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The Environmental Protection Agency's Use of  
Consultants

Statement of  
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Before the  
Subcommittee on Federal Services,  
Post Office, and Civil Service  
Committee on Governmental Affairs  
United States Senate



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THE ENVIRONMENTAL  
PROTECTION AGENCY'S USE OF CONSULTANTS

SUMMARY OF STATEMENT BY  
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GAO has reported in the past on many aspects of the Environmental Protection Agency's (EPA) contracting, including its use of consulting services. We have identified the underreporting of consulting services contracts and contract management weaknesses, which can result in increased costs to the government, and concluded that management improvements were needed. EPA has taken steps to improve its management; however, its focus continues to be on getting the work completed under a contract without placing enough emphasis on sound contract management and cost considerations.

EPA depends heavily on contractors to accomplish its mission. In fiscal year 1989, EPA's estimated contract obligations will be about one-third of its total budget, excluding construction grants. According to EPA's budget documents, the Superfund is the largest single program that uses contractors, in general, and the largest user of consulting services contracts.

Although we could not determine the full extent of EPA's use of consulting services contracts, our work showed that EPA significantly underreported its use of these services. For fiscal year 1987, EPA identified a total of about \$16 million for consulting services contracts, but we estimated the amount to be at least \$168 million based on criteria established by the President's Cabinet Council on Management and Administration. The underreporting stems largely from ambiguity in the consulting services definition and varying and narrow interpretations of the definition by EPA personnel. Reporting systems limitations also contribute to underreporting.

EPA's Inspector General has submitted statutorily required evaluations of the agency's progress in establishing effective management controls over consulting services and for improving the accuracy and completeness of reported information. However, we found that the Inspector General reviewed only those contracts identified as consulting services by contracting officers and, thus, could not determine the extent to which other EPA contracts should have been, but were not, reported as being for consulting services. Inspector General officials told us they have adopted an approach to identify the underreporting of consulting services contracts.

Mr. Chairman and Members of the Subcommittee:

I am pleased to be here today to discuss the Environmental Protection Agency's (EPA) use of consultants. You asked us to address our past work on EPA's use of contracting and the extent that it uses consultants to do its work.

EPA depends heavily upon contractor support to accomplish its mission. This dependence has increased over the last 8 years from obligations of \$362 million in fiscal year 1981 to an estimated \$1.2 billion in fiscal year 1989. EPA obligated \$999 million for contracting work in fiscal year 1987. With its current budget at about \$3.4 billion, excluding construction grants of \$1.95 billion, EPA's estimated fiscal year 1989 contract obligations account for about one-third of EPA's total budget.

The Superfund is the largest single program that uses contractors, with obligations estimated at about \$655 million this fiscal year. Since fiscal year 1982, EPA's appropriations acts for the Superfund program have substantially limited the funds available for administrative expenses. For example, in fiscal year 1989 Congress appropriated about \$1.4 billion for the Superfund program and placed a ceiling of \$190 million, or 13 percent, on the amount EPA could spend on administrative expenses. Thus, EPA has to rely on external organizations,

primarily contractors, to carry out the Superfund program. Moreover, EPA budget documents also show that almost 52 percent of fiscal year 1989 estimated obligations of about \$16.0 million for consulting services will be spent on the Superfund.

Over the last 8 years, we have reported on numerous facets of EPA contracting. (See app. I.) We have addressed specific contracting issues at the request of several congressional committees. In many of these reviews we identified contract management weaknesses which can result in increased costs to the government and concluded that management improvements were needed. Although EPA has taken steps to improve its contract management, its focus continues to be on getting the work completed under a contract without placing enough emphasis on sound contract management and cost considerations.

Our most recent report<sup>1</sup> on EPA contracting focused on the Superfund. We found that EPA was not adequately controlling contractor costs for remedial studies under the Superfund program. We identified several weaknesses which may be increasing EPA's costs for remedial studies, and we recommended that the Administrator, EPA, affirm his commitment to cost control on remedial studies' contracts and take specific actions to correct the identified weaknesses. These studies are

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<sup>1</sup>Superfund Contracts: EPA Needs to Control Contractor Costs (GAO/RCED-88-182, July 29, 1988).

undertaken to determine the type and extent of contamination at Superfund sites and identify and evaluate alternative cleanup strategies. Consultants are being used in remedial studies to do activities, such as developing designs for cost analysis research and models for remedial project cost estimation.

