

# **GMPO's Planning, Organizing, and Funding the 1995 Gulf of Mexico Symposium**

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## **CHAPTER 1** **INTRODUCTION**

### **PURPOSE**

During fiscal 1994, the EPA Office of Inspector General (OIG) reviewed various activities of the Office of Water's Gulf of Mexico Program (GMP). The overall objective was to gain an understanding of the GMP and identify any high risk areas and/or activities that warranted further review or audit.

One activity selected for further review was the Gulf of Mexico Program Office's (GMPO) plan for the 1995 GMP Symposium to be held in Corpus Christi, Texas. Our preliminary review identified potential issues surrounding the planning, organization, and funding for the biennial symposium. Specifically, we were concerned that while the GMPO was officially promoting the symposium as a "co-sponsored event" with other Federal, state, and private organizations, the actual planning and funding for the 1995 Symposium appeared to be Federally directed and controlled through the GMPO and its on-site contractor (see Chapter 2 and Appendix II). As a result, we initiated an audit to: (1) evaluate the organizational structure of the 1995 Symposium; (2) determine GMPO's and other Federal agency involvement in planning and funding the event; and (3) determine whether the 1995 Symposium implementation and funding was consistent with applicable laws, regulations, and Agency guidelines related to Federally sponsored conferences.

### **BACKGROUND**

In 1988, EPA Regions 4 and 6 agreed to establish a program to develop and implement a strategy for managing and protecting the resources of the Gulf of Mexico and associated coastal environments. As a result, the GMPO was organized and located at the John C. Stennis Space Center near Bay St. Louis, Mississippi. In its program literature, the GMPO described the GMP as a regionally focused program established to facilitate the cooperation and coordination of various Federal, state, and local agencies, academia, and private industry groups which share in and have significant interests in the coastal and marine resources of the Gulf. The GMPO, through the Policy Review Board (PRB) and related subcommittees (a Federal advisory committee structure), provided the organizational mechanism necessary to implement the GMP.

### **GMPO Staffing**

The GMPO, although established by EPA, is staffed by administrative and technical personnel from EPA and various other Federal organizations. According to GMPO staffing charts (February 7, 1995), 14 out of 34 listed personnel, or 41 percent of the GMPO workforce, were EPA employees. Other Federal agencies staffed six positions, or 18 percent of the workforce, while 14 EPA contractor and cooperator personnel made up the

remaining 41 percent. The Gulf states have not yet provided any direct support to GMPO operations in the form of personnel or funding. The GMPO Director, Deputy Director, and the Chief Scientist have always been EPA employees. These individuals supervised the day-to-day operations of the GMPO including the activities of Federal personnel representing other Federal agencies.

### **Program Management Responsibility**

Prior to April 1994, GMPO reported directly to the Assistant Administrator for Water. While the Assistant Administrator for Water still serves as the National Program Manager for the GMP, the GMPO Director now reports to the Region 4 Deputy Administrator ([footnote 1](#)) who currently serves as the Federal Co-Chair of the PRB's Management Committee (MC) ([footnote 2](#)). The MC Federal Co-chair position rotates between Region 4 and Region 6 every two years. Therefore, the day-to-day management and administration of the program resides with the region that holds the MC Federal co-chair position.

### **History and Organization of the National GMP Symposium**

An important part of GMPO's management strategy ([footnote 3](#)) is the development of an effective public information and education outreach program. As a part of this program, GMPO planned and conducted "Status-of-the-Gulf" symposiums, convened as a national biennial event. The symposium would provide an opportunity for people with expertise in various areas of science and management around the Gulf and the Nation to communicate and centralize their knowledge of the complex issues that affect the Gulf.

In 1990, GMPO held its first GMP symposium in New Orleans, Louisiana. In 1992, a second symposium was held in Tarpon Springs, Florida. A third symposium was hosted in Corpus Christi, Texas from March 29 through April 1, 1995. The actual total cost of the 1990 and 1992 symposiums was \$196,000 and \$307,000, respectively. Federal appropriations provided the majority of the funding for all three symposiums. Additional resources were generated for all three symposiums by charging registration and exhibitor fees and soliciting private donations. The 1995 registration and exhibitor fees were collected by a GMPO contractor and transferred to a cooperator under an off-site cooperative agreement for payment of symposium costs. The donations were generated and made available to pay symposium costs through an informal arrangement between GMPO, Texas General Land Office (TGLO), and the Gulf Of Mexico Foundation (GMF).

### **SCOPE AND METHODOLOGY**

We conducted a survey of the GMPO from April through August 1994. As a result of this survey, we initiated an audit of the planning, organization, and funding of the GMPO sponsored GMP symposium which was held in Corpus Christi, TX on March 29 through April 1, 1995. Our primary audit objectives were to: (1) evaluate Federal control, planning, and implementation of the symposium and (2) determine that symposium implementation and funding was consistent with applicable laws and regulations. Audit fieldwork was conducted from October 1994 through July 1995.

To establish the purpose of GMPO sponsored symposiums and GMPO's approach toward organizing, planning and funding the 1995 Gulf of Mexico Symposium, we interviewed GMPO, Region 4, and Region 6 personnel involved in the symposium planning process. We also visited and followed up with the on-site contractor providing logistical support for the 1995 Symposium, the TGLO which was involved through a cooperative agreement, and the GMF which provided private donations to support symposium activities. From these organizations, we also obtained and reviewed files and other documentation related to symposium planning, implementation, and funding. This included meeting summaries for the PRB and its symposium steering committee; contract work assignments; subcontracts; the TGLO cooperative agreement and modifications, status reports, correspondence; symposium literature; OMB and Agency guidance on conference planning; invoices for symposium costs; and other documentation found related to the 1995 GMP Symposium. During the

conduct of this audit, several legal issues were identified which were discussed in detail with the Office of General Counsel (OGC), OIG Division.

This audit was conducted in accordance with Government Auditing Standards (1988 revision) issued by the Comptroller General of the United States. Our audit included an evaluation of existing controls, policies and procedures specifically related to the promotion of agency sponsored conferences. The findings in the report include any control weaknesses identified during the audit and our recommendations to correct the deficiencies, where appropriate.

Certain background and summary information related to the 1995 Symposium was extracted from data maintained by GMPO, the GMPO's on-site support contractor, cooperator (TGLO), and the GMF, a private foundation. No audit tests were performed to evaluate the adequacy of the controls over the accumulation and accuracy of the information provided. However, the data we accumulated and present in this report was provided to the respective organizations for their review and nothing was brought to our attention which would indicate that the data as presented was inaccurate. Nevertheless, we can not and do not attest to the accuracy or completeness of the data provided.

Other issues did come to our attention which we believed sufficiently material to warrant further audit effort. However, these issues were unrelated to the GMP symposium process and have either been addressed in a separate OIG report or are currently being developed for a future report.

## **CHAPTER 2** **POTENTIAL IMPROPER AUGMENTATION OF FEDERAL APPROPRIATIONS**

GMPO's control over symposium planning/implementation and the collection and use of fees and donations through intermediaries (contractor, cooperator, and a nonprofit foundation) to pay obligations it incurred in implementing the 1995 GMP Symposium may have created an improper augmentation of EPA appropriations. Much of the cost paid or planned to be paid from these fees and donations were contracted for and incurred by GMPO's contractor ([footnote 4](#)) and, thus, represented a legal obligation and liability of the Agency. Therefore, we concluded that the fees and donations used to pay GMPO's financial obligations, whether through a contractor, cooperator or a foundation, represented miscellaneous receipts or gifts as defined under Federal appropriations law.

According to 31 U.S.C 3302(b), the "miscellaneous receipts statute," a Federal agency can not retain and use miscellaneous receipts and/or gifts, whether received directly or by an agent for the Government, to augment its own appropriation unless authorized by statute or in the case of a repayment ([footnote 5](#)). EPA has no congressional authorization to retain and use miscellaneous receipts or gifts in support of a symposium. Without authorization, miscellaneous receipts must be deposited directly into the general fund of the U.S. Treasury.

### **Agency Actions**

GMPO had originally tasked the on-site contractor with receiving the registration/exhibitor fees and tracking both the fees and private donations. The contractor also coordinated the use of these monies in consultation with GMPO to pay symposium costs which were not allowable for payment from Federal funds (see Chapter 4). However, as a result of our audit and advice received from GAD, GMPO learned that fees and donations received by GMPO's contractor could not be used to pay the unallowable costs. Also, GAD was aware that if the GMPO contractor received the fees and donations an improper augmentation would occur. A March 1995 memorandum from the Director, Office of Grants and Debarment, to the Acting Assistant Administrator for Administration and Resources Management concerning the symposium stated:

If a contract had been used, any fees collected would have to have been returned to the U.S. Treasury.

