



OFFICE OF INSPECTOR GENERAL

*Catalyst for Improving the Environment*

## **Audit Report**

# **EPA Office of Air and Radiation and Office of Water Can Further Limit Use of Level-of-Effort Contracts**

**Report No. 2006-P-00015**

**March 14, 2006**

**Report Contributors:**

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**Abbreviations**

EPA	Environmental Protection Agency
FAR	Federal Acquisition Regulation
LOE	Level-of-Effort
OAM	Office of Acquisition Management
OAR	Office of Air and Radiation
OIG	Office of Inspector General
OMB	Office of Management and Budget
OW	Office of Water



# At a Glance

*Catalyst for Improving the Environment*

## Why We Did This Review

We sought to determine whether the acquisition planning process for the Environmental Protection Agency's (EPA's) Office of Air and Radiation (OAR) and Office of Water (OW) used knowledge gained from prior acquisitions to limit the use of cost reimbursable Level-of-Effort (LOE) contracts. EPA could reduce its risk and potentially save money by using other contract types.

## Background

LOE contracts are cost-plus-fixed-fee contracts that span multiple years. Generally, they are not performance based – where the contractor is compensated for results rather than effort or process. LOE contracts require the contractor to provide only required hours over a specified time, with no final product or deliverable required.

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

To view the full report, click on the following link:

[www.epa.gov/oig/reports/2006/20060314-2006-P-00015.pdf](http://www.epa.gov/oig/reports/2006/20060314-2006-P-00015.pdf)

## **EPA Office of Air and Radiation and Office of Water Can Further Limit Use of Level-of-Effort Contracts**

### **What We Found**

OAR and OW need to improve efforts to limit the use of LOE contracts. By maximizing available opportunities to use other than LOE contracts, OAR and OW can reduce EPA's financial risk, increase the possibility for greater competition and cost savings, and improve the Agency's ability to increase the use of performance-based contracts. Federal regulations indicate such cost-type contracts are the least preferred method for acquiring services.

Based on the active list of OAR and OW contracts as of June 15, 2004, we determined that 83 of those 169 contracts were LOE contracts. Significantly, \$288 million of the \$383 in cumulative obligations for those 169 contracts, or 75 percent, were for LOE contracts:

<u>Office</u>	<u>Cumulative Obligations (millions)</u>	
	<u>All Contracts</u>	<u>LOE Contracts</u>
OAR	\$ 235	\$ 174
OW	148	114
<b>Totals</b>	<b>\$ 383</b>	<b>\$ 288</b>

In a judgmental sample of 14 cost-plus-fixed-fee contracts awarded for OAR and OW, totaling approximately \$105 million, we found that 61 of the 217 work assignments, or 28 percent, could have been contracted out as other than LOE procurements. These involve such projects as planning meetings and conferences and maintaining computer systems.

### **What We Recommend**

We recommend that OAR and OW require their program offices to reduce reliance on cost reimbursable LOE contracts by improving acquisition planning and increasing efforts to identify opportunities for performance-based acquisitions. We also recommend that the Office of Administration and Resources Management, which is responsible for contracts, work with OAR and OW to better define contract requirements to make greater use of performance-based contracts, and better enable contract officers to share best practices. The Agency generally agreed with the findings and recommendations in the draft report and has identified steps taken and planned to further reduce EPA's reliance on LOE contracts and increase performance-based service acquisitions.



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

OFFICE OF  
INSPECTOR GENERAL

March 14, 2006

**MEMORANDUM**

SUBJECT: EPA Office of Air and Radiation and Office of Water  
Can Further Limit Use of Level-of-Effort Contracts  
Report No. 2006-P-00015

FROM: Carl A. Jannetti, Director for Contra  
Office of Inspector General

A handwritten signature in black ink that reads "Carl A. Jannetti".

TO: Luis A. Luna, Assistant Administrator  
Office of Administration and Resources Management

Bill Wehrum, Acting Assistant Administrator  
Office of Air and Radiation

Benjamin H. Grumbles, Assistant Administrator  
Office of Water

This is our report on the subject audit conducted by the Office of Inspector General (OIG) of the U.S. Environmental Protection Agency (EPA). This report contains findings that describe the problems the OIG has identified and corrective actions the OIG recommends. This report represents the opinion of the OIG and does not necessarily represent the final EPA position. Final determination on matters in this report will be made by EPA managers in accordance with established audit resolution procedures.

**Action Required**

Your response to the draft report adequately addresses the findings and recommendations in this report. Therefore, we will close this report upon issuance and no further response to this report is necessary. We have no objection to the further release of this report to the public. This report will be available at <http://www.epa.gov/oig>.

If you or your staff have any questions regarding this report, please contact me at (215) 814-5800 or Stephen Burbank at (617) 918-1489.

