by three EPA program offices showed that they generally (1) appeared qualified to perform the tasks for which hired, (2) were hired to perform appropriate tasks, (3) performed primarily those tasks, (4) were compensated at reasonable rates, and (5) had no apparent conflicts of interest that would bias their performance. Numerous officials in the three reviewed EPA offices told us that experts and consultants must be relied on to perform various tasks to help accomplish the agency's mission because (1) the needed expertise does not exist in-house, (2) the in-house staff capable of doing those tasks are busy on other duties and cannot be spared, and/or (3) the unique skills required to perform the tasks are not needed full time.

EXPERT AND CONSULTANT
APPOINTMENT REQUIREMENTS

Section 3109 of Title 5, United States Code, authorizes the employment of experts and consultants for intermittent (occasional or irregular work pattern) or temporary employment. Inherent in this authorization are limitations, including that (1) the needed services can be met by temporary (1 year or less) or intermittent employment and (2) the agency may not use this authority to fill a continuing full-time position. An intermittent appointment allows an expert or consultant to work no more than one-half of full time, that is, he/she cannot be paid for all or any part of more than 130 days in a service year (a 1-year period from his/her appointment date).

If an expert or consultant works more than 130 days in a service year, his/her employment automatically ceases to be intermittent and becomes temporary. In such cases, the expert or consultant may be reappointed to the same position in the next service year only on an intermittent basis. Otherwise, a temporary appointment means that an expert or consultant can work for no more than 1 year. However, the fact that an expert or consultant served under a temporary appointment in 1 service year does not rule out a new appointment in the next year to a different temporary position.

According to subsection 1-3 of chapter 304 of OPM's Federal Personnel Manual, experts and consultants are expected to be used only in brief periods of need for "highly specialized knowledges and skills." The subsection also states that the improper employment of experts and consultants is not only illegal but wasteful and destroys the morale of the career specialists. One example cited as improper employment of an expert or consultant was "to do a job that can be done as well by regular employees."

It also provides that even when different positions are involved, reappointments resulting in service for more than 2 years in a row on a regular basis can give the appearance of continuing employment, and such reappointments should be made only after careful consideration. In addition, OMB's Circular A-120, which provides guidance to Federal agencies on the use of consulting services, states as a basic policy that these services will not be used to bypass or undermine personnel ceilings.

EPA's policies on the use of experts and consultants are set forth in its September 28, 1973, Order 3110.4A and May 15, 1980, Personnel Management Handbook Notice No. 304-3.

PROVISIONS FOR APPROVING NEED FOR APPOINTMENTS

With the issuance of Federal Personnel Management Bulletin No. 300-48, dated February 28, 1979, OPM delegated to the Administrator, EPA, and the heads of other Federal agencies the authority to appoint experts and consultants without prior OPM approval or without entering into agreements with OPM. However, as a condition of this delegation of authority, the agencies were made responsible for ensuring that OPM regulations, guidelines, and instructions are properly applied to all pertinent personnel actions.

EPA's May 15, 1980, Personnel Management Notice No. 304-3 provides agency guidance on the employment of experts and consultants pursuant to the authority delegated by OPM to hire experts and consultants. The notice authorizes the Deputy Administrator, assistant administrators, and regional administrators to approve requests for appointments. The notice also provides that EPA's personnel officers are responsible for reviewing proposed appointments and reappointments and determining that such appointments conform with all legal and regulatory requirements.

QUARTERLY REVIEWS OF SERVICES RENDERED BY EXPERTS AND CONSULTANTS

EPA's May 15, 1980, notice includes a requirement that each operating personnel office make a quarterly review of the services rendered by experts and consultants who have worked more than 10 days during the quarter. The review's purpose is to ensure that all appointments comply with basic policies and guidelines.

These periodic reviews are intended to assure EPA, with respect to each appointment, that (1) the duties performed are still appropriate for an expert or consultant, (2) duties performed are those for which the expert or consultant was hired,

and (3) periods of appointments are observed. EPA procedures permit only the Administrator, Deputy Administrator, and assistant administrators at its headquarters to certify to the above as a part of the quarterly reviews.