In order to avoid what they could not do under the contract, GMPO amended a cooperative agreement with the Texas General Land Office for the accumulation and use of the fees to pay these unallowable costs. However, we concluded the TGLO was tasked under the modification to act as an intermediary for GMPO and, therefore, the modification was procurement of services not assistance (see Chapter 2). In addition, the GMPO, through TGLO, instructed the GMF to pay certain symposium costs from its donations in lieu of the contractor receiving the donations and paying the costs. However, the on-site contractor, at GMPO's direction, had contracted for many of the symposium services provided and, therefore, the costs paid by GMF and TGLO from the fees and donations were primarily legal obligations of GMPO and the on-site contractor. Both the TGLO and the GMF repeatedly received instructions from the GMPO or its contractor on the use of the fees and donations and what symposium cost would be paid from these funds.

## **BACKGROUND**

The 1995 Gulf of Mexico Symposium was advertised as a GMP sponsored conference involving several Federal, state, and local agencies, academia, and private industry groups ([footnote 6](#)). However, the actual planning, organization, implementation, and funding of the 1995 Symposium was principally a Federal undertaking, controlled by EPA and other Federal contributors through the GMPO. Fifty-seven percent of the planned funding for the symposium was entirely from Federal appropriations with the remainder of the funding to come from symposium registration and exhibitor fees and private donations. The fees and donations were to be used to pay for entertainment, luncheons, receptions, invitational travel, and other costs that could not be paid from Federal appropriations. GMPO's contractor was to collect the registration and exhibitor fees and the GMF was to solicit donations. GMPO's contractor was to use the fees and donations to pay the costs unallowable for Federal funding.

The same funding sources had also been used for the 1990 and 1992 GMP symposiums. The funding sources and amounts for the 1990, 1992, and 1995 symposiums are shown below:

Federal Funds: ([footnote 7](#))

	1995	1995	1992	1990
	Estimate	Actual	Actual	Actual
EPA	\$ 73,000	\$161,000		
Other Federal Agencies	<u>136,000</u>	<u>65,000</u>		
Total Federal	\$209,000	\$226,000	\$174,000	\$120,000
Registration/Exhibit Fees	82,000	34,000	68,000	66,000
Private Donations	<u>78,000</u>	<u>32,000</u>	<u>65,000</u>	<u>10,000</u>
Total Cost*	\$369,000	\$292,000	\$307,000	\$196,000

\* Note: The 1995 actual funds were obtained by OIG from the organizations involved after conclusion of the 1995 Symposium. The EPA dollar amount represents the excess of costs, as determined by OIG, over available funding from all other sources. GMPO had not provided OIG with a final accounting of available funds and related costs as of July 31, 1995. Therefore, the actual funding available (including that required to be contributed by EPA/GMPO) may differ once GMPO finalizes all symposium related transactions.

The GMPO not only controlled the funding for the 1995 Symposium but also controlled the planning and implementation as well. This control was exercised through the GMPO's PRB advisory committee which was dominated by Federal agencies. This control structure is detailed in Appendix II. A five member Executive

Symposium Steering Committee (ESSC) under the PRB was the principal symposium planning committee. The ESSC was dominated by three EPA representatives with close ties to the GMPO. Federal control of the event was established by the GMPO Director at the first ESSC meeting when he told ESSC members that the PRB would review symposium recommendations "...because it is the PRB [Federal agencies] that sponsor and contribute financially to the symposium." In addition, GMPO furthered its control over the event by tasking its on-site contractor to coordinate implementation of the symposium with the GMPO, PRB, ESSC, and track leaders ([footnote 8](#)). Specific contractor tasks included tracking budget requirements, expenditures, including Federal and non-profit funding ([footnote 9](#)) and donations, and collecting, tracking, and disbursing registration and exhibitor fees. The GMPO work assignment manager for this task was also a member of the ESSC and was referred to as the "Symposium Coordinator." This GMPO employee provided direct guidance to the contractor in implementing the 1995 Symposium. The collection and disbursement of fees was subsequently removed from the contractor's work assignment and transferred to a cooperative agreement when concerns were raised regarding the propriety of the GMPO contractor receiving the fees and paying for unallowable costs. The task was included in a modification to a TGLO cooperative agreement on February 6, 1995, less than two months before the symposium was held.

## USE OF FEES AND DONATIONS FOR A FEDERAL EVENT

### **CREATED A POTENTIAL UNAUTHORIZED AUGMENTATION**

Because GMPO (1) controlled symposium funding and implementation and (2) directed the GMF and TGLO to use fees and donations to pay Federal obligations, we concluded that an improper augmentation of Federal appropriations may have occurred. In addition, the fees and donations were used by GMF and TGLO to pay certain symposium events and expenses, a potential noncash gift to GMPO. According to 16 Comptroller General 911 (1937), a government agency may not accept gifts of money or other property in the absence of specific statutory authority. Further, 25 Comptroller General 637, 639 (1946) defined a gift as "gratuitous conveyances [emphasis added] or transfers of ownership in property without consideration." Further, Comptroller decision B-139992, August 31, 1959, provides:

Acceptance of a gift by an agency lacking statutory authority to do so is an improper augmentation. If an agency does not have statutory authority to accept donations, it must turn the money into the Treasury as miscellaneous receipts.

Our review of events subsequent to the 1995 Symposium confirmed that GMPO, either directly or through the on-site contractor, exercised significant control over TGLO's and GMF's use of the fees and donations. Invoices for symposium costs were usually received by the contractor (unless contracted and paid directly by GMF or TGLO), who had contracted for the services billed as part of the GMPO work assignment. The contractor would pay for allowable costs from Federal appropriations, the remaining unallowable costs on invoices were forwarded to either TGLO or the GMF (through TGLO) for payment from available fees and donations. Personnel at both the TGLO and the GMF confirmed that the use of these funds was orchestrated from the GMPO.

### **CONCLUSION**

Because of the way the GMPO planned and implemented the 1995 Symposium and arranged for the use of the fees and donations to pay its legal obligations, we believe that the GMPO was in constructive receipt of these funds. Arranging for the collection of registration and exhibitor fees (miscellaneous receipts) and the solicitation of private donations (gifts) without proper statutory authority from Congress and then using those funds, either directly or indirectly, to defray the cost of a Federally sponsored event constitutes an unauthorized augmentation of the Agency's regular appropriation(s).

In order for GMPO to establish a truly intragovernmental, privately sponsored symposium, GMPO will have to give up some control of the event. To use fees and donations without creating a potential improper augmentation, GMPO needs to allow the host states and/or private organizations to plan, fund, and implement future symposiums. GMPO funds can be transferred to the host state or organizations through grants and/or cooperative agreements. GMPO can contribute to the planning and funding, but GMPO must divest itself from the collection and use of fees and donations.

## **RECOMMENDATIONS**

We recommend that the Assistant Administrator for Water:

2-1 Obtain a written legal opinion from OGC concerning the potential augmentation of Federal appropriations through the collection of fees and donations, whether through a contractor, cooperator, or public foundation, to pay Federal obligations for costs unallowable for Federal funding.

2-2 If fees and donations are to be used for future symposiums, require a legal review of the symposium planning and funding to preclude any future improper augmentations of EPA appropriations.

2-3 Consider allowing host states or some other appropriate organization to plan and implement future symposiums to include contracting for services and collecting fees and donations. GMPO can award a grant or cooperative agreement to the host organization in order to contribute financially to the symposium effort.

## **CHAPTER 3** **COOPERATIVE AGREEMENT MODIFICATION WAS PROCUREMENT NOT ASSISTANCE**

The GMPO modified a TGLO cooperative agreement to obtain services and pay costs it could not legally obtain under a contract; specifically, the accumulation of registration/exhibitor fees that would represent an improper augmentation of EPA appropriations and the payment of symposium costs that were unallowable for Federal funding. Because (1) the modification was narrow in scope and provided for no independent action by the recipient, (2) the services provided were totally directed by the GMPO through its contractor for the direct benefit of GMPO, and (3) the fees were to be used primarily to pay costs incurred by GMPO and its contractor, we concluded that TGLO acted as an intermediary ([footnote 10](#)) for the GMPO in accumulating these fees and paying specific symposium costs. Therefore, the cooperative agreement modification was for the procurement of services not assistance.

