

GAO

Report to the Honorable
John D. Dingell, Chairman, Subcommittee
on Oversight and Investigations,
Committee on Energy and Commerce,
House of Representatives

February 1989

SUPERFUND CONTRACTS

EPA's Procedures for Preventing Conflicts of Interest Need Strengthening



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United States
General Accounting Office
Washington, D.C. 20548

**Resources, Community, and
Economic Development Division**

B-231219

February 17, 1989

The Honorable John D. Dingell
Chairman, Subcommittee on Oversight
and Investigations
Committee on Energy and Commerce
House of Representatives

Dear Mr. Chairman:

As you requested, this report assesses the adequacy of the Environmental Protection Agency's overall system for preventing conflicts of interest among Superfund contractors.

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 this letter. At that time, we will send copies to the Administrator, EPA, and to other interested parties. We will also make copies available to others upon request.

Major contributors to this report are listed in appendix I.

Sincerely yours,



J. Dexter Peach
Assistant Comptroller General

Executive Summary

Purpose

The Environmental Protection Agency (EPA) relies heavily on private contractors to carry out the multibillion-dollar Superfund program, whose goal is to clean up thousands of potentially hazardous waste sites throughout the nation. Because contractors also do work for private firms that may have polluted these sites, contractors could be confronted with a conflict of interest that could impair their objectivity when performing work for EPA. Similarly, contractors could have access to sensitive EPA enforcement information that could provide polluters with an advantage in combating EPA's efforts to get them to clean up these sites.

Concerned that conflicts could adversely affect the integrity of EPA's Superfund enforcement cases, the Chairman, Subcommittee on Oversight and Investigations, House Committee on Energy and Commerce, asked GAO to review the adequacy of EPA's system for preventing conflicts of interest among its contractors. Consistent with the Subcommittee's concerns, GAO limited its review to contractors EPA uses to study site contamination and alternative cleanup remedies or who assist in carrying out enforcement actions.

Background

The Comprehensive Environmental Response, Compensation, and Liability Act of 1980, also known as Superfund, provided EPA with \$1.6 billion to respond to releases of hazardous substances and clean up hazardous waste sites. The Superfund Amendments and Reauthorization Act of 1986 reauthorized Superfund until 1991 and provided an additional \$8.5 billion in cleanup funds.

EPA uses remedial engineering management contractors to study contamination at waste sites and develop cleanup alternatives. Technical enforcement support contractors search for parties responsible for the pollution and assist EPA with other enforcement actions. EPA uses other contractors to do the actual cleanup work. EPA's reliance on remedial and technical enforcement contractors increased from 3 contracts valued at \$11.8 million in 1981 to 7 contracts valued at \$745 million in 1988.

EPA recognizes that these contractors sometimes work for firms that caused the pollution and that this could present some contractors with a conflict of interest. EPA also recognizes that such conflicts could weaken its ability to litigate enforcement cases or result in the loss of cases or reduction in the cleanup costs EPA recovers from polluters. Accordingly, EPA has a policy to avoid, neutralize, or mitigate conflicts of interest by

its contractors. To implement this policy, EPA established a system of requirements and procedures that requires contractors to (1) identify potential conflicts or certify that they are not aware of any existing conflicts during the precontract award phase, (2) notify EPA, after contract award, of any known conflicts that the contractor becomes aware of, and (3) request EPA's approval to work for private parties.

Results in Brief

EPA's conflict of interest system contains weaknesses that hinder EPA's ability to adequately ensure that contractors are adhering to EPA's policy. In its routine reviews of contractors' performance, EPA does not check to determine that contractors have and follow policies and procedures for preventing conflicts and are in compliance with EPA's conflict of interest requirements and procedures. Contrary to EPA regulations and the Comptroller General's internal control standards, EPA's contracting officers were not documenting in the contract files important actions taken to resolve identified conflicts or actions taken on contractors' private party work requests. In addition, some contractors' requests did not always include all the information contracting officers said was needed to evaluate the requests.

Principal Findings

Verifying Contractors' Conflict of Interest Systems

Historically, EPA did little to determine whether contractors had policies and procedures in place to prevent conflicts of interest prior to contract award. But in 1988, EPA took action to obtain information on the conflict of interest policies and procedures of prospective contractors.

Although EPA's contracting and project officers periodically review Superfund contractors' performance, none of the reviews include routine checks to verify that contractors have conflict policies and procedures in place or to ensure contractor compliance with EPA's conflict of interest requirements. EPA officials told GAO that such checks would be appropriate and could be done as a part of existing contractor performance reviews.

Documentation in Contract Files

While EPA does not keep statistics on the number of conflicts that have surfaced, GAO came across two cases where EPA was informed of or identified actual conflicts. In both cases, resolutions of the conflicts were not

documented in the contract files, as required by EPA regulations or the Comptroller General's standards for internal controls. For example, in one case, an enforcement subcontractor accepted work from an EPA prime contractor while performing work for a responsible party at the same site. The subcontractor had a longstanding work relationship with the responsible party. The situation came to light when the subcontractor attempted to represent both sides at preliminary settlement hearings. The EPA contracting officer concluded that a conflict existed because of the subcontractor's dual role. Although the contracting officer told GAO that the subcontractor was directed to discontinue its work for the responsible party, the contract file contained no documentation of EPA's resolution of the conflict.

To help prevent conflicts, EPA requires contractors to obtain written approval from EPA's contracting officers to compete for or engage in private party work at waste sites. For the 7 contracts GAO reviewed, EPA's contract files showed that contractors had submitted 251 requests of which 170 were approved and 24 denied. GAO could not determine from the contract files what actions had been taken on the remaining 57 requests and EPA officials could not remember. Similarly, GAO could not determine from the contract files the factors and rationale EPA contracting officers used in approving or denying some contractor requests. In addition, GAO found that the contract files did not contain all contractors' work requests.

Conflict of Interest Guidance

Beyond its regulations and contract clauses, EPA has provided contractors with little additional guidance for avoiding conflicts, according to the contractors GAO interviewed. Some contractors told GAO that they would like more guidance on what EPA considers a conflict.

In addition, EPA's contracting officers differed on the information they required contractors to include in their requests to compete for or engage in private party work. Furthermore, contractors' requests did not always include information EPA's contracting officers needed in order to process the requests. This occurred because EPA has not formally established its information needs on contractors' private party work requests.

Similarly, some contracting officers differed on the importance placed on the information contractors provide on their private party work requests. This occurred because EPA has not provided its contracting officers with definitive criteria for evaluating contractor requests.

Recommendations

To strengthen its conflict of interest system under Superfund, GAO recommends that EPA

- include steps to check compliance with EPA's requirements for avoiding, neutralizing, and mitigating conflicts of interest as part of its reviews of contractors' performance;
- direct contracting officers to follow requirements for documenting actions taken to resolve conflicts and actions taken on contractors' requests to work for private parties; and
- provide contractors and contracting officers with additional written guidance for avoiding conflicts. This should include guidance on the information contractors should include in their requests for private party work and the importance contracting officers should place on this information when evaluating these requests.

