UNITED STATES DEPARTMENT OF EDUCATION

OFFICE OF INSPECTOR GENERAL

September 20, 2002

CONTROL NUMBER
ED-OIG/A19-B0009

Jack Martin, Chief Financial Officer
Office of the Chief Financial Officer
U.S. Department of Education
Federal Building No. 6, Room 4E313
400 Maryland Avenue, S.W.
Washington, DC 20202-4300

Grover J. Whitehurst, Assistant Secretary
Office of Educational Research and Improvement
U.S. Department of Education
Capital Place, Room 600
555 New Jersey Avenue, N.W.
Washington, DC 20208

Dear Messrs. Martin and Whitehurst:

This **Final Audit Report** (Control Number ED-OIG/A19-B0009) presents the results of our audit to evaluate the Department of Education's process for identifying and monitoring high-risk contracts that support Office of Educational Research and Improvement (OERI) programs.

Statements that managerial practices need improvements, as well as other conclusions and recommendations in this report, represent the opinions of the Office of Inspector General. Determinations of corrective action to be taken will be made by the appropriate Department of Education officials.

In accordance with the Freedom of Information Act (5 U.S.C. § 552), reports issued by the Office of Inspector General are available, if requested, to members of the press and general public to the extent information contained therein is not subject to exemptions in the Act.

BACKGROUND

Department of Education (Department) contract management staff includes the Contracting Officer (CO), Contract Specialist (CS), and the Contracting Officer's Representative (COR). Generally, the CO and CS are staff in Contracts and Purchasing Operations (CPO) under the Department's Office of the Chief Financial Officer (OCFO). The COR is a member of the program office staff, in this case, OERI.

400 MARYLAND AVE., S.W. WASHINGTON, D.C. 20202-1510

Our mission is to ensure equal access to education and to promote educational excellence throughout the Nation.

The CO is primarily responsible for ensuring effective contract performance. However, the monitoring process is a team effort between the CO, CS, and the COR. Contract monitoring is based on the terms and conditions in each contract, and the requirements set forth in the Federal Acquisition Regulation (FAR).

As of April 19, 2001, OERI had 213 active contracts valued at $470,851,196, representing 56 percent of all non-Federal Student Aid contract dollars.

AUDIT RESULTS

We found that the Department established guidelines to identify high-risk contracts and the level of monitoring required. However, neither CPO nor OERI specifically designated contracts as "high-risk" or maintained a listing of high-risk contracts. Instead, each contract was monitored based on the specific terms of the contract. As no contracts were officially designated as high-risk, we focused our audit on the general contract monitoring process for selected OERI contracts. (See Attachment 1 for characteristics the Department defined to indicate contracts that may need additional monitoring.)

Our audit revealed that Department staff did not always ensure compliance with contract terms and conditions or follow established regulations, policies, and procedures in monitoring OERI contracts. As a result, the Department could not ensure that the terms of the contracts were followed and contract obligations were met. In our opinion, the conditions noted result in more than a relatively low risk that errors, irregularities, and other inefficiencies may occur resulting in inefficient and/or ineffective contract performance.

The Department responded to our draft report, concurring with the results and supporting the recommendations provided. The Department also described specific corrective actions they have taken and intend to take to address the issues noted and stated, "OCFO and OERI will continue this collaboration to develop a comprehensive action plan that will not only improve contract monitoring within OERI, but Department-wide." The full text of the Department's response is included as Attachment 5 to this audit report.

Finding No. 1 Department Staff Did Not Always Ensure Compliance with Contract Terms or Follow Established Regulations, Policies, and Procedures.

In 8 of 15 OERI contracts reviewed,[1] we noted that Department staff did not always ensure compliance with contract terms and conditions. Specifically, we found:

- Four contractors did not provide deliverables within specified timeframes;
- One contractor did not comply with cost-sharing terms;
- One contractor exceeded task order cost ceilings;

[1] See the OBJECTIVE, SCOPE, AND METHODOLOGY section of this report for further detail on the contracts reviewed. Some contracts are represented in more than one category.

- One contractor exceeded task order hours ceilings;
- One contractor substituted labor categories; and
- One contractor did not provide annual reports of Government furnished property.

We also noted that Department staff did not always follow established regulations, policies, and procedures in monitoring 14 of 15 contracts reviewed. Specifically, we found:

- In nine contracts, COs authorized payment of invoices without proper payment recommendations from the CORs;
- In seven contracts, CORs did not document or provide evaluations of contractor progress reports to the COs;
- In six contracts, CORs did not provide COs with timely or accurate deliverable acceptance recommendations;
- In five contracts, CPO staff did not complete closeout procedures timely;
- In three contracts, CPO staff did not maintain the Statements of Work and/or the contractors' proposals in official contract files;
- In two contracts, COs did not complete modifications appropriately;
- In two contracts, unauthorized Government personnel rejected deliverables;
- In two contracts, COs extended periods of performance beyond maximum time limits;
- In two contracts, COs did not provide written COR delegations;
- In two contracts, CPO and OERI staff did not document receipt of deliverables; and
- In one contract, the CO authorized an incentive payment without appropriate documentation.