# Table of Contents

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## At a Glance

### Chapters

<b>1</b>	<b>Introduction .....</b>	<b>1</b>
	Purpose .....	1
	Background .....	1
	Scope and Methodology .....	2
	Prior Reports .....	3
	Internal Control Structure .....	3
	Compliance with Laws and Regulations.....	3
<b>2</b>	<b>OAR and OW Need to Further Limit Future Use of LOE Contracts .....</b>	<b>4</b>
	Opportunities Exist to Use Other than LOE Contracts .....	4
	OAR and OW Continue to Prefer LOE Contracts.....	6
	Potential Benefits Exist for Moving Away from LOE Contracts .....	7
	Recommendations .....	8
	Agency Comments and OIG Evaluation.....	8

### Appendices

<b>A</b>	<b>Excerpts from Federal Acquisition Regulation .....</b>	<b>10</b>
<b>B</b>	<b>Contracts and Work Assignments Reviewed and Results of Review.....</b>	<b>11</b>
<b>C</b>	<b>Work Assignments Identified that Could Have Been Other Than LOE .....</b>	<b>12</b>
<b>D</b>	<b>Agency Response .....</b>	<b>14</b>
<b>E</b>	<b>Distribution .....</b>	<b>17</b>

# Chapter 1

## Introduction

### Purpose

We sought to determine whether the acquisition planning process for the Environmental Protection Agency's (EPA's) Office of Air and Radiation (OAR) and Office of Water (OW) used knowledge gained from prior acquisitions to limit the use of cost reimbursable Level-of-Effort (LOE) contracts. EPA could reduce its risk and potentially save money by using other types of contracts.

### Background

Contracts play a major role in supporting the regulatory requirements of the Clean Air Act and Clean Water Act, as well as Agency initiatives to improve human health and the environment. In 2004, contracts accounted for 36 percent and 30 percent of the operating budgets for OAR and OW, respectively. These program offices use contracts to provide regulatory and programmatic support for a variety of professional engineering, technical, and management services.

LOE contracts are cost reimbursable contracts that span multiple years (base period and option years) and are predominantly awarded to large vendors. Generally, the contracts are not performance based – where the contractor is compensated for results rather than effort or process. LOE contracts describe the scope of work in general terms and obligate a contractor to devote a specified level of effort for a stated time period. LOE contracts have the contractor provide only required hours over a specified time period with no final product or deliverable required.

The Federal Acquisition Regulation (FAR) identifies cost-type contracts that are not performance based as the least preferred method for acquiring services. FAR states that such contracts can be used for research or preliminary exploration but cautions against using them after experience from prior acquisitions provides a basis for firmer pricing. FAR urges greater use of performance-based, fixed-price contracts, particularly for follow-on acquisitions. FAR notes that if a cost-type contract is to be used, one that identifies a deliverable is preferred over an LOE contract. The use of other than LOE contracts is also reinforced by the Federal Acquisition Streamlining Act of 1994, which makes Multiple Award Contracts the preferred method (through this method, agencies award multiple contracts covering the same scope of work and, as specific needs are identified, can compete the orders among the multiple contract holders). Use of LOE contracts is further discouraged in the EPA Contracts Management Manual, which states that the contract should be either (1) performance-based, or (2) a "hybrid," combining

both cost reimbursement and fixed-price type provisions. Appendix A contains further details on FAR requirements.

EPA’s Office of Acquisition Management (OAM), within the Office of Administration and Resources Management, provides the policies, procedures, and operational support for OAR and OW procurements, from contract planning through close out. OAR and OW initiate the contracts, identify the tasks or work assignments to be accomplished, and monitor the tasks through completion.

In a September 7, 2004 memorandum, *Increasing the Use of Performance-Based Acquisition*, the Office of Management and Budget (OMB) set a Government-wide goal of 40 percent of eligible contract dollars to be placed as performance-based in Fiscal Year 2005. Procurements where at least 50 percent of the acquisition is performance-based can be counted toward this goal.

## Scope and Methodology

We performed this audit from September 2004 to September 2005 in accordance with *Government Auditing Standards*, issued by the Comptroller General of the United States. Our audit included visits to OAR and OW offices in Washington, DC, and OAM’s Headquarters Procurement Operations Division in Washington and the Cincinnati Procurement Operations Division, Cincinnati, Ohio.

We interviewed OAR and OW personnel responsible for review and approval of contract actions, and OAM contracting personnel, to determine how contract type is selected and managed. We specifically interviewed program staff from three OAR and two OW offices, as shown in Table 1.1. Combined, those offices are responsible for almost 80 percent of OAR’s and OW’s cost-type contracts.

