



**Office of Inspector General
Memorandum Report**

ASSISTANCE AGREEMENTS

**Assistance Agreement X99694001
Awarded by EPA to the
Central States Air Resource Agencies**

Report No. 2001-0000801-2002-P-00010

March 29, 2002

Inspector General Division: Central Audit and Evaluation
Resource Center
Dallas, Texas Branch Office

Audit Conducted By: Dan Howard

Region Covered: Region 6

Program Office Involved: Multimedia Planning and
Permitting Division



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

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March 29, 2002

SUBJECT: Final Memorandum Report
Assistance Agreement X99694001 Awarded by EPA
to the Central States Air Resource Agencies
Report Number 2001-0000801-2002-P-00010

FROM: Randy P. Holthaus *Randy P. Holthaus*
Branch Manager
Dallas Branch Office

TO: Carl E. Edlund, P.E., Director
Multimedia Planning and
Permitting Division (6PD)
EPA Region 6

Purpose

During the Office of Inspector General (OIG) nationwide audit of procurement procedures used by recipients of U.S. Environmental Protection Agency (EPA) assistance agreements, we identified findings related to assistance agreement X99694001 that we believe need to be brought to your attention. We are therefore providing you with a report on our findings concerning this agreement, awarded to the Central States Air Resource Agencies (CenSARA). CenSARA is a multi-state organization headquartered in Oklahoma City, Oklahoma.

This memorandum report contains issues that describe conditions OIG has identified and corrective actions OIG recommends. This report represents the opinion of OIG. Final determinations on matters in this report will be made by EPA managers in accordance with established EPA audit resolution procedures. We have no objections to the release of the report to the public.

Action Required

In accordance with EPA Order 2750, you, as the action official should provide this office with a written response within 90 days of the final report date. For corrective actions planned but not completed by the response date, reference to specific milestone dates will assist us in deciding whether to close this report.

If you or your staff have any questions regarding this report, please contact Dan Howard at (214) 665-3160, or me at (214) 665-6620.

Objectives

The objectives of our audit were to determine whether:

- Assistance agreement recipient procurement practices were in accordance with the procurement requirements in Title 40 Code of Federal Regulations (CFR) Part 30, Office of Management and Budget (OMB) Circular A-122, “Cost Principles for Non-Profit Organizations,” and any additional regulations governing the specific assistance agreements reviewed.
- EPA personnel involvement in the award and management of contracts under the assistance agreement complied with 5 CFR Part 2635 “Standards of Ethical Conduct for Employees of the Executive Branch,” and the EPA Project Officer’s Manual, Appendix C.

Scope and Methodology

EPA awarded approximately \$2 million in assistance agreement funds, for the project period beginning May 5, 1998, and ending September 30, 2001, to CenSARA, for the purpose of exchanging information between the states and other interested parties related to the control of air pollution. Activities funded under this assistance agreement included training courses and research projects, such as air modeling. The assistance agreement with CenSARA was 1 of 70 agreements that OIG selected to review as part of its nationwide audit. This report only represents our findings regarding the CenSARA assistance agreement. OIG plans to issue a comprehensive report on the OIG nationwide audit.

We performed this audit in accordance with the *Government Auditing Standards* issued by the Comptroller General of the United States, as they apply to program audits. We reviewed Federal procurement standards provided in Title 40 of the CFR, Part 30. We reviewed files of EPA and the recipient, and held discussions with EPA and recipient representatives. We conducted our work from March to September 2001. This review does not represent a financial audit of CenSARA.

Results

We found violations of Federal procurement regulations and an apparent conflict of interest. The recipient awarded six contracts under the assistance agreement totaling \$369,451. These six contracts included contracts with five contractors. We found that the recipient had not performed cost or price analyses for any of these six contracts. We also found that a Region 6 employee's involvement in the recipient hiring of a contractor was not appropriate. Further, we identified an instance of an apparent conflict of interest.

No Cost or Price Analyses

The recipient did not perform cost or price analyses for any of the six contracts awarded under the assistance agreement, as required by 40 CFR § 30.45. Further, all six contracts were awarded sole source. Therefore, there is no assurance that contract work performed with assistance agreement funds was conducted at a fair and reasonable price. A CenSARA representative stated that CenSARA did not perform such analyses because he assumed that member state agencies had already performed them. However, neither the recipient nor its members provided documentation to demonstrate any analyses were performed.