Under the cooperative agreement modification, the registration and exhibitor fees were classified as "program income." However, the fees were not "program income" as defined in EPA regulations and did not represent gross income directly generated by any TGLO supported activity or earned as a result of the TGLO agreement. The registration and exhibitor fees were merely received by TGLO from GMPO's contractor and held to pay costs identified by GMPO through the same contractor. In addition, the use of the TGLO cooperative agreement to pay for services that TGLO did not approve or contract for violated State law.

In December 1994, GMPO received GAD approval for the modification to the TGLO cooperative agreement. However, GMPO documentation indicated that GAD approved the modification based on the Symposium and cooperative agreement, as a whole, being for a public purpose. GAD apparently did not consider the modification as a stand-alone agreement. Also, GAD may have approved the modification without all of the relevant information including the fact that the costs to be paid were GMPO obligations. Since the modification changed the scope of the agreement and added "program income," we believe that the modification should have been considered alone in determining whether it complied with the FGCAA. We could not locate any EPA policy that specifically addressed cooperative agreement modifications; however, our contact with other EPA

grant specialists indicated that modifications have to be considered individually for compliance with laws and regulations.

## **BACKGROUND**

Early in the symposium planning process, GMPO's use of a grant or cooperative agreement to provide the logistical support for the 1995 Symposium was eliminated as an option. An early symposium steering committee meeting summary stated, "EPA Headquarters and Regional Offices indicate a grant mechanism would not [emphasis added] be appropriate for this symposium." Therefore, GMPO selected the contract as the appropriate funding mechanism and tasked its on-site contractor with providing the logistical and administrative support services needed to coordinate and implement plans for the 1995 Symposium.

One of the tasks outlined for the contractor under the work assignment was collecting, tracking, and disbursing registration/exhibitor fees and accounting for all the funds provided -- including private donations. The plan was for the contractor to use available funds to pay, among other costs, the housing and transportation of students, educators, and both domestic and international guests to attend and participate in symposium activities.

Because recent OIG reports had criticized EPA noncompliance with 31 U.S.C. 1345 restrictions on invitational travel for non-Federal personnel and EPA use of contractors and contract funds to pay for such invitational travel, GMPO's use of a contractor for this purpose became a concern to GMPO management. In a March 1995 memorandum, GAD also expressed concern that use of a contractor to collect the fees would represent an augmentation of EPA's appropriations. In early December 1994, GMPO contacted GAD for advice on using the TGLO's existing GMP state coordinators grant ([footnote 11](#)) for the collection and use of symposium registration, exhibitor fees in lieu of the on-site contractor. Specifically, GMPO asked about the propriety of TGLO using the fees to pay for: 1) rental fees for the opening ceremony on the U.S.S. Lexington; 2) invitational travel costs for student speakers and their chaperons; 3) invitational travel costs for international speakers; 4) coffee, soft drinks, continental breakfasts, and snacks during the symposium; 5) rental fees for meeting rooms; and 6) entertainment costs (i.e., singers, dancers, luncheon speaker fees).

GAD informed GMPO in December 1994 that TGLO could collect the registration and exhibitor fees and that the fees could be classified as program income under the grant. However, GAD cautioned that it would be inappropriate for the recipient to use the registration fees for entertainment. According to GAD, the other costs were allowable for payment from grant funds as long as GMPO could support their necessity and reasonableness.

On February 6, 1995, seven weeks before the 1995 Symposium, the TGLO cooperative agreement was modified, under a no-cost extension from April 1995 until September 1995. The overall cooperative agreement project title and description ([footnote 12](#)) did not change; however, the TGLO task to promote the 1995 GMP Symposium in Corpus Christi, which was added in August 1994 (second modification), was expanded under this third modification to include collecting and disbursing the symposium registration and exhibitor fees.

## **IMPROPER USE OF TGLO COOPERATIVE AGREEMENT**

Although the symposium and the TGLO cooperative agreement appeared to be for a legitimate grant purpose, i.e., public support and stimulation, the February 6 modification, in our opinion, represented the acquisition of services that GMPO could not legally procure under a contract and that were for the direct benefit of the GMPO. Under this modification, the TGLO merely performed services at the explicit direction of the GMPO or its contractor. As a result, TGLO acted as an agent for the GMPO in accumulating the fees it received from GMPO's contractor and paying the invoices it received from the same contractor. TGLO used the fees to pay costs that were legal obligations of GMPO's contractor and ultimately GMPO. In addition, the fees were improperly classified as "program income" under the agreement modification because they were not generated by the agreement but by the actions of GMPO's contractor in implementing the symposium.

The FGCAA distinguishes between the use of contracts and assistance. The Act states that an agency must use a procurement contract if the principal purpose is to acquire property or services for the direct benefit of the Federal government. Conversely, an agency should use an assistance agreement (grant or cooperative agreement) to transfer money, property, services, or anything of value to a recipient to accomplish a public purpose of support and stimulation.

However, the modification to the TGLO cooperative agreement was not for public support and stimulation. The cooperative agreement was modified for the sole purpose of transferring the tasks of collecting and disbursing fees to TGLO in order to pay costs (primarily invitational travel) not allowable under a contract. However, TGLO did not collect the registration and exhibitor fees, GMPO's contractor collected the fees as part of the symposium registration process and merely forwarded these fees to TGLO.

The General Accounting Office (GAO) in its Principles of Appropriation Law, Volume 1, Chapter 2, states that grant funds lose their identity once awarded and, therefore, are not normally subject to the restrictions on the use of Federal funds under 31 U.S.C. 1345 related to invitational travel. However, GAO further states:

...an agency may not use the grant mechanism for the sole purpose of circumventing 31 U.S.C. 1345, that is, to do indirectly that which it could not do directly

In GAO report GGD-81-88, related to Federal agency use of assistance versus procurement, GAO specifically stated "...the use of an intermediary to perform accounting and bill paying services for a Federal agency" is an improper use of assistance. GAO indicated that such services should be procured through a contract.

### **GMPO Initiated the TGLO Modification**

GMPO and TGLO records show that it was GMPO not TGLO who initiated the third modification. GMPO wrote TGLO on December 9, 1994, instructing the project manager to immediately send a letter to GMPO requesting that GMPO execute a no cost extension of the Cooperative Agreement CX821488 until September 1995. GMPO also provided the exact wording that TGLO should use in requesting the modification. TGLO followed these instructions exactly in its January 4, 1995, modification proposal submitted to GMPO. Therefore, the change in TGLO's scope of work was initiated by GMPO. GMPO's request for an amendment proposal from TGLO, just three months before the symposium, was the initial indication that GMPO was using the TGLO cooperative agreement to do what they could not do under the contract - use fees to pay costs unallowable for Federal funding.

### **Contractor's Tasks Did Not Materially Change**

The tasks performed by the contractor related to the registration process did not fundamentally change after the responsibility for accumulating and disbursing fees was transferred to TGLO. The actual registration process was still handled by the contractor and the contractor still contracted for all the logistical arrangements for the symposium including hotel accommodations, airline tickets, luncheons, receptions, and catering. The only discernable change in the contractor's responsibilities was that, after the modification, the registration and exhibitor checks being received, processed, and accounted for by the contractor were being bundled and mailed to the TGLO. TGLO had to rely completely on the GMPO contractor to identify those individuals receiving invitational travel and those vendors due payment from the fees. It was the contractor who was directly billed for the invitational travel cost (airline tickets, hotel costs, and per diem and/or mileage charges for individual recipients). The contractor, in consultation with GMPO, segregated the cost on each invoice as to who would be making the payment.

Although TGLO did perform various tasks under the cooperative agreement to promote the 1995 Symposium, TGLO was not directly involved in generating the symposium registration and exhibitor fees. Also, TGLO did not contract directly with nor receive services from the vendors and individual travelers to whom it was to make

payments under the modification. Therefore, TGLO's prime function under the cooperative agreement modification was apparently to serve as an intermediate broker of the fees generated by GMPO and its contractor.

### **Last Minute Modification to TGLO Agreement**

The validity of the purpose of TGLO modification is also questionable due to its timing. The task of collecting and disbursing symposium registration and visitor fees was added to the TGLO cooperative agreement only seven weeks (February 6, 1995) prior to the conference. This was a last minute adjustment to the sources of funding for the symposium to accomplish indirectly what GMPO could not legitimately do directly through its on-site contractor.