**Table 1.1: Offices from Which Staff Were Interviewed**

<b>OAR</b>	Office of Atmospheric Programs Office of Transportation and Air Quality Office of Air Quality Planning and Standards
<b>OW</b>	Office of Science and Technology Office of Ground Water and Drinking Water

We reviewed pertinent documentation, including the relevant sections of the FAR, EPA’s Contracts Management Manual, Office of Federal Procurement Policy’s Best Practices, and OMB’s Program Assessment Rating Tool reports for Air and Water programs.

To identify the universe of contracts, we used OAM’s Active Contract Listing as of June 15, 2004. As of that date, OAR and OW had a total of 169 contracts. Included in this amount were 93 cost reimbursable contracts, of which 83 were LOE contracts. Details, including cumulative obligations, are in Table 1.2.

**Table 1.2: Breakdown of Contracts Sampled**

Office	All Contracts		Cost Reimbursable		LOE	
	No. of Contracts	Cumulative Obligations (millions)	No. of Contracts	Cumulative Obligations (millions)	No. of Contracts	Cumulative Obligations (millions)
OAR	111	\$235	59	\$180	54	\$174
OW	58	148	34	128	29	114
<b>Totals</b>	169	\$383	93	\$308	83	\$288
<b>% of All Contracts</b>			55%	80%	49%	75%

To identify opportunities to use other than LOE contracts, we selected a judgmental sample of 14 cost-plus-fixed-fee contracts awarded for OAR and OW with total obligations of about \$105 million. See Table 1.3 for details; specific contracts reviewed are further identified in Appendix B. To examine Statements of Work for planned acquisitions, we queried OAM Web sites.

**Table 1.3: Sample of OAR and OW LOE Contracts**

Office	No. of Contracts	Cumulative Obligations (millions)	Work Assignments Reviewed
OAR	9	\$70	144
OW	5	35	73
<b>Total</b>	14	\$105	217

## Prior Reports

We are not aware of any prior reports specifically on the acquisition planning process for OAR and OW.

## Internal Control Structure

In planning and performing the audit, we reviewed management controls relating to our objectives. These included procedures for initiating contracts and selecting contractors. As discussed in Chapter 2, while certain controls were in place, OAM and program offices need to work closely to better define contract needs and promote the use of other contract types. We examined the Fiscal Years 2003 and 2004 Federal Managers' Financial Integrity Act Annual Assurance Letters issued to the EPA Administrator for OAR and OW. The letters did not identify any contract-related issues for either OAR or OW.

## Compliance with Laws and Regulations

EPA complied with the laws and regulations outlined in the FAR pertaining to its efforts in the selection of contract type. However, we have identified opportunities for improvement in OAR and OW acquisition planning through utilization of knowledge gained from prior acquisitions to refine statements of work and/or contract type to limit the use of cost reimbursable (LOE) contracts. We discuss needed process improvements in Chapter 2.



# Chapter 2

## OAR and OW Need to Further Limit Future Use of LOE Contracts

OAR and OW need to improve efforts to limit the use of LOE contracts. By maximizing available opportunities to use other than LOE contracts, OAR and OW can reduce EPA's financial risk, increase the possibility for greater competition and cost savings, and improve the Agency's ability to achieve OMB's goals to increase the use of performance-based contracts. Although the FAR cautions against the protracted use of cost reimbursable LOE contracts, OAR and OW continue to use them. At the time of our audit, these program offices had more than \$288 million in LOE contracts, and OAR and OW acquisition plans indicate the trend to predominately use LOE contracts will continue due to convenience.

### Opportunities Exist to Use Other than LOE Contracts

FAR 16 provides guidance on why and how to minimize LOE procurements. As noted, a September 2004 OMB memo set a Government-wide goal of 40 percent of eligible contract dollars being performance-based in Fiscal Year 2005. However, as shown back in Table 1.2, of the \$383 million in cumulative obligations as of June 2004 for OAR and OW, 80 percent were cost reimbursable (\$308 million), including \$288 million in LOE (75 percent of the \$383 million).

Although OW is making progress, OAM's statistics indicate that both OAR and OW have not met the OMB 40-percent goal. In Fiscal Year 2004, 14.5 percent and 24 percent of OAR's and OW's eligible contracts, respectively, were performance based. Preliminary data for Fiscal Year 2005 show that OAR increased to 17 percent and OW to 38 percent. Our audit demonstrated that OAR and OW have opportunities available to help meet or exceed the 40-percent goal, and it is important that EPA take advantage of these opportunities.

For our audit, we reviewed 217 of the procurements (work assignments) initiated under 14 contracts awarded for OAR and OW. These contracts totaled approximately \$105 million, and had obligated amounts ranging from about \$425,000 to \$33,000,000. We determined that 61 work assignments, or 28 percent, could have been other than LOE procurements, as shown in Table 2.1.