Inappropriate Region 6 Involvement in Recipient Hiring of a Contractor

We found that a Region 6 employee wrote the sole source justification, along with the scope of work for one contract, for CenSARA. In this sole source justification, the Region 6 employee listed the objectives for the contract and concluded that the contract should be a sole source contract with a specific contractor. Region 6 sent Regional Geographic Initiative funding to CenSARA to pay for the \$60,000 contract. Further, Region 6 is listed on the contract as the contracting agency, rather than one of the recipient's member states. According to the Region 6 employee, Region 6 wanted specific work performed, and due to timing and familiarity with the contractor, decided to award the contract through the recipient rather than award the contract using Region 6's procurement process.

While EPA employees should review and comment on the recipient's procurement activities, the recipient should be generating the information that EPA reviews. Region 6 employees should not be generating sole source justifications for the recipient. Appendix C of the Project Officers' Manual, *EPA Involvement in Grantee Personnel and Contractor Selection Under Grants and Cooperative Agreements*, dated September 24, 1992, provides that:

- EPA employees may not:
 - Direct a recipient to award a contract to a specific individual or firm.
 - Participate in the negotiation or award of a contract under a grant or cooperative agreement.

- EPA employees may:
 - Approve the key personnel of the grantee organization and the project director or principal investigator.
 - Review and comment on a grantee's procurement process or a particular procurement action.
 - Participate in review panels to make recommendations on qualified offers and acceptable proposals based on published evaluation criteria.
 - Upon request by a recipient organization, provide a reference for individuals who are employed by EPA contractors and who are being considered for employment by the recipient institution to work on EPA matters. In doing so, EPA employees should take great care to avoid even the appearance of undue influence in hiring decisions, especially EPA officials who have a role in selecting the assistance recipient or in defining the scope and amount of the assistance received.

In summary, it is inappropriate for EPA staff to direct or require the use of particular persons or firms by assistance recipients in the performance of an assistance agreement.

Apparent Conflict of Interest

The Region 6 Deputy Ethics Official did not review an Intergovernmental Personnel Act assignment for apparent conflicts of interest issues prior to the issuance of the Intergovernmental Personnel Act assignment. This Intergovernmental Personnel Act assignment was for the recipient's Senior Advisor. This individual was an EPA employee serving on a 2-year Intergovernmental Personnel Act assignment to the recipient. Prior to working on the assignment, the Advisor was the Region 6 acting division director, and while in this capacity also served as the award official for this assistance agreement.

We discussed this with the Region 6 Deputy Ethics Official from the Office of Regional Counsel. He informed us that he was not aware of the Intergovernmental Personnel Act assignment, and was concerned that he was not consulted about it. The Deputy Ethics Official also said that this assignment should have been given extra consideration, since the former division director signed the assistance agreement as the award official prior to starting the assignment. Further, the Deputy Ethics Official stated that even though the Intergovernmental Personnel Act position is that of an advisor and may not involve making decisions for the recipient, he still had concerns about this situation.

As a result of our review, the Deputy Ethics Official issued a memorandum dated August 6, 2001, to the Region 6 Assistant Regional Administrator. In this memo, the Deputy Ethics Official stated that he reviewed the Intergovernmental Personnel Act assignment and determined that there were no ethical issues involved. However, the Deputy Ethics Official stated he would brief the former acting division director on the need to recuse himself should an issue arise in any matter in which he was involved at EPA.

The Deputy Ethics Official also noted in his memo that, even though the former acting division director was the signatory on the EPA grant, this took place a year-and-a-half prior to serving on the Intergovernmental Personnel Act assignment, and that the former acting division director had “no inkling he would go to CenSARA when he signed the grant.” Although this may have been true, we found that the former acting division director was still signing amendments to the assistance agreement up to two-and-a-half months prior to starting his Intergovernmental Personnel Act assignment.

Region 6 renewed the former acting division director’s Intergovernmental Personnel Act position in October 2001.