Our last report that specifically focused on EPA's use of consulting services was issued in March 1982.<sup>2</sup> One problem we identified was EPA's use of a limited definition of consulting services, resulting in an understatement of its use of consultants. Other problems included the potential existence of organizational conflict of interest situations that could have diminished the contractors' ability to give impartial, objective advice, lack of receipt or questionable value of work products in some cases, and frequent award of sole source contracts.

Our testimony last June<sup>3</sup> before this Subcommittee showed that although we could not determine the extent the federal government uses consulting services, information on the use and cost of consulting services was still being significantly understated. This was due to the varying agency interpretation of what constitutes consulting services and reporting systems limitations. We said that the government's use of consultants

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<sup>2</sup>EPA's Use of Management Support Services (CED-82-36, Mar. 9, 1982).

<sup>3</sup>Federal Government's Use of Consulting Services (GAO/T-GGD-88-39, June 13, 1988).

has been vulnerable to abuse and improprieties due largely to underreporting on the use of consultants and limited monitoring by Inspectors General of agency compliance with rules and requirements concerning the use of consultants.

CONSULTANT INFORMATION IS  
UNDERSTATED

According to EPA budget documents, actual consulting services contract obligations totaled about \$16 million<sup>4</sup> in fiscal year 1987 and are estimated to be \$6.9 and \$15.9 million respectively in fiscal years 1988 and 1989. However, as we reported<sup>5</sup> in June 1988, on the basis of criteria established by the President's Cabinet Council on Management and Administration, we estimated EPA's fiscal year 1987 consulting services contract obligations to be at least \$168 million. Appendix II shows EPA's obligations for contracting and consulting services for fiscal year 1987, excluding consultant appointments.

According to EPA, costs for consultant appointments were \$2.4 million for fiscal year 1987 and \$2.3 million for fiscal year

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<sup>4</sup>The Federal Procurement Data System (FPDS) shows that EPA reported consulting services contract obligations of \$10.2 million for fiscal year 1987. We do not know the reason for the difference.

<sup>5</sup>Government Consultants: Agencies' Consulting Services Contract Obligations for Fiscal Year 1987 (GAO-GGD-88-99FS, June 23, 1988).

1988. Additionally, the Office of Personnel Management (OPM) reported 456 and 471 appointments in effect at the end of fiscal years 1987 and 1988, respectively. EPA ranked second highest among all agencies in the number of consultant appointments. Although we have no indication that costs for EPA's consultant appointments are understated, the number of appointments may be less than the total number made during the year due to a reporting system limitation discussed later.

#### REASONS FOR UNDERSTATING

#### CONSULTING SERVICES

Our work showed that governmentwide information on the use and cost of consulting services was understated because of (1) an ambiguous definition and varying and narrow agency interpretations of what constitutes consulting services and (2) reporting systems limitations.

#### Definitional Problems

One of the key reasons for the understatement of consulting services contracts is the ambiguity of the Office of Management and Budget's (OMB) definition and varying and narrow interpretations of the definition by EPA personnel. OMB's 1980 Circular No. A-120 defined consulting services as those services of a purely advisory nature relating to the governmental

functions of agency administration and management and program management. Our review of 10 of EPA's contracts awarded in fiscal year 1987, as discussed below, demonstrates the definitional problems.

In fiscal year 1987 EPA awarded 425 initial contracts with about one-third being equally awarded by EPA's three contracting offices located in Washington, D.C. headquarters, Research Triangle Park, North Carolina, and Cincinnati, Ohio. Two of these contracts were classified by EPA as consulting services contracts. We reviewed the two contracts and found that one was properly classified as consulting services while the other was not. The one properly classified was to obtain management and technical services to support EPA in planning, managing, implementing, and evaluating its Superfund policies and program. However, the second contract was for the purchase of operator services for photocopy and binding equipment, clearly not a consulting services contract. EPA contracting officials agreed and said it was miscoded.