Agency Comments

GAO discussed the report's contents with responsible EPA officials, and their comments have been incorporated where appropriate. However, as directed by the Subcommittee Chairman, GAO did not obtain official agency comments on a draft of this report.

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Abbreviations

| | |
|--------|---|
| ARCS | Alternative Remedial Contract Strategy |
| CERCLA | Comprehensive Environmental Response, Compensation, and Liability Act of 1980 |
| EPA | Environmental Protection Agency |
| NPL | National Priorities List |
| PCMD | Procurement and Contract Management Division |
| PRP | potentially responsible parties |
| REM | remedial engineering management |
| SARA | Superfund Amendments and Reauthorization Act of 1986 |
| TES | technical enforcement support |

Introduction

In the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (CERCLA), commonly known as Superfund, the Congress provided the Environmental Protection Agency (EPA) a broad mandate to clean up inactive hazardous waste sites and respond to emergency releases of hazardous substances. The Congress strengthened and expanded the program by enacting the Superfund Amendments and Reauthorization Act of 1986 (SARA).

EPA relies heavily on private contractors to perform a large share of its Superfund workload. These contractors assist EPA in virtually all aspects of program management and support. Many of EPA's contractors also work for potentially responsible parties (PRP)—private firms and individuals who may have generated, transported, or stored hazardous materials at Superfund sites. Accordingly, EPA recognizes that such work arrangements could present some contractors with an organizational conflict of interest.

The Federal Acquisition Regulation, which specifies the procurement policies and procedures that all executive agencies must follow, states that organizational conflicts of interest among government contractors exist when the nature of work to be performed under a proposed government contract may result in an unfair competitive advantage to a contractor or impair the contractor's objectivity in performing the contract work. This chapter discusses the Superfund program and EPA's use of contractors in carrying out this program; and the objectives, scope, and methodology of our review. Chapter 2 describes EPA's system for preventing conflicts, and chapter 3 discusses the weaknesses we found in that system.

Background

CERCLA provided EPA with a \$1.6 billion fund, which was to be accumulated from taxes on petroleum and certain chemicals and from federal appropriations, to carry out Superfund cleanup activities. While the program's initial funding authority expired at the end of fiscal year 1985, SARA, which became effective October 17, 1986, extended the program through October 1991, and provided an additional \$8.5 billion to carry out the Superfund program.

EPA can use money made available by Superfund for two types of site cleanup actions—removal and remedial actions. Removal actions are generally short-term responses taken to address immediate and significant threats at hazardous waste sites, but are not necessarily final solutions. Remedial actions are long-term efforts taken to mitigate or

permanently eliminate conditions at waste sites considered serious, but not posing immediate dangers to the public.

EPA ranks the severity of sites with environmental hazards and places the worst sites on its National Priorities List (NPL) for cleanup under Superfund. The NPL has grown from 115 sites in 1981 to 797 sites as of September 30, 1988, with an additional 378 proposed sites.

Although EPA takes removal actions at both NPL and non-NPL sites, it limits remedial actions to NPL sites only. Remedial actions may involve cleaning up an entire site or treating a portion of an identified problem. NPL sites often have multiple remedial actions underway because multiple sources of contamination must be cleaned up. Overall, EPA's remedial cleanup process at NPL sites is multiphased and can take years to complete.

As an alternative to using Superfund money, EPA can use its enforcement authority to (1) issue an administrative order or pursue judicial action to require PRPs to clean up NPL sites or (2) negotiate a settlement under which PRPs agree, with court approval, to undertake all or part of site cleanup activities. Where EPA chooses to use Superfund money to clean up sites, it can also use its enforcement authority to recover federal funds from PRPs.

To help ensure appropriate cleanup actions at waste sites, EPA uses its remedial engineering management (REM) contractors to conduct remedial investigations and feasibility studies to identify the types and extent of contamination at waste sites and to analyze various cleanup alternatives and assess their cost effectiveness. Once EPA selects a cleanup remedy, the remedy is documented in an EPA record of decision, and a design for implementing the remedy is developed.

To help carry out its enforcement authority, EPA uses its technical enforcement support (TES) contractors to (1) conduct investigations to identify PRPs at waste sites, (2) assist EPA in preparing negotiation documents, (3) oversee PRPs' activities, including remedial investigations and feasibility studies performed at waste sites, to ensure compliance with EPA/PRP agreements, and (4) provide expert witnesses in specialized fields to testify on behalf of EPA in enforcement cases.

Although not discussed in this report, EPA also uses its emergency response cleanup services contractors to perform removal and remedial cleanup activities at waste sites. These contractors provide personnel,

equipment, and materials necessary to recover and dispose of hazardous substances, analyze samples, and restore areas after clean ups are completed.

EPA's Reliance on Superfund Contractors Continues to Grow

EPA's reliance on contractors to perform remedial and enforcement activities has grown steadily over the past 7 years. In 1981, EPA had awarded three remedial contracts valued at \$11.8 million. In 1982, EPA awarded two additional remedial contracts valued at \$325 million. EPA awarded the first TES contract, valued at \$2.5 million, in 1983. As shown in table 1.1, EPA had five active REM and two active TES contracts, with potential values over the contracts' life of about \$612 million and \$133 million, respectively, as of September 30, 1988.

Table 1.1: Summary of Active REM and TES Contracts as of September 1988

| Dollars in millions | | |
|---------------------|-------------------------|------------------------------|
| Contract | Contract period | Potential value ^a |
| REM contracts: | | |
| REM II | June 1984 - May 1989 | \$167 |
| REM III | Nov. 1985 - Sept. 1990 | 198 |
| REM IV | Nov. 1985 - Sept. 1990 | 204 |
| REM V | July 1987 - June 1991 | 21 |
| REM VI | Sept. 1987 - Sept. 1991 | 21 |
| Subtotal | | 612^b |
| TES contracts: | | |
| TES III | June 1986 - June 1989 | 67 |
| TES IV | Sept. 1986 - Sept. 1989 | 66 |
| Subtotal | | 133 |
| Total | | \$745 |

^aOver contract period.

^bColumn does not total because of rounding.