**Table 2.1: Work Assignments That Could Have Been Other Than LOE**

Office	Work Assignments Reviewed	Work Assignment Opportunity for Other than LOE	Percent
OAR	144	52	36%
OW	73	9	12%
<b>Totals</b>	217	61	28%

We had determined that other than an LOE procurement was appropriate if the task or service procured met one or more of the following criteria:

- Similar to items or tasks previously purchased under the same contract;
- Able to stand alone and a deliverable was specified;
- Similar to items or tasks acquired elsewhere within EPA using a contract other than LOE; or
- Available commercially.

By relying on LOE contracts for these procurements, OAR and OW forfeited opportunities to obtain the benefits associated with other contract types, such as reducing the Government's risk and increasing contractor input and innovation.

Many of the 61 work assignments reflected procurements for which the Agency had considerable historical data, such as the labor hours used and costs paid to complete similar work. For example, during the past 5 years, OAR issued six work assignments for contractors to develop and present training courses. Another contract contained work assignments to task a contractor to plan four conferences during 3 consecutive years.

Also, each of the 61 work assignments was to procure a specific quantifiable task that could have been purchased using other than an LOE contract (see Appendix C for details). For example, work assignments procured tasks and services such as:

- Facilitating classes
- Planning meetings and conferences
- Maintaining computer systems
- Writing brochures
- Creating videos
- Translating documents

Other EPA offices used a variety of contract types besides LOE to accomplish a number of these tasks. The historical data within OAR and OW, as well as the experiences of other EPA offices, demonstrates that OAR and OW have the opportunity to move away from their reliance on LOE contracts.

In addition to the 61 work assignments discussed above that could have been procured in their entirety as other than LOE, we identified 86 other work assignments for which a portion of the tasks could have been separated from the work assignment and awarded other than LOE. For example, for a \$3 million contract with 28 work assignments, 24 of the assignments contained some tasks that were ordered repetitively and fairly common to all 24, such as technical and general support and recordkeeping. The repetitive tasks could have been other than LOE if procured separately from the non-repetitive tasks.

## OAR and OW Continue to Prefer LOE Contracts

OW is making efforts to move away from LOE in future acquisitions by identifying some of its future contracts as candidates for performance-based acquisitions. However, both OAR and OW contend they need to continue relying on cost-plus-fix-fee LOE contracts because they provide the ability to change priorities easily and adjust funding. Further, they said LOE contracts better allow them to control how the contractor does work and hold one contractor responsible for work under a single contract.

Changes in priorities and funding occur continually throughout the Agency and should not inhibit the use of other contract types. This is demonstrated by several other EPA offices that deal with the same uncertainties as OAR and OW but do not use LOE contracts to the same extent. While LOE contracts provide the ability to control how the contractor does its work, it can result in limited contractor innovation. Although program offices contend that using a single contractor can be convenient, this presupposes that the contractor is the best available resource for all tasks.

Also, OAR and OW said there are inherent uncertainties in defining tasks at the time of contract planning. However, uncertainties at the time of award usually should be limited to new tasks. As work assignments are completed during contract performance, program offices gain the knowledge needed to identify and quantify resources for future acquisitions. Currently, EPA awards LOE contracts for multiple years. Once contract type is determined and the contract awarded, the terms are fixed for the duration of the contract, which can extend up to 5 years. If the contract awarded permitted flexibility by being structured to allow for the use of other than LOE in subsequent years, OAR and OW would be able to change the way work is procured as they gained experience and knowledge.

The Statement of Work outlines the services to be procured and is the primary document used to determine contract type. While OAR and OW initiate the Statement of Work and identify the type of contract they desire, the contracting officers at OAM ultimately determine the contract type, based on the information in the Statement of Work. The degree of specificity in the Statement of Work strongly impacts contract-type selection. Contracting officers will usually recommend using an LOE contract when the Statement of Work is broadly worded or vague and it is difficult to determine the specific tasks needed, whether the tasks were procured previously, and whether sufficient historical data exists to estimate costs. To move away from LOE procurements, OAR and OW need to prepare more definitive Statements of Work that more effectively portray the actual services needed and the historical knowledge available. When OAM did convert LOE contracts to other types, it often was because OAM worked collaboratively with OAR or OW to clarify the Statement of Work.

## Potential Benefits Exist for Moving Away from LOE Contracts

EPA will need to move toward more innovative contract types to comply with OMB's goal of 40 percent of eligible contracts being performance-based. LOE contracts are less conducive to such performance-based contracting. It is difficult to write incentives for superior performance and innovative techniques into LOE contracts because this contract type procures the contractor's "best effort" and the Agency directs how the contractor accomplishes the work. As a result, continued use of LOE contracts inhibits OAR and OW from developing performance measures/incentives, and obtaining the benefits that would accrue from other contract types. Such benefits can include:

- Increased competition.
- Increased opportunities for small businesses.
- Sharing more of the risk with the contractor.
- The economic "encouragement" for the contractors to provide new and innovative/creative solutions and methodologies.
- Reduced administrative costs for EPA programs.