We judgmentally selected eight other contracts awarded at EPA headquarters that were not classified as consulting services contracts using the contracts' short project title. Contracts similar to those that we selected for review at headquarters had also been awarded at the other two locations.

Comparing the statements of work of these eight contracts against the definition of consulting services in the April 1980 OMB Circular No. A-120, we believe six of these eight contracts should have been classified as consulting services. These six contracts had a maximum potential value of \$52.5 million over the life of the contracts. We used the 1980 OMB definition because it was the criteria in effect for determining consulting services at the time these contracts were being prepared for approval. The April 1980 OMB Circular No. A-120 defines consulting services as those relating to the government functions of agency administration and management and agency program management.

The following examples are excerpts from the statements of work for two of the six contracts we believe EPA should have classified as consulting services.

-- To obtain the management and technical services to support EPA in planning, management, implementation, and evaluation of the Superfund program. This contract's statement of work is similar to that in the contract noted earlier that EPA classified as consulting services.

-- To conduct efficiency and financial evaluations or reviews of information collection activities; to develop innovative approaches to evaluation planning for regulatory programs and regulation development processes relating to information

collection; to develop methodologies for analysis and evaluation regarding the EPA's Office of Information Resources Management; to establish information valuation and use criteria; to develop techniques for reducing cost to the government of implementing information requirements; and to review applications for OMB clearance.

We discussed the classifications of five of the eight contracts which we judgmentally selected with five contracting officers who were available to obtain their basis for determining why these contracts were not consulting services. The contracting officers for the remaining three contracts were either no longer at the agency or not working in EPA's contracting office. Two of the five contracting officers still believe their two contracts were not for consulting services; one agreed that the contract was consulting services, and the other two said their two contracts were "borderline" and could have gone either way. The one contracting officer who agreed with us said that her contract was consulting services and provided us with several documents from the contract file supporting the consulting services determination. She was surprised to learn that this contract was not classified in EPA's computer data base as a consulting services contract. We do not know why the contract was not coded as consulting services.

One of the reasons cited by an EPA contracting official for not classifying contracts as consulting services was that they were not intended to affect policy decisionmaking. As previously stated, the April 1980 OMB Circular No. A-120 definition of consulting services, however, covers those contracts relating to the government functions of agency administration and management and agency program management. In six of the eight contracts we reviewed, the statements of work provided for evaluations or studies that were intended to render advice or an evaluation of agency management or program management to help EPA perform its mission. It is the relationship of the work to be done to agency management, and particularly program management, that may have been overlooked or narrowly interpreted by EPA contracting officers. Such a narrow interpretation had the effect of underreporting consulting services in the contracts we reviewed.

EPA's decision not to code the remaining two contracts as consulting services contracts appears consistent with OMB's guidance in effect at the time the contracts were awarded. OMB's 1980 Circular No. A-120 exempted from its consulting services definition contracts awarded under OMB Circular No. A-76, which establishes federal policy for contracting out commercial activities.

These remaining two contracts were for support services covered under Circular No. A-76 and were thus not to be considered as consulting services under Circular No. A-120. One of the contracts was a support service contract involving inspections and studies to provide safe and healthful working conditions under the direction of EPA's Occupational Health and Safety staff. The other contract, involving technical services for the Superfund program, was for architectural and engineering services which also falls under OMB Circular No. A-76. The statement of work requires engineering feasibility studies involving the detailed evaluation of alternatives using economic, environmental, and engineering factors resulting in the contractor recommending a cost-effective remedial action and a detailed remedial action plan for the approved remedy.

OMB's January 1988 revision of Circular No. A-120 modified the exemption of contracts awarded under its Circular No. A-76. The revision states that activities that are reviewed in accordance with the A-76 process are exempt from the provisions of OMB Circular No. A-120 except when the functions performed by the contractor meet the definition of advisory and assistance, or consulting, services. In these situations they are to be reported to FPDS as consulting services contracts.