Recommendations

We recommend that the Regional Administrator:

1. Instruct the project officer to ensure the recipient performs cost or price analyses for every procurement action in accordance with 40 CFR § 30.45.
2. Inform Regional employees about the prohibitions against directing recipients to award contracts.
3. Inform all Region 6 divisions that they are to submit all Intergovernmental Personnel Act assignments to the Deputy Ethics Official for review. Also,

instruct the Deputy Ethics Official to review all future Region 6 Intergovernmental Personnel Act assignments before they are approved.

4. Instruct the Deputy Ethics Official to investigate the apparent conflicts of interest noted in this report, including re-examining the former acting division director's Intergovernmental Personnel Act assignment for possible ethics violations or conflicts of interest.

Region 6 Response and OIG Evaluation

Region 6's responses adequately address Recommendations 1, 3, and 4. (For Region 6's complete response, see attachment.) The actions taken and actions planned for these recommendations are sufficient and no further actions are needed. However, Region 6 did not provide an adequate response to Recommendation 2 because it did not provide sufficient details as to how the Region would ensure that staff would not be involved in directed contracting in the future. Specifically:

- Regarding Recommendation 1, Region 6 agreed with our recommendation and stated that the project officer reminded the grantee on November 9, 2001, of the regulatory requirement to perform cost/price analyses, and has informed the grantee that Region 6 will be requesting copies of such cost/price analyses for every future contract. Region 6's response adequately addresses Recommendation 1.
- Regarding Recommendation 2, Region 6 responded that the contract was clearly not for EPA's direct benefit and Region 6 did not direct CenSARA to hire a specific contractor. Region 6 further responded that staff is aware of the prohibition against directed contracting, and they will continue to ensure that implementation of this policy is closely monitored. However, Region 6's response did not identify the process they have in place, if any, to monitor implementation of the policy. We continue to believe that Region 6's involvement in the hiring of this contractor was inappropriate. Appendix C of the Project Officers' Manual, *EPA Involvement in Grantee Personnel and Contractor Selection Under Grants and Cooperative Agreements*, dated September 24, 1992, provides that it is inappropriate for Agency staff to direct or require the use of particular persons or firms by assistance recipients in the performance of an assistance agreement. The sole source justification, written by a Region 6 employee, identified who the recipient should contract with, as well as the scope of the contract.

- Regarding Recommendations 3 and 4, Region 6 responded that the Intergovernmental Personnel Act staff advisor at CenSARA (a former Region 6 acting division director) has very carefully maintained an impartial attitude in any dealings with CenSARA on EPA matters, and with EPA on CenSARA matters. While he had routinely signed earlier grant award/amendment documents, he had not sought funding for an Intergovernmental Personnel Act position; he was later offered the Intergovernmental Personnel Act opportunity on short notice; and his salary is not paid by grant funds (only travel expenses, etc.). Although the acting division director in the months prior to his appointment may have signed amendments to the CenSARA grant, his Intergovernmental Personnel Act assignment developed months later. He had no direct involvement in CenSARA grant matters after his selection for the Intergovernmental Personnel Act assignment. Region 6 also responded that a new policy has already been instituted by the Office of Regional Counsel on November 20, 2001, to ensure that all future Intergovernmental Personnel Act assignments are submitted to the Deputy Ethics Official for review. In fact, the Intergovernmental Personnel Act assignee has met with the Deputy Ethics Official as part of the Intergovernmental Personnel Act “renewal” to extend this assignment. Region 6’s response adequately addresses Recommendations 3 and 4.

Based on comments received to the draft report we removed information related to consultant fees for consideration at a later time.

Attachment



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 6
1445 ROSS AVENUE SUITE 1200
DALLAS, TX 75202-2733

November 20, 2001

MEMORANDUM

SUBJECT: Response to Region 6 OIG's Draft Memorandum Report on Assistance Agreement X-996940-01 Awarded by EPA to the Central States Air Resource Agencies (CenSARA)/OIG Assignment Number 2001-0000801

FROM: Carl E. Edlund, P.E., Director
Multimedia Planning and
Permitting Division (6PD)

TO: Randy Holthaus
Region 6 OIG Branch Manager

As requested in the Region 6 Office of Inspector General's (OIG) Draft Memorandum Report on EPA's oversight of Assistance Agreement X-996940-01, awarded to the Central States Air Resource Agencies (CenSARA), dated October 22, 2001, the Region 6 Multimedia Planning and Permitting Division (6PD) and Office of Regional Counsel (ORC) have reviewed the OIG's findings and recommendations. Attachment 1 provides the Region 6 comments on the subject draft memorandum. The grantee also reviewed the draft report and sent a written response; those comments are reflected in Attachment 2.