Our audit results demonstrate that OAR and OW have opportunities available to help meet the 40-percent goal. It is important that EPA take advantage of these opportunities because OMB's 40-percent goal may increase in future years.

EPA's recent efforts to use "hybrid" contracts (i.e., contracts that combine both LOE and fixed-price components) are a step in the right direction. For example, we identified three contracting officers in OAM who worked with program offices to convert three long-running LOE contracts into hybrid contracts, two of which are multiple award. A contracting officer noted the program had contracted this work for the past 10 years in the same fashion and that changing contract type would foster improved competition and contractor effectiveness. OAM officials also told us that they provided training to the programs offices to increase the use of other than LOE contracts.

The work assignments and tasks we identified that could have been other than LOE impacted 11 of the 14 contracts reviewed. While all the tasks would not necessarily be convertible to other than LOE, there are repetitive work assignments and tasks that could be awarded differently. Once contracts are awarded as LOE, there are no other options available for assigning the future work. Since OAM is responsible for making the final determination on contract type, it should take the lead in helping OAR and OW move away from LOE contracts by advocating the use of other contract types or forms, such as:

- |                   |   |
|-------------------|---|
| • Fixed-Price     | • Multiple Award                          |
| • Completion Form | • Indefinite Delivery Indefinite Quantity |
| • Task Order      | • Hybrid                                  |

According to OAR and OW acquisition plans, they planned to award 32 LOE contracts during Fiscal Years 2005 through 2008. Of that amount, 24 represent follow-on efforts for expiring LOE contracts. Given the historical information available, at least a portion of the future contracts could be candidates for conversion to other than LOE.

## **Recommendations**

We recommend that the Assistant Administrator for Air and Radiation and the Assistant Administrator for Water:

- 2-1 Require program offices to reduce reliance on cost reimbursable LOE contracts by making a more concerted effort to identify opportunities for performance-based acquisitions. The offices should improve acquisition planning by utilizing contract history and experience to develop Statements of Work that are more specific, definitive, and detailed.

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

- 2-2 Instruct contracting officers to adhere to the FAR guidance and work collaboratively with OAR and OW to:
  - a. Improve Statements of Work to better define contract requirements and identify opportunities to limit the use of LOE contracts.
  - b. Utilize knowledge gained and lessons learned from current and planned OAM procurements to assist OAR and OW to develop new and innovative contracts that provide flexibility and minimize risk, and move the Agency toward its goals for increased small business participation and performance-based acquisition.
- 2-3 Establish a process to assure that the best practices and accomplishments of contracting officers in developing new and innovative contracts to service program offices are shared among all the contracting officers as a guide and incentive for similar success.

## **Agency Comments and OIG Evaluation**

OAR and OW agreed that less reliance should be placed on the use of LOE contracts, and indicated they will work collaboratively with OAM to make this happen. Since 2002, when only 7 percent of the OAR and OW contracts awards were Performance-Based Service Acquisitions, considerable progress has been

made. In 2005, OW increased Performance-Based Service Acquisition contract awards to 38 percent and OAR increased such awards to 17 percent.

Nonetheless, both OAR and OW recognize that more progress can and should be made in this area. These offices indicated they plan to work harder to identify opportunities for performance-based contracting, in both new acquisition requirements and future task/delivery orders under already existing contracts. One valuable tool those two offices and OAM said they will be using is training through the Federal Acquisition Institute. This training course enables EPA program and contracting staff to meet with trainers and Performance-Based Service Acquisition experts to develop performance-based requirements and statements of work. Both OAR and OW said representatives will be taking this training during Fiscal Year 2006.

OAM agreed with our recommendations and said it took a major step in the right direction in October 2005 by issuing a revision to Chapter 37 of the Contracts Management Manual. This revision acknowledges the FAR preference for performance-based contracting when acquiring services and mandates that all EPA contracts eligible for Performance-Based Service Acquisition be awarded as such. The revised chapter includes guidance to contract and program offices on establishing Performance-based Work Statements, Statements of Objectives, Measurable Performance Standards, Quality Assurance Surveillance Plans, and Incentives. OAM expects this new policy to enable the Agency to significantly decrease its reliance on LOE contracts over the next several years. OAM said it will continue to discuss Performance-Based Service Acquisition, increased small business participation, and the use of new and innovative contracting vehicles with customers during acquisition planning meetings. OAM said it also has a network in place to share best practices.

We believe the increased training of program personnel and implementing the revised Chapter 37 of the Contracts Management Manual should help the programs move toward less reliance on LOE and more performance-based contracting. The programs OAM has put in place, as well as those planned, should provide strong impetus to further reduce the Agency's reliance on LOE contracts.