The actual symposium planning process began 19 months earlier in July 1993. At the very next meeting (September 1993), a contract, not a cooperative agreement, was identified as the appropriate mechanism for providing the symposium's logistical and administrative support including the collection and disbursement of exhibitor and registration fees. Moving the task of collecting and disbursing registration and exhibitor fees to the TGLO cooperative agreement represented an attempt to rectify the problems that OIG and others had brought to GMPO's attention in late 1994.

In a June 19, 1995 post-symposium memorandum, which documented a meeting with between GAD and GMPO, GMPO delineated the chain of events which lead to the symposium organizational and funding problems. GMPO stated that it originally entered into a contractual agreement with the on-site contractor to provide the logistical services for the 1995 Symposium. The statement of work required that the contractor collect registration and exhibitor fees for the symposium. GMPO subsequently concluded that registration and exhibitor fees for a conference could not be collected through a contractual agreement and used for travel assistance for presenters at the symposium. GMPO further stated that, once the contractual deficiency was discovered, the GMPO and TGLO "... modified the existing (cooperative) agreement in good faith to collect the 1995 Symposium fees and pay for the travel of presenters." GMPO also stated that it was TGLO who initiated the request for the amendment on January 4, 1995. However, as previously discussed, both GMPO and TGLO file documentation and/or interviews confirmed that GMPO actually initiated the modification of the TGLO cooperative agreement. Regardless, it was the on-site contractor who continued to collect the registration and exhibitor fees.

### **Fees Did Not Qualify As Program Income**

On December 9, 1994 and later on March 22, 1995, GAD advised GMPO that assigning TGLO the task of collecting and disbursing the fees by modifying the cooperative agreement was permissible. GAD further advised that the fees could be treated as program income and, thereby, used to pay invitational travel and other restricted costs. However, according to requirements of 40 CFR 31.25, the registration and exhibitor fees did not qualify as program income under the TGLO cooperative agreement. Under Subpart 31.25, program income is defined as "... gross income received by the grantee or subgrantee directly generated by a grant supported activity, or earned only as a result of the grant agreement." The registration and exhibitor fees were not "generated" or "earned" by TGLO through a grant supported activity, but merely forwarded to TGLO after collection by GMPO's contractor during the symposium registration process. Therefore, in actuality the registration and exhibitor fees were produced through the efforts of GMPO's contractor not TGLO. As a result, we concluded the fees represented miscellaneous receipts received by an agent for the Government (GMPO's on-site contractor), not program income to TGLO as indicated in the cooperative agreement.

### **GAD Advice on Propriety of Modification Based on Misleading Information and Broad Scope of Symposium and Original Agreement**

GAD advised GMPO in December 1994 that modifying the TGLO cooperative agreement to collect and disburse symposium fees would be proper. According to a March 1995 memorandum from the GAD Director to the Assistant Administrator for Administration and Resources Management, this decision was based on the fact that the cooperative agreement and the symposium, as a whole, were for a public purpose; support of the GMP and the 1995 Symposium. We agree that the purpose of the original cooperative agreement, titled "Year of the Gulf Texas Outreach Program," and the 1995 Symposium benefitted citizens, states, and local government, as well as EPA and other Federal participants in the GMP. However, the narrow purpose and scope of the February 1995 modification to the cooperative agreement, considered alone, did not, in our opinion, support a principal purpose of support and stimulation as required by the FGCAA. This modification not only added tasks and changed the scope of the original agreement but added expected program income of over \$80,000 (original estimate). Prior to this modification, only about \$50,000 in total EPA funds had been awarded to TGLO under the March 1993 cooperative agreement.

We could not find any EPA guidance that specifically related to modifications of cooperative agreements and whether each modification had to meet FGCAA and EPA requirements. Our contacts with EPA grant specialists indicated that, not only does the original agreement have to meet the principle purpose test, but each modification, individually, must meet the requirements of the FGCAA. In addition, GAO report GGD-81-88 implied that each cooperative agreement and subsequent modification(s) should be considered separately as to whether they comply with the requirements of FGCAA. The report states:

This decision [procurement or assistance] must be made for each transaction because procurement authority is available in all assistance programs and any given transaction might be either procurement or assistance.

The GAD Director's memorandum also indicated that the symposium was not to support EPA or FACA activities because EPA provided very little appropriated funding for the symposium (\$73,000 budgeted). However, the Director did not recognize that the GMPO and its FACA committee planned and controlled the symposium and that the estimated total Federal appropriated funding represented 57 percent (\$209,000) of the symposium budget and the remainder was fees and donations - potentially miscellaneous receipts to the Government. This included appropriated funds from seven Federal agencies, as well as EPA. Although GMPO is an EPA program office, the GMPO receives staffing and, in this case, funding support from various other Federal agencies. Also, the GMPO FACA committee consists of representatives from these various other Federal agencies. Therefore, you would have to consider all the Federal funding, not just EPA's contribution, in concluding whether or not the symposium directly supported EPA (as manager of the GMPO) and FACA activities.

In addition, the GAD Director alluded to over 40 financial supporters (Federal and non-Federal) for the symposium. We do not know where the Director got this information, but the number must include each Federal agency that participates in the GMPO individually and those who donated funds through the GMF. The only sources of funds we identified were Federal appropriations and the fees and donations. The donations were only 21 percent of the total funds budgeted for the symposium (11 percent of actual funding based on funding and cost information available as of July 31, 1995). No state funds were involved.

### **USE OF COOPERATIVE AGREEMENT VIOLATED STATE LAW**

In the rush to amend the TGLO cooperative agreement and avoid contract and appropriation law restrictions, GMPO, GAD, and TGLO did not adequately consider State of Texas procurement restrictions that would apply to the TGLO modification. In general, Texas procurement regulations do not allow payment for goods and services that were not preapproved and/or contracted for by the State. According to TGLO, they informed GMPO in January 1995 that they could not legally pay all the costs proposed in the amendment. As a result, over \$95,000 in costs owed to the Symposium hotels, a travel agency, and individual invitational travelers had not been paid at the time our audit fieldwork ended (July 31, 1995).

On June 2, 1995, TGLO, apparently acting upon instructions from GMPO, attempted to transfer \$25,000 in fees to the GMF to help pay for services that TGLO could not pay for under Texas law. However, the cooperative agreement modification provided for no subagreements and no subagreements had been approved by EPA. The GMF refused to accept the funds and sent the check back to TGLO.

In a June 14, 1995 letter, the TGLO informed the GMPO Director that: "After discussing [the] situation with our legal and purchasing divisions, we have determined that the Texas General Land Office cannot pay the travel costs incurred by the Gulf of Mexico Symposium." As explained by TGLO, the problem arose because TGLO was not responsible for procuring the travel arrangements for the symposium. State of Texas procurement regulations, required that three written bids be obtained from travel agencies. Also, TGLO would have had to approve which individuals received airline tickets and the issuing of the tickets from the travel agency. TGLO pointed out that it was not given authority under the agreement to arrange or approve the individual travel transactions.

On July 6, 1995, TGLO's Director of the Environmental Section, Legal Services Division, returned the invoices related to invitational travel (travel agency invoice of \$38,500 and claims from individual symposium participants, totaling \$8,100) to GMPO's contractor and stated that these invoices were "inadvertently" delivered to TGLO. The letter further stated that:

The Texas General Land Office never contracted with nor received any services from [travel agent]. We also received invoices from individual symposium participants, invited to attend the symposium by your office. Apparently these individuals were under the mistaken impression that the Land Office would pay the invoices. Again, the Land Office never contracted with nor received services from these individuals. Therefore, we are returning the invoices to the Gulf of Mexico Program for appropriate handling.

This decision on the part of TGLO's legal counsel further supports our position that the GAD and GMPO decision to modify the TGLO agreement for the narrow purpose of obtaining a "collection and bill paying service" and to avoid Federal restrictions on the fees was improper.

A June 20, 1995 memorandum, from GMPO's work assignment manager (WAM) to the GMPO Director, documented a June 19, 1995 meeting between GAD and the WAM. The meeting concerned resolution of the \$38,000 travel agency bill for invitational travel that TGLO said they could not legally pay. As a result of the meeting, three possible solutions were proposed: (1) TGLO should investigate entering into a ratified contract (ratification of an unauthorized procurement) with the travel agency, (2) TGLO could make individual payments to invited travelers that also cover the travel agency expenses for airline tickets, and (3) GMPO could investigate resolution from the OIG and OGC. As of July 31, 1995, GMPO had taken none of the recommended actions.