The revision also states, however, that architectural and engineering services of construction and construction management

services and engineering studies related to specific physical or performance characteristics of existing or proposed systems are excluded from the consultant definition. Because of the ambiguity of the definition and whether the exclusions would apply in these cases, it is unclear to us whether these two contracts would now be considered consulting services if they had been awarded after OMB's January 1988 revision. For example, we cannot tell from the statement of work whether the architectural and engineering services contract was for construction. If it was not, it appears that the contract would be considered to be for consulting services under OMB's January 1988 Circular No. A-120.

OMB is currently restudying the definition of consulting services. OMB's January 1988 Circular No. A-120 broadened the definition of consulting services to advisory and assistance services as recommended by the President's Cabinet Council on Management and Administration in 1984. It did not, however, fully resolve the definitional problems. EPA contracting officials, as well as officials of other agencies, believe this revised definition is too broad in scope. They have suggested that OMB again revise its definition of consulting services, and OMB is analyzing their comments and concerns. We believe that more accurate reporting of consulting services contracts is unlikely until the definitional problems and reporting systems limitations discussed below are resolved.

## Reporting Systems Limitations

Three reporting systems limitations contribute to underreporting of consulting services. The first two involve contracts, while the third involves personnel appointments.

First, only contracts over \$25,000 are required to be individually reported by procurement category and entered into the FPDS. Actions of \$25,000 and under are not required to be reported by procurement category, but can instead be reported on a consolidated agency statement and entered into the system. This makes it impossible to identify consulting services within FPDS for any contract actions of \$25,000 or less that are not individually reported. According to the FPDS Standard Report for fiscal year 1987, contract actions for all types of procurements for \$25,000 and under in fiscal year 1987 accounted for 98 percent of the total reported actions and 10 percent of the costs.

Second, understating also occurs if the consulting services do not form the predominant, or principal, part of the contract costs. According to OMB officials and correspondence, if the contract is primarily for products or services other than consulting services, contracting officers are not to report it as a consulting services contract. Contracting officers are

required to check the "yes" block on the FPDS Individual Contract Action Report only if the contract is solely for consulting services or if consulting services constitute the predominant part of the contract. For example, if an agency were to enter into a \$450,000 contract for the purchase of \$400,000 in equipment and \$50,000 for advisory services on the equipment's use, the cost of the advisory services would not be reported as being for consulting services.

Third, agencies report to OPM the number of consultant appointments made throughout a reporting period. However, according to an OPM official, OPM reports information on individuals with consultant appointments only as of the last day of the period and does not report on those made and terminated during the reporting period. Thus, the CPDF report can understate the number of consultant appointments made during a quarter and for a year's period. For example, if an agency had appointed a consultant on July 1, 1987, and terminated the appointment on August 30, 1987, this appointment would not be included in the CPDF report for the period ending September 30, 1987. However, this does not necessarily mean that consultant cost data reported by OPM is also understated because the cost of appointments should be included in the agency's payroll system and, thereby, in the cost data reported by OPM.

EPA INSPECTOR GENERAL'S  
REQUIRED EVALUATION

Each Inspector General, comparable agency official, or agency head or designee is required by 31 U.S.C. § 1114, enacted in 1982, to submit to Congress each year, as part of the agency's budget justification, an evaluation of consulting services. The evaluation is to consider the agency's progress in establishing effective management controls and improving the accuracy and completeness of the information provided to the FPDS on contracts for consulting services.

In June 1988, we told your Subcommittee we had not addressed the adequacy of annual evaluations made by the Inspectors General. However, information we had obtained from statutory Inspectors General at 19 agencies indicated that for 9 of the 19 agencies the evaluations were being done as required. At 10 agencies evaluations were not being done for various reasons.

EPA was one of the nine agencies doing the required evaluations. To date, the Inspector General has completed five evaluations which were submitted with each of EPA's budgets for fiscal years 1985 through 1989. In its most recent evaluation, the Inspector General determined that EPA had controls to guide the procurement of consulting services contracts; however, improvements were needed to improve the timely identification and reporting of

consulting services contracts to FPDS. The Inspector General's evaluation to be submitted with the fiscal year 1990 budget justification has not yet been submitted.