We have taken action to address the OIG's recommendations to ensure that the grantee performs the required cost/price analyses, and that more careful scrutiny be performed to prevent the inclusion of unallowable costs. In addition, written confirmation of regional policy to require that the ethics officer review all future Intergovernmental Personnel Agreements should prevent potential conflicts of interest such as the possibility referred to in the draft memorandum report. We do, however, disagree with certain findings on consultant fees and directed contracting, as we explain in Attachment 1.

Thank you for the opportunity to comment on the report. Should you have any questions, please contact me or Susan Branning of my staff at (214) 665-7208.

Attachments

cc: Larry Starfield (6RA-D)
Larry Andrews (6RC-D)
Larry Byrum (CenSARA)
Dan Howard (6IG)

Attachment 1

The following comments are furnished in response to the Region 6 OIG's draft memorandum report on Assistance Agreement X-996940-01, awarded by EPA to the Central States Air Resource Agencies (CenSARA), OIG assignment number 2001-0000801, dated October 22, 2001:

Cost/Price Analyses

The OIG report cites the lack of cost or price analyses and recommends that EPA instruct the project officer to ensure that the grantee performs cost or price analyses for every procurement action in accordance with 40 CFR § 30.45.

- Region 6 agrees. The project officer has already reminded the grantee in a telephone conversation on November 9, 2001, of the regulatory requirement to perform cost analyses, and has informed the grantee that she will be requesting copies of such cost/price analyses for every future contract. Cost/price analyses for other procurement actions should also be available upon request.

Unallowable Costs

The draft memorandum report found that the grantee used a "cost-plus-a-percentage-of-cost" contracting method that is disallowed by 40 CFR §30.44.

- We disagree. The contract is based on a Contract Costs Budget and a Schedule of Fixed Costs. Some confusion may have resulted, however, from the contractor's billing method. Attachment D to the contract (the Standard Fee Schedule) does contain two items apparently based on the improper "cost-plus-a-percentage-of-cost" method (sub-contracting and travel), by which the contractor attempted to recover indirect costs.
- The project officer discussed this issue with both the Louisiana Department of Environmental Quality, for whose benefit the contract was let, and the grantee, CenSARA, to alert CenSARA to the appearance of impropriety that may result from this practice. At any rate, Region 6 grant officials will discourage this practice in the future.

Excessive Consultant Rates

The draft report finds that consultant rates paid to two contractors (Systems Applications, Inc., and Mike McDaniels & Associates) "exceeded the maximum daily amount allowed per 40 CFR §30.27(b)," which limits the Agency's share of the rate (excluding overhead) paid to "**individual** consultants" [emphasis added] "to the maximum daily rate for level 4 of the Executive Schedule unless a greater amount is authorized by law."

Attachment 1

- We disagree. The limitation refers to individual consultants, not to consulting firms. The final sentence in the same paragraph of 40 CFR §30.27(b) reaffirms this interpretation, when it reiterates:

Contracts with firms for services which are awarded using the procurement requirements in this part are not affected by this limitation.

Since the contracts in reference were clearly awarded to two consulting firms rather than to individual consultants, Region 6 finds no need to recover any funds here. This interpretation is consistent with the approach taken by EPA's Office of General Counsel, Finance and Operations Law Office.

Directed Contracting

The draft memorandum suggests that Region 6 circumvented EPA procurement processes in granting an award to CenSARA, then directing the grantee to award a contract to MCNC, to EPA's direct benefit.