All seven REM and TES contracts are managed by EPA headquarters staff and are either zone contracts which cover several EPA regions, or national contracts which cover all 10 regions. These contracts are all multiyear, cost-plus-award-fee contracts, where contractors are reimbursed for all allowable costs incurred under their contracts and paid a base fee of about 3 percent of allowable costs. In addition, contractors can earn an award fee of up to 7 percent of allowable costs. This award

fee is based on EPA's subjective evaluation of each contractor's performance. We recently issued a report on EPA's controls to ensure cost-effective work under its Superfund remedial contracts.¹

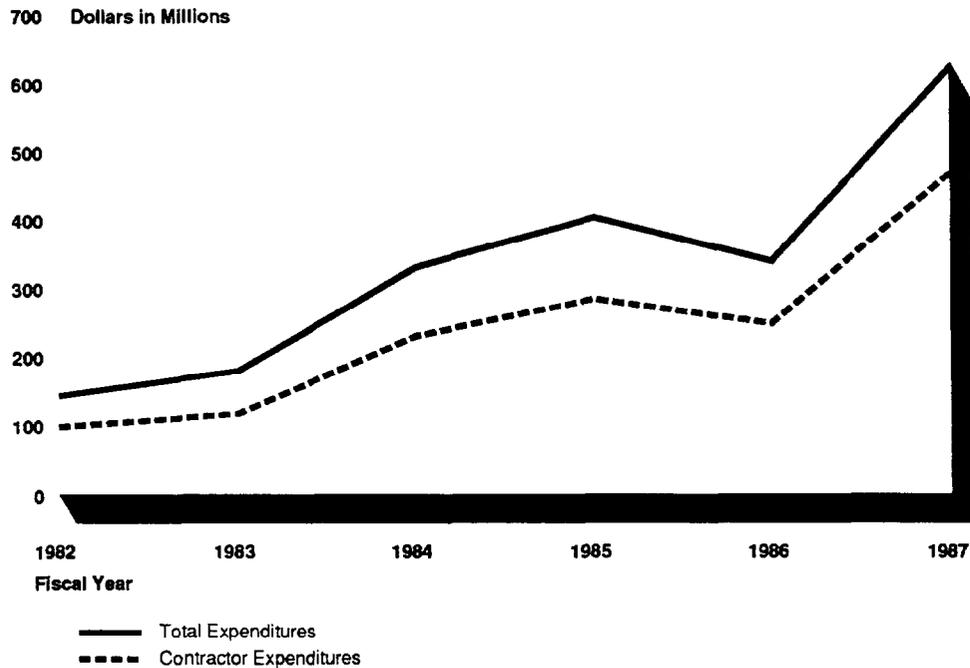
To accelerate site clean ups, increase competition for contract awards, and decentralize contract management responsibilities to its regions, EPA began replacing its REM contracts with a new contracting initiative called the Alternative Remedial Contract Strategy (ARCS) in January 1988. Under ARCS, EPA's five REM contracts will be replaced with approximately 40 to 50 new 10-year, cost-plus-award fee contracts. The ARCS contracts will be managed by EPA's regional staff. According to the Remedial Action Branch Chief, contracting officers in the regions will perform the same duties (including making determinations on whether conflicts exist) that are now being performed by contracting officers in EPA headquarters. Project officers in EPA headquarters and regions will continue assisting the regional contracting officers in managing the technical aspects of ARCS contracts. As of September 30, 1988, EPA had awarded 18 ARCS contracts valued at over \$2.6 billion. EPA plans to award the remaining ARCS contracts by the end of fiscal year 1989.

Similarly, EPA is also increasing the number of TES contracts. EPA plans to award eight 5-year, cost-plus-award-fee contracts by the first quarter of fiscal year 1989. Unlike the ARCS contracts, contracting officers in EPA headquarters will continue to manage these contracts with technical assistance from the headquarters and regional project officers.

Just as EPA's reliance on contractors to perform remedial and enforcement services has continually grown, so has EPA's reliance, in general, on contractors to carry out the Superfund program. Figure 1.1 illustrates how total Superfund contractor expenditures have increased steadily from \$97.3 million in fiscal year 1982 to an estimated \$467.7 million in fiscal year 1987, the latest fiscal year for which EPA had complete expenditure data. As a percentage of total annual Superfund expenditures, costs for contractor services have also grown from about 68 to 75 percent of total Superfund program dollars.

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

Figure 1.1: Total Superfund Program and Contractor Expenditures, Fiscal Years 1982-87



Source: EPA's Procurement and Contracts Management Division.

EPA's Contract Management Responsibilities

Officials in EPA's Procurement and Contracts Management Division (PCMD) in the Office of Administration and Resources Management are responsible for managing all EPA contracts, including Superfund contracts. According to PCMD officials, contracting officers within the Remedial Action and Enforcement Branches of PCMD are responsible for managing the REM and TES contracting functions. Contracting officers in EPA regions have responsibility for managing ARCS contracts. The contracting officers' duties include preparing EPA's solicitations for contractor services, negotiating the contracts, issuing work assignments to contractors, approving or denying contractors' requests to compete for or engage in private party work, terminating work assignments and contracts, and ultimately, determining whether conflicts exist and what corrective actions are necessary to resolve them.

EPA's contracting officers told us that they often consult with project officers in EPA headquarters and regions on the technical aspects of Superfund contracts, including conflicts of interest matters. At EPA headquarters, project officers in the Office of Emergency and Remedial Response are responsible for the technical management of REM and ARCS contracts. Project officers in the Office of Waste Programs Enforcement are responsible for technical management of TES contracts. Both of these offices are organizationally located under the Assistant Administrator for Solid Waste and Emergency Response.

In EPA's regions, regional project officers are responsible for monitoring the technical performance of contractors within their regions. Under them, Superfund contractors' work at individual sites is monitored by regional project managers. Besides monitoring contractors' work, these managers evaluate contractors' performance and provide technical guidance to the contracting officers on such matters as conflicts of interest. In addition to consulting with project officers, the contracting officers may seek advice from attorneys in EPA's General Counsel and/or regional counsel offices on conflict of interest matters.

Objectives, Scope, and Methodology

The Chairman of the Subcommittee on Oversight and Investigations, House Committee on Energy and Commerce, asked us to review EPA's overall system for preventing conflicts of interest under Superfund contracts. He also asked us to determine the adequacy and appropriateness of EPA's procedures to ensure that Superfund contractors' past and present work for PRPs do not compromise the integrity of Superfund enforcement cases. The Subcommittee was especially concerned with EPA contractors who perform remedial investigation/feasibility studies, and asked that we limit our review to REM and TES contracts. During our review, EPA was in the process of awarding its new ARCS and TES contracts. Therefore, we have included, where appropriate, information on how EPA avoids conflicts of interest under these contracts.

In conducting our review, we:

Interviewed EPA procurement managers and contracting officers in PCMD and project officers in EPA's Waste Programs Enforcement and Emergency and Remedial Response Offices and regions I, II, IV, V, and VIII. We conducted the interviews to determine whether EPA (1) has a system, which includes policies and procedures, to prevent conflicts of interest, (2) collects and maintains information on contractors' work relationships with PRPs, and (3) has had any conflicts occur under REM and TES

contracts; and, if so, what steps EPA took to resolve the situations. We also sought to determine whether conflicts have or could have adverse effects on the Superfund program, specifically, enforcement cases. We judgmentally selected the five EPA regions because they were responsible for cleanup activities at a wide range of waste sites.