On September 25, 1995, a TGLO official informed us that they had informed GMPO in January 1995, before award of the cooperative agreement amendment, that TGLO could not pay certain costs as proposed under the amendment. However, GMPO personnel informed TGLO that the amendment was just a mechanism to resolve concerns over the use of their on-site contractor for collection and use of registration and exhibitor fees. GMPO indicated that TGLO would not be held responsible for paying the costs specified in the proposed amendment.

## **CONCLUSION**

A cooperative agreement could have been properly awarded by GMPO to provide financial support for the symposium as long as the recipient, not GMPO, controlled the organization, planning, and overall funding of the event. Such a broad-based agreement would have served a legitimate purpose of public support and stimulation, and program income, in the form of fees and donations, would have been generated by cooperator actions or operations as required in 40 CFR 31.25.

However, the TGLO agreement modification was accomplished for the sole purpose of processing miscellaneous receipts, received by the GMPO contractor, as "program income" under the cooperative agreement so that the money could be used to pay expenses which could not be legally paid under a contract. Because TGLO was only providing a service and was not given the authority to act independently in approving and contracting for the services to be paid for, we concluded, as TGLO's legal counsel apparently has, that this was not a proper purpose for an assistance agreement.

While GMPO maintained that the TGLO modification was intended to rectify a contract deficiency, the deficiency resulted from GMPO's inadequate consideration of Federal requirements and appropriation law during the initial symposium planning process 19 months earlier. Awarding a modification to allow TGLO to act as an intermediary for GMPO in collecting fees and paying predetermined costs was inconsistent with FGCAA and Texas procurement regulations. The General Accounting Office (GAO) ([footnote 13](#)) has maintained the position that such "intermediary" situations as arranged with TGLO represent procurement not assistance. Therefore, a contract would have been the appropriate mechanism.

## **RECOMMENDATIONS**

We recommend that the Assistant Administrator for Water:

3-1 Obtain formal OGC advice upon the propriety of the modification to TGLO's cooperative agreement for the collection and disbursement of fees considering only the actual purpose and narrow scope of the modification as presented in this chapter. This advice should include OGC's opinion as to whether individual agreement modifications must meet the requirements of the FGCAA and Agency guidance for use of assistance versus procurement without consideration of the overall purpose of the agreement as originally awarded.

3-2 Based upon OGC's advice and in consultation with GAD, issue clarifying guidance to program offices concerning the proper use of assistance versus procurement in modifications to assistance agreements and require that each modification to an assistance agreement, individually, meet the requirements of the FGCAA and Agency policies.

3-3 If a cooperative agreement or grant are determined to be the appropriate mechanism for support of future symposiums:

Ensure that cooperators are given control and authority over the symposium logistical functions they are to support under the Agreement to include contracting for goods and services, approval of vendors and invitational travelers, and the actual collection of fees or donations that may be used to pay for these goods and services.

Request that the recipient have its proposal subjected to a legal review by its governing authority to ensure compliance with all applicable State and local laws and regulations.

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

3-4 Require GAD to provide written clarification of EPA-wide policies on procurement versus assistance as it relates to modifications of assistance agreements. This will aid users in understanding that each substantial change in agreement scope through a modification should "stand-alone" in meeting the requirements for use of an assistance agreement versus procurement.

3-5 Require GAD personnel to ensure that future agreement modifications, that change an agreements scope and tasks, meet, individually, the same stringent requirements as the original agreement award.

GMPO actions in the 1995 GMP Symposium planning process conflicted with certain OMB and EPA guidelines concerning Federally sponsored conferences. Specifically, GMPO (1) did not document the rationale or cost effectiveness of the symposium site selected, (2) directed its contractor to subcontract with specific firms and violated privity of contract between the prime contract and subcontractor, and (3) paid unallowable/unreasonable costs from Federal receipts or gifts.

Interviews with GMPO personnel involved in the symposium planning process disclosed that they were unaware of any direction and/or restrictions regarding conferences and conference related activities. However, GMPO management had not solicited any advice from the Office of Water regarding conference planning or requested legal advice from OGC to clarify GMPO responsibilities in sponsoring a national conference.

### **INADEQUATE SITE SELECTION PROCESS**

GMPO did not document the rationale used in selecting the conference site for the 1995 Symposium. Further, GMPO did not justify the selection by performing a cost comparison of at least three alternative sites.

OMB Bulletin 93-11 ([footnote 14](#)) requires that agencies exercise strict fiscal responsibility when selecting conference sites. Agencies shall select conference sites and make other conference arrangements to ensure that conference costs are kept to a minimum. Agencies shall document the alternatives considered and rationale used in selecting conference sites. EPA Comptroller Policy Announcement 94-10 ([footnote 15](#)) expanded on the OMB Bulletin by requiring that an appropriate cost comparison be made of "... at least, three alternative conference sites" and that the selection rationale be documented. The cost comparison should consider: attendee's time; all administrative costs (e.g., shipping, conference room rental, equipment, etc.); and the cost of each attendee's travel.

During a September 1993 GMPO Symposium steering committee meeting, Corpus Christi, Texas, was potentially identified as the symposium's host city with the Sheraton and Marriott Hotels as potential locations. Neither the minutes for the September meeting nor meeting minutes for earlier meetings documented any discussions of other potential sites, or the benefits the Sheraton and Marriott Hotels in Corpus Christi would have over any other potential locations. On February 2, 1994, the GMPO symposium steering committee held a meeting at the Marriott Hotel in Corpus Christi with the Acting GMPO Director in attendance. The meeting summary documented that a final decision had been reached to hold the symposium at the Marriott and Sheraton Hotels in Corpus Christi, Texas.

There was no documentation which indicated the rationale for selecting Corpus Christi as the host city or any consideration of conference sites other than the Marriott and Sheraton Hotels. The only documentation provided to support site selection was an April 1, 1993 form letter from the GMPO Acting Director addressed to "Potential Applicants." We were later provided an address list of convention/visitors bureaus located on the coast of the State of Texas. We were told by GMPO personnel that each of these bureaus received an invitation to provide a proposal. We were also told that there was intense competition between Corpus Christi and Galveston, Texas, to host the symposium. However, we did not find any file documentation which would support either of these statements. All file references we found concerning site selection discussed only Corpus Christi and the Marriott and Sheraton Hotels.

### **DIRECTED SUBCONTRACTING AND PRIVACY OF CONTRACT**

#### **Directed Subcontracting**

During the September 1993 symposium steering committee meeting, the minutes documented that Corpus Christi would be recommended to the PRB as the host city for the 1995 Symposium. On February 2, 1994, during a meeting held at the Marriott - Bayfront Hotel in Corpus Christi, the symposium steering committee announced the decision to hold the symposium at the Marriott and Sheraton Hotels (Corpus Christi Bayfront).

GMPO originally tasked a Region 6 contractor (LWI [\[footnote 16\]](#)) with logistical arrangements for the 1995 Symposium. The proposed work assignment for the symposium support contractor was discussed at the next symposium steering committee meeting on March 7, 1994. One of the stated tasks (task 2b) was to:

Secure the symposium site, which can accommodate 2000-2500 participants, capable of providing full conference facilities, in Corpus Christi (emphasis added). ...

On March 15, 1994, LWI responded to the task of securing a symposium site in its workplan. Based on this workplan, it was obvious that the contractor was expected to subcontract for a variety of goods and services needed to put on the conference. However, its pricing proposal did not reflect any estimates for the cost of subcontracting. Only LWI's direct labor charges, travel, and a small amount of other direct cost were estimated under this work assignment.

LWI was not given the latitude to select its own subcontract support. Vendors were selected under the direction or in consultation with the symposium steering committee and/or the GMPO symposium coordinator (an EPA employee). Under the work assignment, the contractor was informed as to which hotels would be used for the symposium. In the March 15, 1994 workplan, the contractor responded to task 2b under the work assignment as follows:

We understand the Marriott and Sheraton Hotels have already been selected by the steering committee. One part of this task is to provide the formal contract mechanism for securing these sites. Then, based on past Symposia and on input from the Symposium Steering Committee, we will develop an inventory of needs for facilities and services ... .

The subcontracting direction that was provided by the symposium steering committee conflicts with Agency guidance. EPA's Contract Administration Manual states:

The government cannot direct the contractor to subcontract any part of the work. The government may also not, under any circumstances, direct the prime contractor to subcontract with a specific firm. Even a suggestion of a particular firm or firms would be improper.

Nevertheless, as instructed, the contractor negotiated an agreement with the Marriott Hotel, Corpus Christi, Texas. Under this agreement, overflow services would be provided through the Sheraton Hotel located across the street.