- We disagree. The contract in question was clearly not for EPA's direct benefit. The primary purpose was to provide funds for a study that would benefit CenSARA members Texas and Louisiana, the two Region 6 States facing non-attainment and ozone transport issues. Using a relatively small amount of Regional Geographic Initiative funds, we were able to take advantage of prior work the contractor had done for the Gulf Coast States (including Region 4 and Region 6 States).
- Region 6 did not direct CenSARA to hire MCNC. EPA's role was to assist the grantee, to take advantage of prior work already accomplished, and thereby leverage a relatively small amount of money into otherwise very expensive analyses. The sole source justification was drafted by an EPA staff person who also participates on a Regional Haze Planning modeling work group with CenSARA members. In any case, staff is aware of the prohibition against directed contracting, and we will continue to ensure that this policy is closely monitored.
- We agree that the contract format is sometimes confusing. EPA is **not** [emphasis added] the contracting agency. The grantee, CenSARA, identified this as an "EPA" (funded) contract, used the "EPA" format, but the signatories were CenSARA and the contractor, not EPA. We will advise grantee(s) to avoid this improper appearance.

Potential Conflicts of Interest

The Multimedia Planning and Permitting Division has consulted the Office of Regional Counsel and the Region 6 Deputy Ethics Official, and we disagree with the report's inferences

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Attachment 1

on this subject. Further, we would like to clarify information which relates to the conflict of interest issues:

- Even though a vague appearance of conflict of interest may exist in relation to the appointment of Larry Byrum as executive director of CenSARA, two intervening factors may help to minimize that impression: 1) The Board of Directors of CenSARA offered the position of executive director to Mr. Byrum only after a national search resulted in offering the position to two other well-qualified candidates, both of whom declined. 2) Once Mr. Byrum's name was suggested, he actively recused himself from participating in any further discussion of selection of the executive director of the new organization. In any case, as explained in the October 16 meeting, it is our understanding that the restrictions of EPA's conflict of interest rules are only applicable to Federal employees.
- We find that the IPA staff "advisor" appointee at CenSARA (a former Acting Division Director) has very carefully maintained an impartial attitude in any dealings with CenSARA on EPA matters, and with EPA on CenSARA matters. While he had routinely signed earlier grant award/amendment documents, he had not sought funding for an IPA position; he was later offered the IPA opportunity on short notice; and his salary is not paid by grant funds (only travel expenses, etc.). Although the Acting Division Director in the months prior to his appointment may have signed amendments to the CenSARA grant, his IPA assignment only developed months later. He had no direct involvement in CenSARA grant matters after his selection for the IPA.
- In response to issues raised in this draft audit report, a new policy has already been instituted by the Office of Regional Counsel to ensure that all future IPA assignments are submitted to the Deputy Ethics Official for review (see Attachment 3). In fact, the IPA assignee has met with the Deputy Ethics Official as part of the IPA "renewal" to extend this assignment.

Attachment 2

CenSARA
Central States Air Resource Agencies Association
10005 S. Pennsylvania, Suite C, Oklahoma City, OK 73159
(405) 378-7377 Fax (405) 378-7379
Larry D. Byrum, Executive Director
E-mail: lbyrum@censara.org



November 9, 2001

Rexene Hanes
U. S. Environmental Protection Agency Region VI
Air, State and Tribal Operations (MC 6PD-S)
1445 Ross Avenue
Dallas, TX 75202-2733

EPA Audit Response on Assistance Agreement X99694001

Dear Ms. Hanes:

During the summer of 2001, Mr. Randy P. Holthaus contacted me about several items concerning the formation and operations of CenSARA. Upon reviewing the subsequent report of his findings I have several comments, which I believe will help to clarify, several of the issues listed. I would also like to state that we are glad that this audit took place, as you know we are striving to be an organization that is of benefit to all of our clients. Any errors on our part are just that "errors." We want to learn from the comments made in the audit to do our job in the most efficient and professional manner.

As background to the Audit, I believe we must go back to July 14, 1995, when in Oklahoma City, the Air Directors of Missouri, Kansas, Iowa, Texas, Oklahoma, Arkansas, Nebraska, and Louisiana met to discuss the efficacy of forming an organization of state Air Quality Directors on a regional basis. This action was deemed prudent and those present requested that a search team be formed of the Officers as well as a delegate from the state of Texas. They also charged this group with finding an individual for the Executive Directors position who would be acceptable to all of the states. It was further decided to contact several other states as possible members. There were plans made for applying to EPA for grant assistance in the form of 103 or 105 funding and that each states proportional share would be off the top funds. The newly elected officers were charged with starting the process of establishing the organization and applying for funding from regions 6 and 7 of EPA.