- Interviewed attorneys in EPA's Office of General Counsel and Office of Enforcement and Compliance Monitoring, and the Department of Justice's Environmental Enforcement Section, within the Land and Resources Management Division, to determine whether conflicts of interest have had, or could have, adverse impacts on Superfund enforcement.
- Interviewed representatives for three prime and two subcontracting firms to (1) obtain information on their corporate policies and practices to prevent conflicts of interest under EPA contracts and (2) determine whether any conflicts have surfaced under their contracts and, if so, what actions the contractors and EPA took to resolve the situations.
- Interviewed the Deputy Associate Administrator for Legislation and Procurement Policy within the Office of Management and Budget's Federal Procurement Policy Office to determine whether EPA's policies and procedures for handling conflicts of interest were consistent with the Federal Acquisition Regulations.
- Reviewed federal and EPA acquisition regulations, policies, and procedures for preventing and handling conflicts of interest.
- Reviewed contract files of the five active REM and two TES contracts and other pertinent documents to (1) determine what information EPA maintains regarding actual or potential conflicts under the contracts, (2) determine whether any actual or potential conflicts have surfaced and, if so, what steps EPA took to resolve them, and (3) evaluate whether EPA's actions were in accordance with federal and EPA Acquisition Regulations and EPA internal guidance. We did not review any of the ARCS contract files because these contracts were new and only had limited contractor activities under them.

We also reviewed the EPA Administrator's fiscal years 1983-87 Federal Managers' Financial Integrity Act reports for previously reported internal control weaknesses related to the REM and TES contracts. No such weaknesses were identified in these reports.

We performed our work at EPA headquarters and in regions I, II, IV, V, and VIII from January 1988 to September 1988. As requested by the Subcommittee, we did not obtain official agency comments on a draft of the report. We did, however, discuss the report's contents with EPA officials responsible for administering Superfund contracts and handling

enforcement cases, and incorporated their comments where appropriate. Our review was performed in accordance with generally accepted government auditing standards.

How EPA Prevents Conflicts of Interest

EPA and Justice officials are aware of the potential for conflicts of interest to occur and are aware that such conflicts could cause harmful effects to Superfund remedial and enforcement activities. Consequently, EPA has developed a system, made up of various control procedures, to carry out its policy of avoiding, neutralizing, and/or mitigating conflicts and to prevent conflicts from occurring under all Superfund contracts. This system is currently dependent on contractors' identifying and informing appropriate EPA officials about conflicts before and after EPA awards the contracts.

Conflicts of Interest Could Adversely Affect the Superfund Program

Most of EPA's contracting and project officers, attorneys, and Justice attorneys responsible for litigating Superfund cases that we spoke with are aware of the potential for conflicts to occur under Superfund contracts. They agreed that such conflicts could have potentially damaging effects on the program, particularly enforcement cases. The damaging effects could include EPA's losing an enforcement case or recovering less cleanup costs from PRPs because of biased information received from a Superfund contractor. Also, EPA's credibility with the general public could be tarnished because of a contractor's involvement with a conflict of interest.

Although EPA and Justice officials told us that conflicts have not hampered any Superfund enforcement cases to date, they described hypothetical situations in which conflicts could jeopardize EPA's enforcement efforts. For example, EPA and Justice may have discussions and exchange memos outlining the government's strategy for pursuing a particular enforcement case or negotiating a settlement with PRPs. An expert witness, hired under a TES contract, involved in EPA/Justice's strategy sessions could have access to privileged information on EPA/Justice's strategy and approach for pursuing an enforcement case. In the hands of PRPs, this information could provide them with a substantial advantage in preparing a defense against EPA. In another hypothetical situation, the officials told us that a judge and/or jury could give less credence to a contractor's testimony provided on behalf of EPA if the testimony had any appearance of being tainted by evidence of an actual or apparent conflict.

EPA and Justice officials believe that the prevention of conflicts is increasingly important because of continuous growth in the Superfund program. As discussed in chapter 1, this growth can be seen not only in terms of aggregate program costs, but also in terms of the increasing

numbers of contractors used in the program and EPA's reliance on contractor services.

EPA's Requirements for Preventing Conflicts of Interest

The Federal Acquisition Regulation requires EPA to develop policy and procedures for identifying, evaluating, and resolving organizational conflicts of interest. To accomplish this, EPA has established a policy to avoid, neutralize, or mitigate conflicts under all EPA contracts. To carry out this policy, EPA's Acquisition Regulation requires that all solicitations and contracts include conflict of interest requirements. All EPA solicitations should include a conflict of interest notification which tells prospective contractors that they must certify, to the best of their knowledge and belief, that they are not aware of the existence of any potential conflict of interest associated with the proposed contract. The provision further states that any prospective contractor not certifying whether a conflict exists should provide a disclosure statement in its proposal which describes all relevant information concerning any past, present, or planned interests that may have a bearing on whether a potential conflict of interest exists.

EPA imposes requirements on contractors to prevent conflicts during the contract performance phase by including special conflict of interest clauses in all of its REM, ARCS, and TES contracts. For example, one standard clause, "Organizational Conflicts of Interest," requires contractors to agree that if an actual or potential conflict is discovered after an award, they will make a full disclosure in writing to the EPA contracting officer. The disclosure should include a description of actions the contractor took or proposes to take to resolve the conflict. According to PCMD officials, this requirement applies to all REM, ARCS, and TES contracts and any work assignments issued under these contracts.

Another contract clause, "Limitation on Future Contracting," lists the restrictions which contractors must adhere to before competing for or engaging in work for private parties at hazardous waste sites while under contract with EPA. For example, under the REM, ARCS, and TES contracts, contractors must obtain EPA's approval prior to performing any private party work at sites where EPA has or plans to initiate enforcement actions.

Other special conflict of interest clauses require contractors to (1) notify EPA of any actual, potential, or apparent conflicts regarding individuals working on EPA work assignments or having access to information

regarding a specific contract and (2) obtain confidentiality agreements from all personnel working on requirements under a given contract.

In addition, EPA's ARCS contracts include a clause that requires each contractor to notify EPA if the firm anticipates the use of patents or other proprietary technologies unique to the contractor as part of the cleanup actions at any waste site. According to PCMD officials, this clause attempts to prevent conflicts in areas where a contractor may have a vested interest in a technology used or recommended for use at a Superfund site.

As the ultimate safeguard against conflicts, EPA retains the right to terminate any of its contracts in whole or in part, if necessary, to avoid a conflict. EPA can terminate a Superfund contract for default and have the contractor debarred from EPA and possibly other federal agencies' contracting activities if a contractor willfully fails to disclose an actual or potential conflict before or after receiving an award or misrepresents relevant information to the contracting officer. EPA officials told us they have not terminated a REM or TES contract or debarred a contractor from EPA's contracting activities to date because of a conflict of interest.