The Agency's entire response is included as Appendix D

## ***Excerpts from Federal Acquisition Regulation***

<b>7.103 Agency-head responsibilities</b>	(2)(r) Ensuring that knowledge gained from prior acquisitions is used to further refine requirements and acquisition strategies. For services, greater use of performance-based contracting methods and, therefore, fixed-price contracts (see 37.602-5), should occur for follow-on acquisitions.
<b>16.103 Negotiating contract type</b>	(c) ... changing circumstances may make a different contract type appropriate in later periods than that used at the outset. In particular, contracting officers should avoid protracted use of a cost-reimbursement or time-and-materials contract after experience provides a basis for firmer pricing.
<b>16.306 Cost-plus-fixed-fee contracts</b>	(1) The completion form describes the scope of work by stating a definite goal or target and specifying an end product. . . . (3) Because of the differences in obligation assumed by the contractor, the completion form is preferred over the term form whenever the work, or specific milestones for the work, can be defined well enough to permit development of estimates within which the contractor can be expected to complete the work.
<b>16.202 Firm-fixed-price contracts</b>	2. A firm-fixed-price contract is suitable for acquiring commercial items or for acquiring other supplies or services on the basis of reasonably definite functional or detailed specifications when the contracting officer can establish fair and reasonable prices at the outset, such as when- (b) There are reasonable price comparisons with prior purchases of the same or similar supplies or services made on a competitive basis or supported by valid cost or pricing data.
<b>16.104 Factors in selecting contract type</b>	(k) <i>Acquisition history</i> . Contractor risk usually decreases as the requirement is repetitively acquired. Also, product descriptions or descriptions of services to be performed can be defined more clearly.
<b>37.102 Policy</b>	When acquiring services, including those acquired under supply contracts, agencies must— (1) Use performance-based contracting methods to the maximum extent practicable (2) Use the following order of precedence (Public Law 106-398, section 821(a)); (i) A firm-fixed price performance-based contract or task order. (ii) A performance-based contract or task order that is not firm-fixed price. (iii) A contract or task order that is not performance-based.
<b>37.602-5 Follow-on and repetitive requirements</b>	When acquiring services that previously have been provided by contract, agencies shall rely on the experience gained from the prior contract to incorporate performance-based contracting methods to the maximum extent practicable. This will facilitate the use of fixed-price contracts for such requirements for services.

## ***Contracts and Work Assignments Reviewed and Results of Review***

### **Office of Air and Radiation**

Contract No.	Program	Cumulative Obligations (millions)	No. of Work Assignments		
			Reviewed	Which Could Be Other Than LOE	With Recurring Tasks
68-W-00-124	OAP	\$ 32.6	5	5	0
68-W-02-001	OAP	14.5	5	5	0
68-C-01-155	OTAQ	11.9	4	0	3
68-C-02-022	OTAQ	1.0	5	0	0
68-D-01-078	OAQPS	3.1	49	7	26
68-D-02-079	OAQPS	1.9	47	24	0
68-D-02-104	OAQPS	0.7	17	7	4
68-D-03-052	OAQPS/QAP	3.4	8	0	0
68-W-04-014	OAP	0.4	4	4	0
<b>Totals</b>		<b>\$69.5</b>	<b>144</b>	<b>52</b>	<b>33</b>

### **Office of Water**

Contract No.	Program	Cumulative Obligations (millions)	No. of Work Assignments		
			Reviewed	Which Could Be Other Than LOE	With Recurring Tasks
68-C-01-098	OGWDW	\$ 2.8	2	0	0
68-C-02-069	OGWDW	12.0	5	5	0
68-C-99-263	OST	9.7	36	0	27
68-C-99-239	OST	7.0	2	0	2
68-C-02-095	OST	3.3	28	4	24
<b>Totals</b>		<b>\$ 34.8</b>	<b>73</b>	<b>9</b>	<b>53</b>

<b>COMBINED TOTALS</b>		<b>\$ 104.3</b>	<b>217</b>	<b>61</b>	<b>86</b>
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OAP: Office of Atmospheric Programs  
 OAQPS: Office of Air Quality Planning and Standards  
 OGWDW: Office of Ground Water and Drinking Water  
 OST: Office of Science and Technology  
 OTAQ: Office of Transportation and Air Quality