Based on GMPO's file documentation, the symposium steering committee preselected the 1995 Symposium site as early as September 1993 and made formal commitment to the Marriott and Sheraton Hotels sometime prior to March 1994 before the work assignment task was finalized with the logistics contractor. In our opinion, the actions of the symposium planners constituted directed subcontracting by EPA.

### **Privity of Contract**

EPA's Contract Administration Manual cautions that the government's only direct contractual relationship is with the prime contractor. EPA has no right to direct subcontracting or to deal directly with a subcontractor on any issue. By ignoring rules against communicating directly with subcontractors, government personnel could create "privity" between EPA and the subcontractors. This means that a contractual relationship might be developed between the GMPO and the subcontractor, of which the prime contractor may or may not be a part.

As discussed above, EPA personnel were involved in recommending subcontracting selections to its logistics contractors. The March 7, 1994 symposium steering committee meeting summary noted:

LWI [Lee Wilson] has asked the Marriott and Sheraton hotels in Corpus Christi, where the symposium is to be held, to send the contract to [EPA employee], Work Assignment Manager (EPA Region 6), who will forward to LWI.

Agency guidance specifically cautions project officers and work assignment managers against becoming involved in the subcontracting process. This involvement apparently clouded the prime contractor's understanding of its responsibility for providing a formal contract for the symposium site. In a letter to the Marriott Hotel on April 12, 1994 the contractor stated:

Our understanding is that ... Lee Wilson and Associates, Inc., as contractor to the Environmental Protection Agency Region 6, has no financial obligation to the Bayfront Connection [subcontractors - Marriott and Sheraton Hotels]. Our signature on this contract is based on this understanding. If we are incorrect, please notify us at once in order that alternative contracting arrangements can be made.

Therefore, because of EPA's direct involvement in the hotel procurement, the contractor did not recognize that the payment for the goods and services provided under the agreement with the Marriott and Sheraton Hotels was its contractual responsibility. GMPO's on-site NASA contractor later assumed Lee Wilson's contract with the hotels but did not enter into a new agreement with the Marriott. Another potential problem was that the GMPO symposium coordinator was listed by the Marriott Hotel as a point of contact. This individual, as well as other EPA personnel visited the Marriott Hotel on several occasions prior to the symposium and may have interacted directly with the Hotel.

In conclusion, based on interviews and file documentation, we concluded that: 1) the subcontract with the Marriott and Sheraton Hotels was directed by EPA/GMPO personnel; 2) the work assignment manager apparently reviewed and passed on the subcontract prior to signature by the prime contractor; and 3) that the GMPO Symposium Coordinator (an EPA employee), as point of contact for the subcontractor, dealt directly with the subcontractor. As a result, we believe that EPA created an improper "privity of contract" between EPA and the Marriott and Sheraton Hotels.

### **UNNECESSARY AND UNREASONABLE SYMPOSIUM COSTS**

In reviewing 1995 Symposium costs, we identified about \$99,000 in costs which would be considered unnecessary, unreasonable, and/or unallowable for a Federally sponsored conference. While we recognize that the overall GMPO goal was to put on a first class event, we found no documented justifications for the elaborate nature of some of the proposed events or the reasonableness of the cost. Symposium registration/exhibitor fees and private donations were collected to pay these questionable costs. GMPO, late in the symposium planning process, transferred the collection and use of these funds from its contractor to a cooperator in order to avoid an augmentation of EPA appropriations and Federal restrictions on the payment of certain symposium costs. However, as shown in Chapters 2 and 3, we concluded that the modification of a cooperative agreement to transfer collection and use of the fees and donations was procurement not assistance and the fees and donations represented miscellaneous receipts to GMPO. Therefore, the restrictions on the use of Federal funds for certain conference costs were applicable.

In addition, our review disclosed in June 1995 that the GMF had collected only \$32,000 of the \$80,000 budgeted for private donations and that the TGLO could not use registration and exhibitor fees to cover certain symposium costs because of a conflict with State law (see Chapter 3). As a result, there may be insufficient fees and donations to pay all of the questionable costs as originally planned. Because GMPO's contractor and ultimately the GMPO are liable for these costs, GMPO may have to use appropriated funds to pay these unliquidated obligations.

Comptroller Policy Announcements 92-18 ([footnote 17](#)) and 94-10 caution that entertainment, recreation, meals, and other unallowable costs incurred at EPA conferences should not be included as part of the

conference room fee or included in registration fees. However, plans for the 1995 GMP Symposium indicated that registration and exhibitor fees, as well as the private donations would be used to pay for these types of unallowable costs. The apparent rationalization was that, since this was a "GMP" symposium and the GMP (through the advisory committee structure) was made up of a coalition of Federal, state, and local agencies, academia, and private industry groups, such expenses could be legitimately paid as long as appropriated funds were not used. However, as demonstrated in Chapter 2 and Appendix II, the 1995 Symposium was principally a Federal controlled and funded event. Therefore, the costs shown below were not eligible for Federal funding under existing Agency guidelines.

Receptions: Three formal receptions were planned. Actual cost \$17,000 (does not include entertainment provided).

March 29th -- A two hour opening ceremony was planned aboard the USS Lexington and a tour of the Lexington. Later on March 29, a two hour welcome reception was planned at the Texas State Aquarium with a Spanish theme and musical entertainment (free admission to attendees).

March 30th -- A two hour "Happy Hour Fiesta" was held at the Corpus Christi Art Center located on the bay. Entertainment was provided by a mariachi band and a Mexican ballet. Later on March 30, a two hour reception was held in the poster/exhibit space at the hotel with food and additional entertainment.

Luncheons/Continental Breakfast/Breaks: Luncheons were held on three days of the conference. Guest speakers were provided. In addition, a continental breakfast was made available for three of the four conference days. Coffee and soft drinks were provided twice a day at scheduled breaks. Costs for these activities was \$22,000.

Symposium Mementos: Each attendee was provided "souvenir items" including a tote bag with the symposium logo, poster, and lapel pin at a total cost of \$13,000.

Travel Cost: Airfare (\$38,000), lodging (\$15,000), meals and incidental costs (\$8,000) for students, chaperons, educators, and international speakers at a total cost of \$61,000.

While some of these expenditures could possibly be justified, others would be considered unnecessary or unreasonable, while still others such as the attendee travel, entertainment, souvenir items, etc. could not be legitimately funded at a Federally sponsored event. Because Agency managers have a responsibility for controlling conference costs, paying for such perquisites either directly through symposium fees and/or donations (miscellaneous receipts), or indirectly by having a second party pay for the goods or services (a gift) does not justify the expenditure.

## **RECOMMENDATIONS**

We recommend that the Assistant Administrator for Water:

4-1 Require GMPO to obtain all Agency and OMB guidance concerning Federally sponsored symposiums/meetings. Also, require GMPO to perform and document the required cost comparisons and justifications when selecting conference sites.

4-2 Remind GMPO personnel of the restrictions on EPA involvement in a prime contractor's subcontract awards and the resulting liability that could be placed on EPA for noncompliance.

4-3 Establish oversight processes to ensure that future symposium perquisites and related costs are reasonable, allowable, and justified and that symposium planning and implementation comply with all applicable laws, regulations, and related guidance.

**CHAPTER 5**  
**ASSOCIATION WITH GMF CREATED A POTENTIAL**  
**COI AND EPA LIABILITY**

The relationship between GMF principal officers and GMPO staff and committees created the appearance of a conflict of interest (COI). Also, GMF's solicitation of donations for GMPO sponsored symposiums may have created a liability for EPA as to the manner in which the donations were solicited and used by the GMF. Some current and former members of GMPO's advisory committees were officers of GMF and the GMPO director was a GMF ex-officio director. Since the GMPO and its advisory committees made decisions concerning the organization and funding of symposiums, including the use of GMF solicited donations, a potential conflict existed between GMPO and GMF. Also, GMPO had no written agreement with GMF related to donations solicited for GMP symposiums. GMPO was not aware of how the donations were solicited. However, GMPO and its contractor apparently instructed GMF, through TGLO, as to what symposium costs would be paid from donations. In our opinion, the relationship between GMF and GMPO, and GMPO's indirect use of private donations to pay symposium costs incurred by its on-site contractor represented an inherent approval of GMF operations and actions and, without a written agreement, created a potential liability for EPA as to any misrepresentations in GMF's solicitations or GMF's use of the donations.