Although EPA enters agreements only with the prime contractors, these contractors often use other firms to assist them in performing their Superfund work. For example, REM and ARCS contractors frequently subcontract with other firms to perform remedial tasks such as well drilling, sampling, aerial photography, survey work, and other engineering services. TES contractors also may rely on subcontractors to perform enforcement work such as searching for PRPs and performing analytical services. EPA's prime contractors are responsible for managing the subcontracts, including inserting EPA's conflict of interest provisions and clauses in their subcontracts.

EPA's Procedures Vary With Contract Phase

To further ensure compliance with the Federal Acquisition Regulation and its own conflict of interest policy and requirements, EPA has established procedures for preventing and mitigating conflicts during the pre-contract award, contract performance, and post-contract performance phases. According to PCMD officials, contracting and project officers are required to follow these procedures to guard against conflicts occurring under Superfund contracts.

While EPA's contracting and project officers are major components of the system in terms of identifying and resolving conflicts, Superfund contractors also play a significant role in the system. EPA officials rely on them to identify and inform the appropriate contracting officers of any actual or potential conflicts as soon as they surface. EPA officials told us that they place such reliance on the contractors because they are the most knowledgeable about their business dealings and are in the best positions to know whether conflicts exist when EPA awards contracts or issues work assignments. EPA officials believe the system works effectively because only a few conflicts have surfaced to EPA under current REM and TES contracts.

Precontract Award Phase

In awarding REM, TES, and the ARCS contracts, PCMD officials told us that they routinely require all prospective contractors to review available PRP and site lists during contract negotiations. Although all PRPs and sites are not known at this time, PCMD officials commented that they always discuss with prospective contractors any past, present, and planned work relationships by the contractors with known PRPs at various NPL or proposed NPL sites.

Upon reviewing EPA's list of known PRPs at NPL sites, prospective contractors must either identify any actual, potential conflicts or self-certify that no conflicts exist. EPA accepts this self-certification as evidence that no conflicts exist. Prospective contractors who identify potential conflicts, however, are required to submit disclosure statements to EPA's contracting officers that describe all relevant information concerning any past, present, or planned interests relating to the work to be performed and giving rise to the conflict. The contracting officers use information contained in the statements to decide whether any conflicts exist. If the contracting officer determines that a potential conflict exists, the prospective contractor may not receive an award unless the conflict can be avoided or otherwise resolved by including a special clause in the contract.

Contract Performance Phase

Once EPA awards a contract, contracting officers in PCMD primarily use two approaches to control conflicts under the REM, TES, and ARCS contracts during the performance phase. One approach relates to the issuance and acceptance of work assignments under individual contracts. The second relates to EPA's controls over contractors' efforts to seek private party work while under contract with EPA.

Work Assignments

When EPA officials want a REM, TES, or ARCS contractor to perform work at a specific Superfund site, the contracting officer, after consultation with the project officers, issues a work assignment to the contractor. Each work assignment includes a general statement of the work to be performed, period of performance, an estimate of the level of effort needed, and estimated completion date.

Upon receipt of a work assignment, contractors check to see whether acceptance of such work would create a conflict. PCMD officials told us that contractors often contact the responsible contracting or project officer soon after receiving a work assignment to discuss the proposed work and any concerns relating to potential conflicts. If a contractor believes that no conflict exists, the firm accepts the work assignment by signing and returning it to the contracting officer. According to EPA and contractor officials we interviewed, the contractors' acceptance of work assignments means that no conflicts of interest exist in relation to the proposed work.

According to EPA and contractor officials, both REM and TES contractors have declined work assignments because of actual or potential conflicts. Although we found evidence in the contract files where contractors had declined work assignments because of actual or potential conflicts of interest, neither EPA nor contractors had statistics on the extent to which the contractors had declined work assignments because of actual or potential conflicts. EPA's contracting officers told us that declined work assignments are usually reissued to other Superfund contractors.

If contractors find that actual or potential conflicts exist, they are required under terms of their contracts to notify the responsible EPA contracting officer immediately. The contracting officer, on the basis of contractor-supplied information and input from project officers and occasionally EPA's attorneys, then determines whether a potential conflict exists and, if so, resolves the situation. According to EPA officials, actual, potential, and even some apparent conflicts are resolved by passing the work to another contractor. The officials further stated that it is rare that a conflict surfaces after a contractor accepts a work assignment.

Requests for Private Party Work

As spelled out in EPA's "Future Limitation" clause, contractors must obtain written approval from the contracting officers to compete for or

engage in private party work at hazardous waste sites while under contract with EPA. According to the contracting and project officers, all contractor requests must be submitted in writing. The contracting officers have overall authority to approve the requests and make the final decisions on whether conflicts exist. Just as with work assignments, contracting officers told us that they may consult with project officers in EPA headquarters or the regions prior to making a decision on these requests. The contracting officers also may consult with EPA headquarters or regional attorneys.

The requirements contained in the "Future Limitation" clause apply to both prime- and sub-contractors' requests. Because of the competition between contractors and their desire to keep many of their private business dealings confidential, EPA permits subcontractors to submit their requests directly to the contracting officers. Since our review was limited to EPA's prime REM and TES contractors, we did not review any subcontractor's files or requests for private party work.

According to the REM and ARCS contracting officers, contractors' requests for private party work should include such information as the client's name, location of the proposed work, type of work, time frame for performing the work, whether the site is on the NPL, and whether the contractors' judgments would be affected if they performed the work. The TES contracting officers require much of the same information.

Once a contractor submits a request, the responsible contracting officers said they evaluate several factors before deciding to approve or deny the requests. In addition to potential clients and types of work to be performed, the officials said they consider whether individual contractors (1) will be conducting analyses and making judgments at the site, (2) will be needed by EPA in the future to perform work at the particular site, and (3) could develop further expertise or capacity that could help EPA in its Superfund efforts. Some contracting officers told us that conflict of interest is less of a concern when contractors request to perform nonjudgmental work, such as well drilling. A more serious concern is when the request involves analytical-type services, such as remedial investigations and site assessments at NPL sites for PRPS.

Post-Contract Performance Phase

In an effort to avert conflicts after a contract expires, the REM, TES, and ARCS contracts stipulate that for a 3-year period after contract expiration, contractors may not compete for or represent private parties on

any work pertaining to specific waste sites where they previously performed work for EPA, without first getting written approval from the EPA contracting officer. Overall, PCMD officials told us that to date, no former remedial or enforcement contractor has submitted a request under this provision. They said that this condition exists because most contractors reapply for new EPA contracts when their old contracts expire; therefore, any requests for private party work are handled under the new contracts.

Summary

EPA officials recognize that conflicts of interest can occur because of contractors working for EPA and PRPs and that such conflicts could harm the Superfund program. To prevent this, EPA has an overall policy of avoiding, neutralizing, and mitigating conflicts, which is carried out through its conflict of interest system. The system is comprised of procedures for preventing conflicts at three phases of the contract period. Although this system requires EPA's contracting and project officers to identify and resolve conflicts, it is also heavily dependent on contractors to identify and inform EPA contracting officers of any conflicts as soon as they occur.