During the next several months, discussions were held with the regional offices and grant applications were developed. The Region 6 grant application was sent in on behalf of the new organization by the state of Oklahoma. Mr. Steve Thompson applied for those funds on January 25, 1996 asking that \$129,976.00 be awarded to the state as start up funding for the new organization. During the same time frame an award was requested by the state of Missouri from

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Re: EPA Audit Response on Assistance Agreement X99694001

Attachment 2

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Region 7 on behalf of the organization. These actions were taken to allow time for the organization to incorporate and apply for tax-exempt status. These funds were used to accomplish projects that the organization was formed to achieve and to supply the funding to set up the infrastructure. Funds were expended prior to the selection of an executive director. As CenSARA became an organization, requests for funding were made directly to EPA Region 6 as the lead region.

Also during this time, the search team for the Executive Directors position was active. Job announcements were placed, position descriptions were drafted, candidate lists were compiled and interview questions were drafted. During the first round several candidates were reviewed and some were interviewed. The search team was in the process of presenting a candidate to the body for a vote when that person withdrew their name from consideration. A second round of candidates were reviewed and an individual was selected and presented to the membership. This individual was offered the position and due to personal reasons declined the job after initially indicating his acceptance. At this point the team met and agreed to go out for a new group of candidates. This round of solicitations did not yield any new individuals who were interested in the job. Faced with this situation the search group was looking for options to fill the position. During this time I was approached by some of the Air Directors who knew that I was able to retire as to whether or not I would be interested in the position. I initially told them that I was not but at their insistence agreed to consider it further, I also told them that I could have no part in the further deliberations in securing a Executive Director. After discussions with my wife and family, I told the search team that I would consent to discussing the position with them. At this point I had several reservations and needed to have many questions answered. Upon completion of the discussions I agreed to have my name sent forward, however I insisted that everyone agree to my serving. I was offered the job and accepted the position effective November 1, 1997.

I would also like to address the issue of Mr. Bob Hanneschlager's appointment as an IPA to the Regional Planning Program. During 1998, EPA proposed the regional technical center approach to do air quality analysis on a large scale. This idea was soon replaced with the Regional Planning concept patterned after the Grand Canyon Commission group. The CenSARA membership was approached by EPA about their interest in such a process and who they would like to represent them in such a concept. The Commissioners of the nine CenSARA states replied that they wanted the organization to represent their interests. Faced with this decision by the commissioners, CenSARA convened meetings of the states to discuss how best to implement the wishes of the commissioners. It was decided among the states that a new organization would be needed and that we should move forward to establish the new unit. It was also noted that CenSARA would need additional staff to accomplish the development of the new organization. It was observed that several similar organizations had asked for and received assignees from EPA. The decision was made to ask EPA Regions Six and Seven to supply an individual each to support this effort. This request was made and Region Six responded by assigning Mr. Hanneschlager. Region Seven responded by offering an individual who was subsequently not available due to reassignment to an area outside the air group. Region Seven is still seeking an individual who is interested in serving in this capacity. Mr. Hanneschlager has proven to be an

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asset both to the Regional Planning Organization and the Regional Office in his current assignment. We look forward to the assignment of staff from Region Seven to help augment this long-range program. It should be noted that the Regional Planning concept was not on the horizon when CenSARA was formed and that the air directors had not contemplated the level of effort necessary to start this process when they established the CenSARA office and its staff.

Sincerely,



Larry Byrum

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Attachment 3

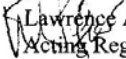


UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 6
1445 ROSS AVENUE, SUITE 1200
DALLAS, TX 75202-2733

November 20, 2001

MEMORANDUM

SUBJECT: Office of Regional Counsel Approval
of Intergovernmental Personnel Act (IPA) Requests

FROM:  Lawrence Andrews
Acting Regional Counsel

TO: Division Directors

The purpose of this Memorandum is to formalize the policy adopted in August, 2001, regarding Intergovernmental Personnel Act (IPA) requests. All requests must be reviewed by the Deputy Ethics Official in the Office of Regional Counsel prior to signature by the Assistant Regional Administrator. The purpose of this policy is to prevent potential conflicts of interest.

cc: Lawrence E. Starfield

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