**Relationships Between GMPO and GMF**

The GMF is a nonprofit, tax exempt organization, located in Corpus Christi, Texas. The Foundation was established to promote environmental quality, resource management, public health, and economic, education, and cultural development in the Gulf region. The founder and past GMF president (current vice president) was a former chairman of the GMPO's CAC, a PRB subcommittee, and continues to serve as a CAC advisor. The current GMF executive director and other individuals, identified from file documentation as associated with the GMF, also served as members or advisors to the PRB and CAC. In addition, the acting GMPO Director was listed on the GMF's Board of Director's (April 1995) as an ex-officio ([footnote 18](#)) member. The acting GMPO director also served on the PRB as its Executive Secretary. Therefore, the close association GMPO had with the GMF was of particular concern because GMPO used the PRB and related subcommittees (ESSC) for decision-making related to the planning and funding of GMP symposiums. The PRB and its subcommittees did not perform in an "advisory" role for symposiums, but actually made planning, implementation, and funding decisions including use of GMF donations.

**GMPO Decisions Related to GMF Activities**

The PRB, PRB subcommittees (primarily the ESSC), and GMPO made the principle decisions concerning the planning, organization, and funding of the 1995 Symposium. This included the use of \$70,000 to \$80,000 in estimated donations pledged by GMF in support of the 1995 Symposium. The original ESSC funding plan included using the private donations solicited by GMF in conjunction with the registration and exhibitor fees to pay those symposium costs which were not eligible for Federal funding under existing Federal guidelines. However, GMPO did not have a written agreement with the GMF to establish the level and extent of support to be provided for the symposium, or to limit EPA's liability for GMF's actions in regard to any solicitation and/or use of donations raised on behalf of the GMP symposium.

In response to our concerns regarding the receipt and use of private donations by GMPO's contractor for symposium costs, GMPO management assured that this had been changed and that while GMF would be soliciting private donations on behalf of the symposium, GMF would make the arrangements for and directly fund specific symposium activities. However, GMF later informed us that while it did collect and hold the private donations and arrange for some symposium services, the majority of the funds it collected were used to pay obligations identified by TGLO through instructions and invoices TGLO had received from GMPO or its contractor. Therefore, GMPO was orchestrating the use of virtually all available symposium funds, including those made available through the GMF, to pay GMPO obligations arranged through its contractor. In our

opinion, GMF was merely a convenient funding mechanism to assist GMPO in funding the 1995 Symposium. The GMF was used by GMPO as a tool to accomplish what it did not have authority to do alone; solicit donations to pay unallowable costs.

During our visit to the GMF, in June 1995, GMF officials would not allow us access to their records to determine the total amount of donations collected, the use of all donations, and how donations were solicited. However, the GMF officials did provide a summary of donations received and related symposium costs it paid with the donations, either directly or through instructions and invoices received from GMPO through the TGLO.

## **RECOMMENDATIONS**

We recommend that the Assistant Administrator for Water:

5-1 Require that future GMPO associations with GMF, especially involving the use of donations, are formally established through written agreements to preclude or limit any EPA liability for GMF actions. OARM should consult with OARM concerning the propriety and requirements for any such agreement.

5-2 Require that for future associations, GMPO maintain an arms-length relationship between GMPO staff/committees and GMF to preclude any appearance of a conflict of interest.

Appendix I

## **GLOSSARY OF ACRONYMS AND ABBREVIATIONS**

CAC Citizens Advisory Committee

CFR Code of Federal Regulations

COI Conflict Of Interest

EPA Environmental Protection Agency

ESSC Executive Symposium Steering Committee

FACA Federal Advisory Committee Act

FGCAA Federal Grant and Cooperative Agreement Act

GAD Grants Administration Division

GAO General Accounting Office

GMF Gulf of Mexico Foundation

GMP Gulf of Mexico Program

GMPO Gulf of Mexico Program Office

LWI Lee Wilson Associates, Incorporated

MC Management Committee

NASA National Aeronautics and Space Administration

OGC Office of General Counsel

OIG Office of Inspector General

OMB Office of Management and Budget

PRB Policy Resolution Board

TGLO Texas General Land Office

U.S.C. United States Code

## **GMP AND GMPO ORGANIZATION**

### **Background**

In 1988, EPA Regions 4 and 6 agreed to establish a program to develop and implement a comprehensive strategy for managing and protecting the resources of the Gulf of Mexico and associated coastal environments. The joint program - the Gulf of Mexico Program (GMP) - was a regionally focused institutional structure established to facilitate full cooperation and coordination of various Federal, state, and local agencies, academia, and private industry groups which share in and have significant interests in coastal and marine resources. The overall objective of the GMP was to achieve a balance between the needs and demands of human related activities and the preservation and enhancement Gulf resources through coalition building and consultive decision-making among all the many organizations that carry out programs effecting the Gulf of Mexico. The Regions' intent was not to establish another layer of bureaucracy, but rather a forum for addressing Gulf-wide problems and solutions.

### **Organization**

To accomplish their goal, Regions 4 and 6 established the Gulf of Mexico Program Office (GMPO) located at John C. Stennis Space Center near Bay St. Louis, Mississippi. While not statutorily based, the GMPO through its interagency agreements (memoranda of understanding)([footnote 19](#)) provided the organizational mechanism needed to develop and implement a management strategy to protect, restore and maintain the health and productivity of the Gulf. GMPO's first hurdle was to establish and implement the institutional structure (advisory committees) needed for the GMP.

The GMP consists of the GMPO and several interacting committees including four oversight committees, eight issue area committees, and two operations support committees.

**Gulf of Mexico Program Office (GMPO):** - The GMPO serves to coordinate and support its advisory committees in addition to overall planning and implementation of GMP activities. The GMPO staff consists of administrative and technical personnel from EPA and various other Federal and contractual organizations. GMPO staffing charts showed that 14 out of 34 on-site personnel, or 41 percent of the GMPO workforce, were EPA employees. EPA contractor/cooperator personnel totalled 14, or 41 percent of the workforce. Other Federal agencies staffed six positions, or 18 percent of the workforce. The Gulf States have not yet provided personnel or funding in direct support of GMPO operations.

The GMPO Director, Deputy Director, and the Chief Scientist have always been EPA employees. These individuals supervise the everyday operations of the office including the activities of Federal personnel representing the other Federal partners. Prior to April 1994, GMPO reported directly to the Assistant Administrator for Water. Under a revised Memorandum of Understanding between the Office of Water and Regions 4 and 6, the GMPO Director now reports to the Deputy Regional Administrator for the Regional Office that is serving as the MC Federal co-chair. The MC Federal co-chair is rotated between Region 4 and Region 6 on a two year cycle.

Policy Review Board (PRB): - The PRB provides overall guidance for the GMP. The PRB consists of senior level representatives of Federal and state agencies with regulatory or management mandates in the Gulf of Mexico (12 Federal and 5 state members) and the two top officers of the Citizens Advisory Committee. The chairmanship of the PRB is rotated between the Region 4 and 6 Administrators. The Executive Secretary of the PRB is the GMPO Director.

According to GMPO organizational information, the PRB provides Agency and state level implementation oversight; directs program activities, establishes strategic program goals, objectives, and priorities; conducts Agency and state level coordination and exchange of intergovernmental ideas and recommendations.

Management Committee (MC): - The MC serves to facilitate implementation of program objectives approved by the PRB through its ability to commit resources, make management decisions, and meet frequently enough to accomplish tasks. The MC consists of 12 members: one from each of the five major Federal agencies participating in the GMP ([footnote 20](#)); a state appointed representative from each of the five Gulf states ([footnote 21](#)); and two members of the CAC. The MC is co-chaired by the Deputy Regional Administrator of Region 4 or Region 6 (alternate in co-chair position) and one state representative.

According to GMPO organizational information, the MC guides program operations and manages program objectives. This includes: establishing program office budget activities and priorities; developing integrated budget proposals for consideration of the PRB; establishing the scope of action agendas; supporting the CAC; appoints members and directs the activities of the TAC and individual issue committees.

Citizen's Advisory Committee (CAC): - The CAC is composed of 25 members. Five members are appointed by the governor of each of the Gulf coastal states, representing the areas of: environment; agriculture; business/industry; development/tourism; and fisheries. Officers of the CAC are elected by its members.

According to GMPO organizational information, the CAC provides advice and guidance to the PRB on the public's perspective concerning the programs goals, objectives, priorities, budget and project activities. The CAC also provides advice and guidance to the MC on engaging public participation in the development of strategies and solutions.

Technical Advisory Committee (TAC): - The TAC consists of environmental scientists who represent a broad range of expertise from across the Gulf coast region. Voting membership of the TAC is limited to 50. Membership is approved by the MC. The Chief Scientist of the GMPO is the Federal co-chair of the TAC. The non-Federal co-chair is elected by the TAC membership.