EPA's Conflict of Interest System Contains Weaknesses

Although EPA has conflict of interest requirements and procedures, its system contains weaknesses that hinder EPA's ability to adequately ensure that its policy of avoiding, neutralizing, and mitigating conflicts is being achieved. EPA relies heavily on contractors to avoid conflicts, but does not review contractors' performance to ensure compliance with EPA's conflict of interest requirements. Until recently, EPA did not require prospective contractors to provide information on their conflict of interest systems prior to receiving a contract.

Regarding two cases where EPA was informed of or identified actual conflicts under REM and TES contracts, we did not find documentation on how the contracting officers resolved the two conflicts, as required by EPA's Acquisition Regulations and the Comptroller General's standards for internal controls. In addition, EPA's contracting officers and, in one instance, project officers did not always document actions taken on contractors' requests for private party work. Documentation not only provides a record of decisions made but could also provide a base for developing additional guidance for EPA's contracting and project officers as well as contractors to use in dealing with conflicts.

Most REM and TES contractors and subcontractors we interviewed said that they would like more written guidance from EPA to help them avoid conflicts. Officials for one contractor further said that additional guidance may result in their submitting fewer private party requests, thereby reducing EPA's and their workloads. In terms of contractors' requests for private party work, we found that EPA had not formalized the information that contractors should include in their requests and that contracting officers were not given any written guidance for evaluating the requests. This led to inconsistencies in the information that contractors submitted and in how contracting officers evaluated this information when approving or denying requests.

While procurement managers and contracting officers responsible for managing the REM, TES, and ARCS contracts acknowledged that EPA's system for preventing conflicts could be improved, they believed that existing requirements and procedures have worked adequately to prevent conflicts. We believe, however, that without appropriate safeguards to prevent conflicts, EPA may be unnecessarily increasing the risk of future conflict of interest problems in the Superfund program. This risk is a growing possibility in light of EPA's continuing efforts to expand the number of contractors used to perform remedial and technical enforcement activities and to delegate remedial Superfund contract responsibilities to its regional staff.

EPA Does Not Have Assurance That Contractors Have and Use Procedures to Prevent Conflicts

EPA did little under its current REM and TES contracts to determine whether contractors had policies and procedures in place to help prevent conflicts of interest. However, in 1988, EPA began requiring some prospective contractors to provide information on their conflict policies and procedures prior to receiving an EPA contract. Nevertheless, none of EPA's reviews of contractors' performances include checks to ensure that contractors are complying with its conflict of interest requirements.

Required Information on Contractors' Conflict of Interest Systems

According to the Remedial Action Branch Chief, prior to March 1988, REM contractors were not required to document their conflict of interest policies and procedures before receiving a contract award. Instead, EPA traditionally obtained this information from contractors during the contract performance phase when EPA's contracting and project officers periodically met with contractors to discuss their overall job performance. If a conflict was a concern, the contracting and project officers would discuss with the contractor the circumstances creating the conflict, the contractor's policies and procedures for handling conflicts, and actions needed or taken to resolve the situation.

As a result of our review, EPA changed its procedures for obtaining information on contractors' conflict of interest policies and procedures. Beginning with ARCS solicitations issued in April 1988, EPA started requiring prospective contractors to provide information on their conflict of interest policies and procedures in their bid proposal packages. Although EPA changed its procedures, little weight is given to information that prospective contractors provide on their conflict of interest policies and procedures—this information represents less than 3 of the 100 points that prospective contractors can receive in the evaluation process. Considering this, the Remedial Action Branch Chief said it is possible for a prospective contractor to get a numerical score high enough to make the firm eligible for an award without having described their conflict of interest policies and procedures in their bid proposal package. But the Branch Chief and other PCMD officials told us that if this should occur, they would discuss the contractor's policies and procedures during final contract negotiations.

The solicitation for the eight TES contracts that EPA plans to award in fiscal year 1989 did not require contractors to describe their conflict of interest policies and procedures in their bid proposal packages nor is this requirement an evaluation factor. However, contracting officers responsible for preparing the TES solicitation, evaluating proposals, and

negotiating the contracts told us that they will obtain this information from prospective contractors during contract negotiations. They also said that this requirement was not included in the TES solicitation because it was issued in January 1988, before EPA's decision to include conflict of interest as an evaluation factor. The TES contracting officers said contractors may provide information on their conflict of interest policies and procedures either orally or in writing.

Review of Contractors' Compliance

The PCMD staff and project officers in EPA headquarters conduct reviews of contractors' performance for compliance with federal and EPA procurement regulations. But none of these reviews verify whether contractors are complying with EPA's conflict of interest requirements or have policies and procedures in place to prevent conflicts and are following them.

PCMD's Planning and Cost Advisory Branch periodically performs reviews of contractors purchasing system to evaluate the efficiency and effectiveness with which EPA contractors spend federal funds and comply with subcontracting policies. During these reviews, the PCMD staff look at what contractors do in terms of their purchasing and subcontracting activities and try to ensure that there was no bias or undue influence in the contractors' subcontracting and purchasing activities. Specifically, the review teams evaluate the adequacy of contractors' written purchasing policies and procedures, examine contractors' files, and determine whether contractors sought adequate competition for subcontracts and included required procurement clauses in their subcontracts.

According to the contracting officers we interviewed, REM and TES project officers also routinely conduct management reviews of contractors' performances. During these reviews, the EPA teams use a checklist approach to determine whether contractors have procedures in place to manage subcontractors' efforts, process work assignments, and track expenditures incurred under their EPA contracts accurately. PCMD's contracting officers usually assist project officers with these reviews.

In addition to purchasing system and management reviews, REM and TES contracting officers said they periodically monitor contractors' performance through financial audits, biweekly or quarterly status meetings with contractor officials, and on-site visits made by regional staffs. The officials added that though these activities are not specifically geared toward reviewing contractors' compliance with EPA's conflict of interest

requirements, conflict of interest matters are discussed if there is cause for concern.

While the PCMD officials acknowledge that they do not routinely check contractors for compliance with EPA's conflict of interest requirements or verify that the contractors have systems in place to prevent conflicts, they agreed that such checks would be appropriate. They also said that these checks could possibly be done as a part of any of EPA's existing contractor performance reviews.

Contracting Officers Need to Better Document Their Actions

Documentation and recording of transactions are important internal control standards for achieving the proper conduct of government business. Additionally, the availability of this information would provide EPA with a historical data base that could be used as guidance by EPA contractors and staff to avoid or resolve conflicts of interest. Without these data, EPA must rely on staff memory to recall actions taken to resolve or avoid conflicts, which could be a problem for EPA, considering its employee turnover.

In two cases where EPA was informed of or identified actual conflicts under REM and TES contracts, we did not find documentation in the files on actions the contracting officers took to resolve the conflicts as required by EPA Acquisition Regulations. Overall, the REM and TES contracting officers did not always document actions taken on contractors' requests to compete for or engage in private party work.