Thus far, the Inspector General's reports have focused on a minimal number of contracts identified as consulting services by EPA contracting officers to assess whether established controls over consulting services contracts were working. In our opinion, these evaluations did not fully determine the adequacy of EPA's controls regarding the reporting of consulting services. Rather than sample what EPA considered consulting services, we believe the Inspector General should have sampled from the entire universe of contracts to determine whether underreporting of consulting services existed. Inspector General officials responsible for performing the evaluation agreed.

According to Inspector General officials responsible for doing the annual evaluation, the evaluation's scope for the 1990 budget justification has been increased to cover contracts not identified as being consulting services to determine whether they were properly classified. These officials told us the reason for the expanded scope was the recent increased interest in consulting services contracts by the Congress and the President's Council on Integrity and Efficiency (PCIE).

EPA's Inspector General is not participating with other agency Inspectors General in a PCIE effort to comprehensively audit various aspects of procuring advisory and assistance services. Officials from the EPA's Inspector General's office said that their resources were insufficient to allow them to participate. The Inspector General has no additional work planned for the current or next fiscal year regarding consulting services beyond that required by law.

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This concludes my statement. We would be pleased to answer questions.

GAO REPORTS ON EPA CONTRACTING  
SINCE 1980

Superfund Contracts: EPA Needs to Control Contractor Costs  
(GAO/RCED-88-182, July 29, 1988).

Superfund: Overview of EPA's Contract Laboratory Program  
(GAO/RCED-88-109FS, March 30, 1988).

Superfund: Cost Growth on Remedial Construction Activities  
(GAO/RCED-88-69, Feb. 24, 1988).

Air Pollution: EPA's Effort to Develop a New Model for  
Regulating Utility Emissions (GAO/RCED-88-57, Jan. 22, 1988).

Internal Controls: EPA Needs to Improve Controls Over Change  
Orders and Claims (GAO/RCED-88-16, Nov. 17, 1987).

Contracts: Status of EPA's Contract Management Improvement  
Program (GAO/RCED-87-68FS, Jan. 12, 1987).

The Environmental Protection Agency Should Better Manage Its  
Use of Contractors (GAO/RCED-85-12, Jan. 4, 1985).

Potential Impacts of Reducing the Environmental Protection  
Agency's Budget (GAO/RCED-83-75, Dec. 30, 1982).

EPA's Use of Management Support Services (CED-82-36, Mar. 9,  
1982).

Agencies Should Disclose Consultants' Roles in Preparing  
Congressionally Mandated Reports (FPCD-80-76, Aug. 19, 1980).

EPA'S ACTUAL OBLIGATIONS FOR CONTRACTING  
AND CONSULTING SERVICES  
FISCAL YEAR 1987

	<u>Actual Obligations (Thousands)</u>
Total EPA Budget <sup>a</sup>	\$ 2,621,966
Total EPA Contracts	999,000
Consulting Services Reported to Congress	15,961
Consulting Services Reported to FPDS	10,231
Consulting Services Using Cabinet Council's 4 Categories <sup>b</sup>	167,994

<sup>a</sup>Does not include \$2,168,797 for construction grants.

<sup>b</sup>In 1984, the President's Cabinet Council on Management and Administration identified four categories of FPDS product service codes that it believed were exclusively for consulting services. These obligations are for all contracts EPA coded under these four categories.

DATA BASE MODIFICATION REQUEST

Document Data Base

Submitted by: *[Signature]*

Inventory Data Base

Date: 2-9-89

ACCESSION NUMBER(S): a. 136756  
b. 118044  
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FIELD(S) TO BE MODIFIED: Desc Note

MODIFICATION(S):

Refer to T-GGD-89-5, February 3, 1989, Accession Number 137838.

- Cost type contracts
- Personnel eval
- Contractor performance
- Manmt consultants
- Fed proc'mnt policies
- Contractors
- Service contracts
- Agency reports
- Inspectors General
- Human resources utilization
- Reporting req'mnts
- Internal controls
- Procurement policies
- Contractor payments
- Contract admin

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