According to GMPO organizational information, the TAC provides advice and guidance to the MC on the scientific and technical approaches presented in the action agendas and other as hoc technical review matters as determined necessary by the MC, issue committees, or the GMPO Director.

Issue Committees: - These committees provide specific guidance to the TAC on technical issues in the areas of: habitat degradation; public health; freshwater inflow; marine debris; coastal and shoreline erosion, nutrient enrichment; toxics and pesticides; and living aquatic resources. These committees provide advise and guidance on research, data management, modeling, sampling, and monitoring efforts relative to their respective issue

area. Membership varies, but total membership is limited to a maximum of 30. Members are appointed by the committee co-chairs (one Federal and one state technical representative). The co-chair appointments are made by the MC.

Operations Support Committees: - provide guidance and support to the issue committees and the TAC on mechanisms for coordination and communication within the GMP and among other programs. Like Issue Committees, Operations Support Committee membership is limited to 30 and co-chaired by a Federal and a state representative appointed by the MC.

These advisory ([footnote 22](#)) committees managed and supported by the GMPO make up the organizational component of the GMP. The GMP is described in GMP literature as a grass roots program that serves as a catalyst to promote sharing of information, pooling of resources, and coordination of efforts to restore and reclaim wetlands and wildlife habitat, clean up existing pollution, and prevent future contamination and destruction of Gulf resources.

GMPO's advisory committee and its subcommittees are subject to the requirements of the Federal Advisory Committee Act (FACA). Under FACA, advisory committees are utilized solely for advisory functions. Therefore, the actual determinations regarding program actions or policy, while possibly based on matters which an advisory committee reported or made recommendations, shall be made solely by an officer of the Federal government. In this case the PRB serves the GMPO.

### **Planning Process for the 1995 GMP Symposium**

Planning for the 1995 symposium was conducted through a system of committees. From the very start of the planning process, the PRB was established as the final approval authority over symposium plans. The PRB members, primarily Federal, would approve all symposium recommendations. The Executive Symposium Steering Committee (ESSC) was the coordinating/functional committee. Of the five member ESSC, three members were EPA employees who were closely associated with the GMPO. These three EPA employees included the Symposium Coordinator from GMPO and the Region 4 and 6 GMP Coordinators. The Region 4 Coordinator served as chairman of the ESSC. The other two members, who also serve on the CAC, were State of Texas employees from the TGLO and the Texas Water Commission. A Texas Symposium Steering Committee, chaired by the TGLO representative on the ESSC, assisted the ESSC in planning the symposium.

Based on ESSC meeting records, the Texas Symposium Steering Committee was instructed to take direction from the ESSC and to present their symposium recommendations directly to the ESSC for its endorsement. The ESSC reported Symposium recommendations directly to the GMPO PRB which, like the ESSC, was also Federally controlled. As previously discussed, the PRB serves in an advisory capacity to the GMPO under the authority of the FACA.

From the prior symposiums, the ESSC planners recognized that outside support, in the form of registration and exhibitor fees would be required to implement the symposium plans. The fees and donations would be used to pay for symposium activities which could not be supported using appropriated funds. As indicated in the original work assignment for the GMPO contractor and confirmed through interviews, the original plan was to bring all the appropriated funds, fees, and donations together to be distributed for symposium expenses through the GMPO contractor; however, the collection and disbursement of the fees was later transferred to TGLO under a modification to a cooperative agreement.

The GMF was designated as the organization to solicit and collect private donations for the symposium. GMPO did not execute a formal agreement with the GMF for the collection of these private donations. However, our review of symposium documentation clearly indicates that the ESSC and the PRB planned on between \$70,000 and \$80,000 in private donations to fund symposium activities. A steering committee meeting summary documented discussions concerning fundraising and coordination of luncheons, receptions, and other events to

be funded by the GMF through GMPO's on-site contractor. The summary asserted that: "All funds raised by the Foundation will be earmarked for these events and established under a separate account." In another meeting summary, an ESSC member was attributed with stating that the Executive Director of the GMF needed a complete list of the symposium events and activities needing sponsorship. The ESSC member and the foundation director were to work jointly on the reception planning and billing activities as well as several other listed activities. In subsequent meeting summaries, these special events were repeatedly discussed in more detail with the Executive Director of the GMF attending.

### REPORT DISTRIBUTION

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Attention: Director, Resources Management Division

#### **Footnotes**

1 Memorandum of Understanding dated April 17, 1994 between the Office of Water and Regions 4 and 6.

2 The Management Committee is a subcommittee of GMPO's PRB advisory committee. The PRB was chartered under the Federal Advisory Committee Act (FACA) and is the principle advisory committee to the GMPO (see Appendix II for details).

3 Gulf of Mexico Program: Five Year Strategy (1988-1992), April 18, 1989.

4 The original contract for support of the 1995 GMP Symposium was awarded to Lee Wilson and Associates, Inc., under a Region 6 work assignment. On expiration of the Lee Wilson contract on June 30, 1994, GMPO arranged for a work assignment with Johnson Control World Services, Inc. Johnson Controls was under contract to the National Aeronautics and Space Administration (NASA) and routinely provided on-site technical and administrative support to GMPO through the EPA/NASA Host Tenant Agreement. For purposes of this report, the NASA contractor will be referred to as the "GMPO contractor," "on-site contractor," or "contractor."

5 A repayment represents a "reimbursement" to an appropriation (authorized by law) for Federal goods or services rendered, or a "refund" to an appropriation resulting from a payment error or adjustment for previous amounts disbursed. Refunds may be credited directly to appropriations.

6 See Appendix A for a description of the organization of the GMP, including the GMPO and its advisory committee structure.

7 See Appendix II for list of other Federal agencies involved.

8 The 1995 Symposium Track Leaders (those individuals selecting symposium participants and organizing track activities and now coordinating with the TGLO through the contractor) were either EPA employees, employees of other federal organizations working under Interagency Agreements at GMPO, or other GMPO on-site cooperator employees.

9 Although the work assignment mentions state funds for the symposium, we did not find where any state funds were provided.

10 Intermediary in this situation represented GMPO's placement of TGLO between its on-site prime contractor and the prime's subcontractors in order to legally use the fees for costs not allowable for Federal funding and to preclude augmentation.

11 The original award entailed producing promotional materials for teachers and students to recruit their support and participation in the 1995 Gulf of Mexico Symposium. Total budget \$22,000 (EPA's share \$20,000).

12 TGLO project title: EPA YEAR OF THE GULF TEXAS OUTREACH PROGRAM -Expand public awareness and knowledge of the importance of the Gulf of Mexico. Promote a sense of stewardship over Gulf resources. Foster public/private partnership for wise use of Gulf Resources.

13 GAO first articulated this position in GAO report GGD-81-88, dated September 4, 1981. In response, EPA concurred with the Comptroller General's interpretation.

14 OMB Bulletin 93-11, April 19, 1993 -- Fiscal Responsibility and Reducing Perquisites.

15 EPA, Office of Comptroller Policy Announcement 94-10, September 14, 1994 -- Conference Planning.

16 Lee Wilson Associates, Inc., Contract Number 68-D3-0142. When LWI's work assignment expired on June 30, 1994, GMPO transferred the Symposium logistical tasks to its on-site NASA contractor, Johnson Controls.

17 EPA, Office of Comptroller Transmittal 92-18, March 27, 1992 -- Charging of an EPA Conference/Meeting Registration Fee.

18 An ex-officio director/member serves as an advisor and may participate in GMF meetings/discussions. However, an ex-officio director/member does not have voting rights.

19 GMPO has negotiated interagency agreements with: EPA, Regions 4 and 6; EPA, Office of Water; National Marine Fisheries Service; Fish and Wildlife Service; Food and Drug Administration; Soil Conservation Service; Corps of Engineers; and National Aeronautics and Space Administration. There are no separate agreements with the Gulf of Mexico states.

20 Federal participants: Environmental Protection Agency (EPA); U.S. Fish and Wildlife Service (FWS); U.S. Corps of Engineers (COE); U.S. Department of Agriculture, Soil Conservation Service (SCS); National Marine Fisheries Service (NMFS).

21 The five Gulf states: Florida; Alabama; Mississippi; Louisiana; and Texas.

22 Advisory Committees means any committee, board, commission, council, conference, panel, task force, or other similar group including any subcommittees or other subgroup thereof, which was established or utilized by one or more agencies in the interest of obtaining advise or recommendations