Officials authorized to make such certifications are asked to do so in a letter from the Personnel Operations Branch. As a guide, the letter states that consultants must not be used for (1) work that should be performed by regular employees, (2) roles which engage consultants (but not experts) in direct operating tasks, and (3) work for which they lack the essential expertise. To make these certifications, the authorized program official signs a statement that:

"* * * the duties which the above employee performed were the consultant/expert duties recorded on EPA form 3110-15, Expert or Consultant Supplemental Information [a form that provides for a full explanation of the services to be performed], filed in his official personnel folder and that those were the only duties performed during the quarter specified above."

The Chief of the Personnel Operations Branch stated that the primary purpose of the quarterly review process has been served if these program officials are reminded of their responsibilities for proper use of experts and consultants. In addition, he said that he expects his staff when in the various program offices to observe whether an expert or consultant is performing the tasks for which he/she was hired. If they are found not to be performing such tasks, the Chief said that he resolves the matter informally with the cognizant program official.

THIRTY EPA MANAGEMENT SUPPORT SERVICECONTRACTS REVIEWED IN DETAIL

<u>GAO control number</u>	<u>Total value</u>	<u>Nature of contract</u>		
		<u>Type of contract</u>	<u>Completion or term</u>	<u>Type of award</u>
<u>WASHINGTON, D.C., PROCUREMENT CENTER</u>				
<u>Office of Policy Analysis Policy and Resource Management</u>				
1	\$ 186,977	Cost-plus- fixed-fee	Completion	Sole-source
2	348,535	Cost-plus- fixed-fee	Completion	Negotiated competitive
3	526,848	Cost-plus- fixed-fee	Completion	Sole-source
<u>Office of Noise Abatement and Control Air, Noise, and Radiation</u>				
4	855,737	Cost-plus- fixed-fee	Completion	Sole-source
5	134,000	Cost-plus- fixed-fee	Completion	Sole-source
6	213,670	Cost-plus- fixed-fee	Term	Negotiated competitive
<u>Office of Water Regulations and Standards Water</u>				
7	1,209,571	Cost-plus- fixed-fee	Completion	Sole-source
8	555,580	Cost-plus- fixed-fee	Term	Negotiated competitive

CAO control number	Total value	Nature of contract		
		Type of contract	Completion or term	Type of award
<u>Office of Water Program Operations</u>				
<u>Water</u>				
9	\$ 366,008	Cost-plus fixed-fee	Completion	Negotiated competitive
10	46,677	Cost-plus fixed-fee	Completion	Negotiated competitive
<u>CINCINNATI, OHIO, PROCUREMENT CENTER</u>				
<u>Industrial Environmental Research Laboratory</u>				
<u>Research and Development</u>				
11	362,745	Cost-plus- fixed-fee	Term	Negotiated competitive
12	2,610,000	Cost-plus- fixed-fee	Term	Negotiated competitive
13	3,168,837	Cost-plus- fixed-fee	Completion	Negotiated competitive
<u>Environmental Monitoring and Support Laboratory</u>				
<u>Research and Development</u>				
14	1,530,190	Cost-plus- fixed-fee	Completion	Negotiated competitive
15	1,811,295	Cost-plus- fixed-fee	Completion	Negotiated competitive
<u>Municipal Environmental Research Laboratory</u>				
<u>Research and Development</u>				
16	100,458	Cost-plus- fixed-fee	Completion	Sole-source
17	145,050	Cost reim- bursable, cost sharing	Completion	Sole-source
18	828,763	Cost-plus- fixed-fee	Completion	Negotiated competitive

<u>GAO control number</u>	<u>Total value</u>	<u>Nature of contract</u>		
		<u>Type of contract</u>	<u>Completion or term</u>	<u>Type of award</u>
<u>Office of Mobile Source Air Pollution Control Air, Noise, and Radiation</u>				
19	\$ 259,660	Cost-plus- fixed-fee	Completion	Sole-source
20	1,091,447	Cost-plus- fixed-fee	Completion	Negotiated competitive
<u>RESEARCH TRIANGLE PARK, NORTH CAROLINA, PROCUREMENT CENTER</u>				
<u>Office of Air Quality Planning and Standards Air, Noise, and Radiation</u>				
21	836,568	Cost-plus- fixed-fee	Term	Negotiated competitive
22	3,107,322	Cost-plus- fixed-fee	Completion	Negotiated competitive
23	131,105	Cost-plus- fixed-fee	Term	Negotiated competitive
<u>Industrial Environmental Research Laboratory Research and Development</u>				
24	266,962	Cost-plus- fixed-fee	Completion	Negotiated competitive
<u>Senior Office of Research and Development Official Research and Development</u>				
25	1,626,042	Cost-plus- fixed-fee	Term	Negotiated competitive
26	3,160,862	Cost-plus- award-fee	Term	Negotiated competitive
27	590,778	Cost-plus- fixed-fee	Term	Negotiated competitive