Importance of Documentation

The EPA Acquisition Regulations state that contracting officers shall document, in writing, the resolution of any identified actual or potential conflict of interest. The Comptroller General's internal control standards, which executive agencies are to follow in establishing and maintaining internal control systems as required by the Federal Managers' Financial Integrity Act of 1982,¹ states that significant events should be clearly documented and readily available for examination. Good internal controls are essential to achieving the proper conduct of government business with full accountability. They facilitate the achievement of management objectives by serving as checks and balances against undesired actions. In preventing negative consequences from occurring, internal controls help achieve the positive aims of program managers.

¹Standards for Internal Controls in the Federal Government, published in 1983 pursuant to the Federal Managers' Financial Integrity Act of 1982.

In the case of EPA's conflict of interest system, documentation provides a recorded institutional knowledge and the continuity necessary to help achieve EPA's policy objective of avoiding, neutralizing, and mitigating conflicts. Without it, staff memory must be relied on to recall what and why actions were taken to address given situations. According to EPA and Justice attorneys, it is important that decisions relating to conflicts of interest be documented so that EPA has records if questions or problems should arise later.

The employee turnover that EPA has experienced among its Superfund employees, which is not likely to abate as EPA expands its use of contractors and delegates some contract administration to its regional offices, only serves to heighten the need for documentation. Concerning employee turnover, we found that the five REM and two TES contracts included in our review have had at least two or three different contracting officers assigned to them since EPA awarded the contracts. In discussing this matter with the REM and TES contracting officers, they agreed that it was not unusual for several contracting officers to be responsible for contract administration over the life of these multiyear contracts. During these contract periods, contracting officers can get promoted and take over other duties, transfer to another office or agency, or leave the government entirely.

In addition, EPA is in the midst of replacing its REM contracts with 40 to 50, 10-year ARCS contracts. It also is planning to delegate the administration of these contracts to its regional offices. In 1987, we reported that the turnover rate for Superfund employees more than doubled from 2.9 percent to 7.2 percent between fiscal years 1985 and 1986 and that most Superfund program managers expected turnover to continue to increase with the program expansion authorized by SARA. We also reported that the Superfund employee turnover rate was much higher in the regions than at EPA headquarters.²

Conflict Resolution

While EPA does not maintain statistics on the number of times conflicts have surfaced, many EPA headquarters and regional officials we interviewed said that they were unaware of any actual conflicts that have occurred under the REM or TES contracts. However, during our review of the five REM and two TES contract files, we came across two cases where

²See Superfund: Improvements Needed in Work Force Management (GAO/RCED-88-1, Oct. 26, 1987).

EPA either was informed of or identified actual conflicts after contractors had accepted EPA work assignments.³ Although EPA officials said the situations were resolved soon after they surfaced, we did not find evidence in the files on how EPA resolved the conflicts.

The first case involved a TES subcontractor who accepted work from an EPA prime contractor while performing work for a PRP at the same site. The subcontractor had a longstanding work relationship with the PRP. The situation came to light when the subcontractor attempted to represent both sides at preliminary settlement hearings with the PRP. EPA's regional staff involved in the case raised concerns about a possible conflict of interest because of the subcontractor's dual role. The subcontractor officials maintained that the firm had not engaged in a conflict of interest. However, the EPA contracting officer concluded that a definite conflict of interest existed and instructed the prime contractor to have the subcontractor stop its PRP work. According to EPA contracting and project officers involved with this case, the subcontractor discontinued working for the PRP. We found no documentation in the contract file to support what the contracting and project officers told us.

The second case involved a REM contractor who had been issued a work assignment on April 24, 1985, to perform a remedial investigation/feasibility study at the same NPL site where the firm had previously worked for one of the PRPs. The contractor discovered the conflict during a site visit on October 29, 1985. Although EPA was notified that a potential conflict existed, we could not determine from the contract file exactly when the contractor notified EPA. The contracting and project officers involved with the case told us that the contractor notified EPA immediately after the conflict was discovered. They thought the contractor notified EPA about the conflict in writing, but there was no record of this in the contract file. On the basis of documentation found in the contract file, the EPA regional project officer sent a memo to the contractor on December 6, 1985, ordering the firm to stop work under the work assignment pending resolution of the situation. In another memo dated December 13, 1985, from the EPA regional counsel to the responsible regional project officer, the regional counsel concluded that a conflict existed and suggested options for resolving the problem.

Both the contracting and project officers involved with this case told us that they had several discussions with the contractor before resolving

³According to the contracting officers, EPA issued 2,909 work assignments as of September 30, 1988, under the seven contracts we reviewed.

the problem. According to the officers, once EPA concluded that a conflict existed, the work assignment was given to another contractor, and EPA demanded that the contractor pay back part of the award fee. Although the officers said that EPA sent a memo to the contractor outlining its resolution of the conflict, we found no documentation of discussions that the project or contracting officers had with the contractor in the contract file. Furthermore, we found no evidence that EPA required the contractor to reimburse the award fees, nor was the contracting officer able to provide this documentation. Several months later, in response to our discussing the results of our review with EPA officials, they gave us copies of documents which showed that the contracting officer ordered the contractor to stop work under the work assignment on December 30, 1985, and that EPA deducted \$18,564 from the contractor's award fee.

Contractors' Requests

In reviewing EPA's files for contractors' requests to compete for or engage in private party work, we found documentation showing that EPA had received 251 requests from REM and TES contractors between June 21, 1984, and August 29, 1988—the earliest and latest dates, respectively, on the requests we reviewed. Three of the 5 REM contractors submitted a total of 153 requests, and the 2 TES contractors submitted a total of 98 requests. According to EPA's contracting officers, the remaining two REM contractors had not submitted any requests to EPA. The contracting officers believe that the firms have not submitted any requests because they are small contracting firms with limited resources to perform Superfund type work.

We found evidence that EPA had approved 170 and denied 24 of the 251 contractor requests. We could not determine from the contract files what actions EPA took on the remaining 57 requests. In addition, the contracting officers responsible for the contracts could not recall whether the 57 requests had been approved or denied.

We also found that the REM contract files did not contain complete records of all requests submitted by contractors or the actions EPA took on these requests. One REM contractor gave us copies of 17 requests that had been submitted to EPA. The contract file only included 9 of the 17 requests. The contracting officer responsible for the REM contract could not explain why the eight additional requests were not in the contract file. The officer suggested that the requests may have been misplaced.

In regards to another REM contract, we found that the contractor had submitted 43 private party work requests to EPA. Because of the contracting officer's heavy workload, the project officer was given responsibility for acting on all requests submitted by the contractor. Although the project officer told us that he sends copies of all requests to the contracting officer to include in the contract file, we found that the contract file only contained 12 of the 43 requests.