## ***Work Assignments Identified that Could Have Been Other Than LOE***

<b>Office of Air and Radiation</b>		
<b>Contract</b>	<b>Work Assignment</b>	<b>No. of Work Assignments</b>
68-D-02-079	Collecting emissions data from power plants	1
	Review and summarize reports provided to EPA from States	1
	Update software and provide phone assistance to users	1
	Develop and present course	3
	Update EPA's Air Quality Index brochure	1
	Plan the 2004, 2005, 2006 Emissions Inventory and Air Quality Conferences	10
	Develop a monitoring strategies brochure, Air Effects health brochure	4
	Note taking at an EPA science meeting	1
	Development of AQI meteorologists educational toolkit	<u>2</u>
	Sub-total	<u>24</u>
68-D-01-078	Develop GANT Chart using MS Project	1
	Update Web site, respond to calls, produce users manual	1
	Make editorial revisions to "Health Effects Notebook" profiles	1
	Prepare draft for review then final inventory plan	1
	Teach one day "Best Practices Course"	1
	Technical support to update and maintain database	1
	Update Microsoft Access database	<u>1</u>
	Sub-total	<u>7</u>
68-D-02-104	Develop document and plan for data collection for 2002 National Emissions Inventory	1
	Develop Web site	1
	Document previously developed software tools	1
	Develop user guide, consolidate several software tools into one	1
	Update database	1
	Software maintenance and support	1
	Develop software tool	<u>1</u>
	Sub-total	<u>7</u>
68-W-04-014	Develop training sessions and develop a comic book	1
	Provide support for conferences, redesign a Web site and translate into Spanish	1
	Convert updated tool kit to CD-ROM, prepare training guide and present training sessions	1
	Support for conferences, distribute educational materials	<u>1</u>
	Sub-total	<u>4</u>

<b>Contract</b>	<b>Work Assignment</b>	<b>No. of Work Assignments</b>
68-W2-00-001	Conduct meetings with potential Energy Star customers	1
	Co-produce training material, conduct training	1
	Edit and publish Energy Star Guide	1
	Identify new industries for Energy Star	1
	Maintain Database iStar	<u>1</u>
	Sub-total	<u>5</u>
68-W0-02-124	Develop public service advertisement, create brochure	1
	Develop training strategy, modify Web site	1
	Develop marketing campaign	1
	Develop new materials, update Web site	1
	Create marketing plan	<u>1</u>
	Sub-total	<u>5</u>
<b>Total Office of Air and Radiation</b>		<b><u>52</u></b>
<b>Office of Water</b>		
68-C-02-095	Prepare training material and provide logistic support for meeting	1
	Guidelines Support, Litigation Support, and drafting guidelines	1
	Provide training materials and set up meetings	1
	Software update	<u>1</u>
	Sub-total	<u>4</u>
68-C-02-0069	Translate materials into Spanish	1
	Develop materials for Web cast training sessions, provide training	1
	Contractor shall produce at least three videos, provide training	1
	Convert documents into formats for a Web page on Internet sites	1
	Develop materials, provide training	<u>1</u>
	Sub-total	<u>5</u>
<b>Total Office of Water</b>		<b><u>9</u></b>
<b>TOTAL ALL</b>		<b><u>61</u></b>

## ***Agency Response***

### **MEMORANDUM**

**SUBJECT:** Draft Audit Report: EPA Office of Air and Radiation and Office of Water Can Further Limit Use of Level-of-Effort Contracts, Assignment Number 2004-1314

**FROM:** Luis A. Luna /s/  
Assistant Administrator

**TO:** Carl A. Jannetti  
Director for Contract Audits  
Office of Inspector General

Thank you for the opportunity to comment on the draft report entitled “EPA Office of Air and Radiation and Office of Water Can Further Limit Use of Level-of-Effort Contracts,” dated January 3, 2006. As requested, we have prepared a consolidated response which has been coordinated with the Office of Air and Radiation (OAR) and the Office of Water (OW).

We generally agree with the findings and recommendations in the draft report, and offer some specific comments below. While the Agency is definitely moving forward in decreasing its use of level-of-effort (LOE) contracts, all three Offices recognize that we could and should do better in this area. Accordingly, we will take your recommendations and suggestions very seriously, and we will collaboratively work to further reduce EPA’s reliance on LOE contracts in the future, and increase the use of performance-based services acquisition (PBSA).

### **General** -

We take no exception to the factual accuracy of this draft report. We would also like to identify and highlight steps we have taken, and are going to take in the near future, to continue to reduce the Agency’s reliance on LOE contracts. We will address these steps under our comments on your recommendations.

### **Recommendations** -

**RECOMMENDATION 2-1** - That the Assistant Administrator for Air and Radiation and the Assistant Administrator for Water requires program offices to reduce reliance on cost reimbursable LOE contracts by making a more concerted effort to identify opportunities for performance-based acquisitions. The offices should improve acquisition planning by utilizing contract history and experience to develop Statements of Work that are more specific, definitive, and detailed.