<u>GAO control number</u>	<u>Total value</u>	<u>Nature of contract</u>		
		<u>Type of contract</u>	<u>Completion or term</u>	<u>Type of award</u>
28	\$ 2,002,055	Cost-plus- fixed-fee	Term	Negotiated competitive
29	2,795,201	Cost-plus- fixed-fee	Term	Negotiated competitive
30	<u>2,033,113</u>	Cost-plus- fixed-fee	Term	Negotiated competitive
Total	<u>\$32,902,066</u>			



EXECUTIVE OFFICE OF THE PRESIDENT
OFFICE OF MANAGEMENT AND BUDGET
WASHINGTON, D.C. 20503

CIRCULAR NO. A-120

April 14, 1980

TO THE HEADS OF EXECUTIVE AGENCIES AND ESTABLISHMENTS

SUBJECT: Guidelines for the Use of Consulting Services

1. Purpose. The Circular establishes policy and guidelines to be followed by executive branch agencies in determining and controlling the appropriate use of consulting services obtained from individuals and organizations. This Circular supersedes OMB Bulletin No. 78-11, dated May 5, 1978, on the same subject.

2. Background. OMB Bulletin No. 78-11 was based largely upon data received from the agencies in response to the President's memorandum of May 12, 1977, which asked the heads of agencies to assure that consulting service arrangements of their organizations were both appropriate and necessary. The Bulletin was issued to meet the identified need for uniformity of definition, criteria, and management controls among the agencies.

This Circular provides permanent guidance in lieu of the interim guidance provided by the Bulletin. To assist agencies in identifying consulting services, as defined in the Bulletin and this Circular, an expanded list of examples is included in the Attachment to this Circular.

An additional policy is provided in this Circular with respect to responsibility for final determination of whether or not a proposed procurement action is for consulting services, as defined in this Circular.

3. Relationship to OMB Circular No. A-76. In summary, OMB Circular No. A-76, "Policies for Acquiring Commercial or Industrial Products and Services Needed by the Government" revised March 29, 1979, directs that:

- Governmental functions must be performed by Government employees (reference 4b and 5f of A-76);
- Commercial or industrial products and services should be provided in the most economical manner through the use of rigorous cost comparisons of private sector and Government performance (reference 4c of A-76); and
- Consulting services are not either of the above categories and should be provided either by Government staff organizations or from private sources, as deemed appropriate by executive agencies in accordance with executive branch guidance on the use of consulting services (reference 6d(5) of A-76).

4. Coverage. The provisions of this Circular apply to consulting services obtained by the following arrangements:

- a. Personnel appointment;
- b. Procurement contract; and
- c. Advisory committee membership.

5. Definition. As used for administrative direction in this Circular, Consulting Services means those services of a purely advisory nature relating to the governmental functions of agency administration and management and agency program management. (See Attachment for examples of the type of services to which this Circular applies.)

These services are normally provided by persons and/or organizations who are generally considered to have knowledge and special abilities that are not generally available within the agency. The form of compensation is irrelevant to the definition.

6. Basic Policy

- a. Consulting services will not be used in performing work of a policy/decision making or managerial nature which is the direct responsibility of agency officials.
- b. Consulting services will normally be obtained only on an intermittent or temporary basis; repeated or extended arrangements are not to be entered into except under extraordinary circumstances.
- c. Consulting services will not be used to bypass or undermine personnel ceilings, pay limitations, or competitive employment procedures.
- d. Former Government employees per se will not be given preference in consulting service arrangements.
- e. Consulting services will not be used under any circumstances to specifically aid in influencing or enacting legislation.
- f. Grants and cooperative agreements will not be used as legal instruments for consulting service arrangements.
- g. The contracting officer shall be responsible for determining whether a requested solicitation or procurement action, regardless of dollar value, is for consulting services. The contracting officer's determination shall be final. Prior to processing any solicitation or procurement action for consulting services, the contracting officer shall insure that the applicable provisions of this Circular have been adhered to and that documentation required by the Circular (see 8.a.

and 8.b.) is complete and included in the official contract file. The contracting officer will also insure that awards over \$10,000 are identified as consulting service contracts on either the agency's data collection form (which conforms to the requirements of the Federal Procurement Data System) or optional Form 279, for input into the Federal Procurement Data System (reference 9.b.).