Some REM and TES contractors' requests did not include all the information that contracting officers said they needed to evaluate the requests. In this respect, we found little written evidence to support the contracting officers' claims that EPA frequently contacts and receives additional information from contractors before approving their requests. Although the contracting officers added that they normally do not record or document the results of their contacts, they agreed that some documentation should be prepared.

In addition, we could not determine the factors or rationale that contracting officers used in approving or denying some REM and TES contractors' requests or whether conflict of interest was a determining factor because this information was not documented in the contract files for the requests we reviewed. This was not a problem in terms of the 14 TES contractor requests that had been denied because the TES contracting officers have written procedures for processing contractors' requests that require them to include a brief statement on why the request was denied. PCMD procurement managers agreed that corrective action was needed to ensure that contracting officers document the basis for actions taken on requests.

More Guidance Is Needed to Help Avoid Conflicts

By documenting and recording pertinent actions relative to EPA's conflict system, EPA would be in a better position to provide contractors and contracting and project officers with additional guidance for avoiding conflicts. REM and TES contractors and EPA contracting and project officers currently use the federal government's and EPA's acquisition regulations and special conflict of interest clauses as guidance to help avoid conflicts. But some of them expressed a need for more guidance on what EPA considers a conflict, especially under requests to engage in private party work.

According to the contractors we interviewed, they have not been given written guidance on the information to be included in their requests for private party work. Also, EPA's contracting officers told us that they

have not been given written guidance on how to evaluate this information. Without this guidance, REM and TES contracting officers differed on the information they required contractors to provide in their written requests and on the importance they placed on this information. In addition, we found that while contracting officers said they had informed contractors of what information to include in their requests, REM and TES contractors did not always submit the required information.

Guidance for Contractors

Some REM and TES contractors believe that EPA's written guidance on conflicts is too general and does not adequately explain what private party work requires EPA's approval. For example, one REM contractor told us that the firm was uncertain of whether prior approval is needed to perform work for other federal agencies. Some contracting officers we spoke with were also uncertain of whether contractors needed EPA's prior approval for such work. Another contractor was unclear as to whether it needed to get EPA's approval for private party work at non-NPL sites.

Officials for one contractor that has a REM and TES contract told us that they might have submitted fewer requests to engage in private party work under their Superfund contract if EPA had issued more detailed guidance outlining its criteria for a conflict. The contractor added that generating requests creates additional work, in terms of staff time and money, not only for the firm, but for the EPA staff responsible for handling them.

While some contractors used informal guidance they said was developed by EPA to determine what requests they should submit to EPA, only two of the five contractors we interviewed were aware of this guidance. However, they told us that this guidance is not very clear in terms of what EPA considers a conflict or the basis for approving or denying contractors' requests.

In addition, two contractors told us that EPA's regional and headquarters staff sometimes have different views of what work arrangements create conflicts of interest. Specifically, one of the contractors said EPA's regional staffs generally allow fewer activities under EPA's conflict of interest provisions than do the headquarters staff. While these contractors could not recall how often EPA's regional and headquarters staff differed on what was a conflict or provide specific examples, they emphasized that this sometimes happens.

Information Needed in Work Requests

Although EPA has not formalized its criteria on the information that contractors should include in their requests to compete for or engage in private party work, we found that REM and TES contracting officers differed on what information contractors should include in their requests. For example, some REM contracting officers told us that contractors should include, among other things, the time frame for performing the work and whether the contractors' judgments would be affected by performing the work. TES contracting officers, however, told us that they do not require contractors to submit this information in their requests. But they told us that this information may be obtained through discussions with contractors prior to acting on their requests.

In reviewing the 251 REM and TES contractors' requests, we found that none included information on the time period for performing the proposed work or whether their objectivity would be affected by the proposed work. Some requests also did not indicate specific sites where the proposed work was to be done or whether the site was on the NPL—information that both REM and TES contracting officers had informed contractors to include. Although the procurement managers and contracting officers said they routinely obtain needed additional information from contractors generally by telephone, they agreed that corrective action was needed to formalize their information needs.

Evaluation Criteria

Although EPA has not issued formalized guidance for evaluating contractors' requests for private party work, we found that TES contracting officers had some written guidance, whereas the REM contracting officers did not. The TES guidance requires contracting officers to use their professional judgment in addition to weighing a variety of factors when evaluating contractors' requests. The factors included the nature of work, site name and location, potential client, and the uniqueness of the contractors' services. The REM and TES contracting officers said that they consider in addition to the aforementioned factors, whether the contractor will be conducting analyses and making judgments at the site needed by EPA for future work at the site in question. Both REM and TES contracting officers said they consider whether the contractor could develop further expertise or capacity that could help EPA in its Superfund efforts.

While the REM and TES contracting officers consider many of the same factors, we found that some REM contracting officers differed among themselves on the importance they placed on these factors. For example, one contracting officer thought the potential client and type of work

were the most important, while another said EPA's future need for the contractor was most important.

PCMD procurement managers agreed that more formalized, written guidance was needed to ensure consistencies in evaluating contractor requests.

Conclusions

EPA officials acknowledged that their conflict of interest system could be improved, but believe that the system works effectively since only a few conflicts have occurred. However, because of the weaknesses we found in the system, we question whether EPA can reasonably ensure that conflicts are not occurring.

EPA's recent action to inquire about contractors' conflict policies and procedures prior to awarding a contract is a step in the right direction. However, after contract award, EPA does not routinely review contractors' performance to check compliance with its conflict of interest requirements or whether contractors actually have and follow their conflict policies and procedures. EPA officials agreed that such reviews would be appropriate and could be done as part of existing contract reviews.

We also found that EPA's contracting officers were not documenting in the contract files important actions taken to resolve identified conflicts and actions taken on contractors' requests for private party work. Besides being required by EPA Acquisition Regulations and the Comptroller General's internal control standards, documentation would provide an institutional knowledge of actions taken to avoid conflicts and serve as additional guidance for EPA's contracting and project officers as well as contractors to avoid conflicts.

Additionally, contractors did not always submit information that contracting officers claimed was needed to approve or deny contractors' requests for private party work. Also, contracting officers were not consistently weighing information submitted by contractors when acting on the requests. These inconsistencies occurred because EPA has not formalized its information requirements on what contractors should include when submitting requests for private party work nor provided its contracting officers with guidance for evaluating the requests.

Recommendations

We recommend that the Administrator, EPA, strengthen EPA's conflict of interest system under Superfund, by directing PCMD to

- include steps to check compliance with EPA's requirements for avoiding, mitigating, and neutralizing conflicts of interest as part of its reviews of contractors' performance;
- direct contracting officers to follow requirements for documenting actions taken to resolve conflicts and actions taken on contractors' requests to work for private parties; and
- provide contractors and contracting officers with additional written guidance for avoiding conflicts. This should include guidance on the information contractors should include in their requests for private party work and the importance that contracting officers should place on this information when evaluating these requests.

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