**RESPONSE** - The OAR and OW agree with this recommendation, and they will work collaboratively with the Office of Acquisition Management(OAM/OARM) to make this happen. Both Offices have made progress in increasing the use of PBSA over the past four years. OAR's percent of obligations that has been PBSA has increased consistently from FY 2002 to 2005: 7.1%; 11.7%; 14.6%, and 17.0%. Similar figures for OW have been: 7.0%; 20.2%; 23.9%; and 38.1%. One of the major reasons for OW's success in this area was the 2002 award of four multiple award contracts with the Office of Wetlands, Oceans and Watersheds. Under these hybrid contracts, 55% of task orders issued, and 46% of the \$22M in obligations to-date ha been issued under performance-based vehicles. Please note that these contracts and task orders were not selected as part of your sample during the audit. Both Offices believe a fuller picture of each Office's contracting would show that they use a wide variety of contract vehicles, and not primarily LOE contracts.

Nonetheless, both OAR and OW recognize that more progress can and should be made in this area, and they will work harder to identify opportunities for performance-based contracting, in both new acquisition requirements, and future task/delivery orders under already existing contracts. Please note that, in the latter case, sometimes the administrative costs of converting new task/delivery orders may outweigh the benefits of converting them. In such cases, conversions will not be done; nonetheless, we will consider and analyze all such cases.

One valuable tool the two program offices and OAM will be using is training through the Federal Acquisition Institute (FAI). FAI's PBSA training course consists of the program and contracting staff involved in a specific upcoming acquisition requirement meeting with FAI trainers and contractor PBSA experts to develop performance-based requirements and statements of work. Both OAR and OW representatives will be taking this training during FY 2006. We believe this valuable training will greatly help the Agency reach future OMB goals regarding PBSA.

**RECOMMENDATION 2-2** - That the Assistant Administrator for Administration and Resources Management, through the Office of Acquisition Management, instruct contracting officers to adhere to the FAR guidance and work collaboratively with OAR and OW to: (a) improve Statements of Work to better define requirements and identify opportunities to limit the use of LOE contracts; and (b) utilize knowledge gained and lessons learned from current and planned OAM procurements to assist OAR and OW to develop new and innovative contracts that provide flexibility and minimize risk, and move the Agency toward its goals for increased small business participation and performance-based acquisition.

**RESPONSE** - OAM agrees with this recommendation. As a major step in helping EPA head in the right direction in this area, OAM issued a new PBSA policy in October 2005, Contracts Management Manual (CMM) Chapter 37, Section 37.1, "Performance-Based Service Acquisition." The policy acknowledges that the FAR establish a preference for performance-based contracting when acquiring services, and it mandates that all EPA contract requirements that are eligible for PBSA be awarded as such. Guidance for EPA contract and program offices is provided in this new CMM Chapter, including how to establish Performance Work Statements, Statements of Objective, Measurable Performance Standards, Quality Assurance

Surveillance Plans, and Incentives. We expect this new policy will enable the Agency to significantly decrease its reliance on LOT contracts over the next several years.

OAM will also continue to discuss PBSA, increased small business participation, and the use of new and innovative contracting vehicles with its program customers during acquisition planning meetings (as prescribed in the CMM, Chapter 7.1.5.1), usually held several times a year, and customer service meetings with Senior Resource Officials, which are held annually. In addition to OAM and program representatives, the Agency's Competition Advocate and Office of Small and Disadvantaged Business Utilization representatives are also invited to attend these meetings.

Additionally, as mentioned under Recommendation 2-1, above, OAM actively participates in FAI PBSA team training courses, along with program representatives. Improving Statements of Work and developing innovative contracts to provide flexibility and minimize risk to the Government are two of the chief goals of these courses.

**RECOMMENDATION 2-3** - That the Assistant Administrator for Administration and Resources Management, through the Office of Acquisition Management, establish a process to assure that the best practices and accomplishments of contracting officers in developing new and innovative contracts to service program offices are shared among all the contracting officers as a guide and incentive for similar success.

**RESPONSE** - OAM has a network in place for sharing best contracting practices. This network includes: monthly Contract Customer Relations Council (CCRC) meetings with program office representatives; discussing noteworthy accomplishments at weekly OAM staff meetings; addressing major contracting issues in OAM's "Buy-Lines" newsletter; posting best practices on OAM's intranet web site; and sharing/posting best contracting practices found during reviews of contracting offices' compliance with their internal Quality Assurance Plans. For an example of this network in action, the Agency's first award-term contract established for the OW has its Performance Work Statement posted on the Best Practices website for PBSA as an example of an award-term contract.

We appreciate the opportunity to provide comments on the draft report. OAM strongly supports the need to increase PBSA and decrease EPA's reliance on LOE contracts. If you have any questions or comments, please contact Judy Davis, Director, Office of Acquisition Management, at 564-4310, or John Oliver, Policy Training and Oversight Division, at 564-4399.

cc: Bill Wehrum  
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## ***Distribution***

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