7. Guidelines for use of Consulting Services. Consulting service arrangements may be used, when essential to the mission of the agency, to:

a. Obtain specialized opinions or professional or technical advice which does not exist or is not available within the agency or another agency.

b. Obtain outside points of view to avoid too limited judgment on critical issues.

c. Obtain advice regarding developments in industry, university, or foundation research.

d. Obtain the opinion of noted experts whose national or international prestige can contribute to the success of important projects.

e. Secure citizen advisory participation in developing or implementing Government programs that, by their nature or by statutory provision, call for such participation.

8. Management Controls

a. Each agency will assure that for all consulting service arrangements:

(1) Every requirement is appropriate and fully justified in writing. Such justification will provide a statement of need and will certify that such services do not unnecessarily duplicate any previously performed work or services;

(2) Work statements are specific, complete and specify a fixed period of performance for the service to be provided;

(3) Contracts for consulting services are competitively awarded to the maximum extent practicable to insure that costs are reasonable;

(4) Appropriate disclosure is required of, and warning provisions are given to, the performer(s) to avoid conflict of interest; and

(5) Consulting service arrangements are properly administered and monitored to insure that performance is satisfactory.

b. Each agency will establish specific levels of delegation of authority to approve the need for the use of consulting services, based on the policy and guidelines contained in this Circular. Written approval of all consulting service arrangements will be required at a level above the organization sponsoring the activity. Additionally, written approval for all consulting service arrangements during the fourth fiscal quarter will be required at the second level above the organization sponsoring the activity.

c. OMB Circular No. A-63, Advisory Committee Management, governs policy and procedures regarding advisory committees and their membership.

d. The Federal Personnel Manual (FPM), Chapter 304, governs policy and procedures regarding personnel appointments.

e. Until the Federal Acquisition Regulation is published, the Federal Procurement Regulation and the Defense Acquisition Regulation govern policy and procedures regarding contracts.

9. Data Requirements. The following data systems will continue to provide information on consulting service arrangements within the executive branch:

a. Central Personnel Data File (CPDF), operated by the Office of Personnel Management, will have data on personnel appointments, segregating consultants, experts, and advisory committee members (as defined in OMB Circular No. 63).

b. Federal Procurement Data System (FPDS) will have data on contract arrangements.

c. Advisory committee data will continue to be maintained in accordance with OMB Circular No. A-63.

10. Effective date. This Circular is effective immediately.

11. Implementation. All executive branch agencies have previously implemented OMB Bulletin No. 78-11. That implementation is applicable to this Circular and will continue under the guidance of this Circular.

To implement the new policy with respect to responsibility for final determination of whether or not a proposed procurement action is for consulting services, the Secretary of Defense and the Administrator for General Services are directed to incorporate the applicable provisions of this Circular (see 6.g.) into the Defense acquisition Regulation and the Federal Procurement Regulations, respectively, within sixty (60) days of the date of this Circular.

12. Inquiries. All questions or inquiries should be submitted to the Office of Management and Budget. Telephone Number (202) 395-6810.


James T. McIntyre, Jr.
Director

Attachment

ATTACHMENT

This attachment contains examples of the type of services which are consulting services, as defined in this Circular, and to which this Circular applies.

- o Advice on or evaluation of agency administration and management, such as:
 - Organizational structures;
 - Reorganization plans;
 - Management methods;
 - Zero-base budgeting procedures;
 - Mail handling procedures;
 - Records and file organization;
 - Personnel procedures;
 - Discriminatory labor practices;
 - Agency publications;
 - Internal policies, directives, orders, manuals, and procedures;
 - and
 - Management information systems.

- o Advice on or evaluation of agency program management, such as:
 - Program plans;
 - Acquisition strategies;
 - Assistance strategies;
 - Regulations;
 - Assistance or procurement, solicited or unsolicited technical and cost proposals;
 - Legal aspects;
 - Economic impacts;
 - Program impact; and
 - Mission and program analysis.

This Circular also applies to any contract task assignment for consulting services given to Federally Funded Research and Development Centers.

See OMB Circular No. A-76 for examples of Governmental functions and commercial and industrial products and services. It should also be noted that the conduct of research and development and technology assessments are not consulting services.

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