A detailed discussion of each issue is provided in Attachment 2. Issues noted for each contract reviewed are provided in Attachment 3.

FAR § 1.602-2 states, "Contracting officers are responsible for ensuring performance of all necessary actions for effective contracting, ensuring compliance with the terms of the contract, and safeguarding the interest of the United States in its contractual relationships."

Department of Education Directive (Directive), C:GPA 2-110, "Contract Monitoring for Program Officials," dated January 12, 1987, Section II, states, "It is the policy of the Department of Education (a) to monitor every contract to the extent appropriate to provide reasonable assurance that the contractor performs the work called for in the contract, and (b) to develop a clear record of that performance and the Department's efforts in monitoring it."

Section VIII.A of the Directive states, "Contract monitoring is conducted by the Government to ensure that the contractor performs according to the specific promises and agreements that make up the contract."

During our audit, we found CPO and OERI staff were not always familiar with contract terms and applicable regulations, policies, and procedures governing contract monitoring. In addition, we found COs did not obtain documentation critical to the flow of information in the contract monitoring process, such as evaluations of progress reports and deliverables.

The COs rely on the CORs to inform them of potential problems. Contracting staff stated they considered contract performance to be satisfactory unless they heard otherwise from the CORs. Without an effective flow of information between the CO and COR, the COs cannot ensure that the CORs are adequately performing the contracting monitoring tasks they have been delegated, and contract progress is satisfactory.

Contracting and program staff who are unfamiliar with contract terms, or with regulations, policies and procedures to be followed in monitoring contracts, will be unable to provide reasonable assurance that the contractor performs the work called for in the contract – the basic purpose of contract monitoring. Failure to enforce contract terms may also constitute a waiver of the Department's rights to enforce contract terms and subsequently weaken its position to effectively defend itself in contract disputes. Rules for contract interpretation during disputes favor the contractor in these situations. (See Attachment 4 for a listing of the "Rules that Aid Contract Interpretation.")

Comments by CPO Management

On January 25, 2002, CPO management provided a written response to the findings presented at the exit conference. We have considered CPO's comments in drafting this audit report and have summarized the comments after each issue presented in Attachment 2. CPO management also listed the following as "four major areas of improvement evolving from this review:"

1. CPO must ensure that all OERI deliverables received under its contracts are timely received, inspected, and accepted/rejected.

2. CPO must ensure that contract administrative matters such as timely formalizing contract modifications, issuing COR delegations, and performing timely closeouts are performed. CPO must also ensure that the regulatory restriction on the life of service contracts is not violated.

3. CPO must ensure that its OERI CORs adequately fulfill their duties under the delegation.

4. OERI CORs must ensure that it satisfactorily performs all aspects of contract monitoring.

While COs are primarily responsible for ensuring compliance with contract terms and conditions, the CORs are also responsible for several of the issue areas noted. Therefore, we have addressed our recommendations to both OCFO and OERI management where applicable.

Recommendations:

We recommend the Chief Financial Officer and the Assistant Secretary for OERI take actions to ensure:

1.1 CPO and OERI staff are aware of and adhere to regulations, policies, and procedures that apply to their responsibilities as contract managers, including the characteristics that affect contract monitoring.
1.2 CPO and OERI staffs are familiar with the terms and conditions of the contracts they are responsible for managing.
1.3 Contract terms (including deliverable schedules, cost and hour ceilings, labor categories, and requirements for reports) are enforced.
1.4 CORs provide timely invoice payment recommendations to COs before payment is made.
1.5 CORs document and provide written evaluations of contractor reports to the COs.
1.6 CORs track and keep COs fully informed of the status of all deliverables.
1.7 COR recommendations to accept or reject deliverables are accurate and timely, only authorized personnel accept or reject deliverables, and documentation of deliverable receipt and acceptance is maintained.

We recommend the Chief Financial Officer take actions to ensure:

1.8 Contract closeout procedures are performed timely.
1.9 CPO staff issue timely and complete modifications to document changes in contract terms.
1.10 Statements of Work and contractor proposals are maintained in official contract files.
1.11 Service contracts are not extended beyond the maximum time limit.
1.12 COR delegations are provided in writing to both the contractor and the COR.
1.13 Incentive payments are not authorized without appropriate documentation.

With respect to the specific contracts reviewed in our audit that have not yet expired, we recommend the Chief Financial Officer take action to:

1.14 Recover the $4,853 due the Department under the cost-sharing provisions of Contract ED99CO0148, (see Attachment 3, page 4).
1.15 Execute a modification to authorize increased labor hours under Task Order 30 of Contract RN96002001, (see Attachment 3, page 6).
1.16 Execute a modification to authorize the labor hour substitution under Task Order 80 of ED99CO00113, (see Attachment 3, page 3).
1.17 Execute a modification and provide written COR delegations to the contractor and COR to reflect the change in CORs for contact RN96002001, (see Attachment 3, page 7).
1.18 Ensure copies of the Statements of Work and/or contractors' proposals are incorporated into the official contract files for Contracts ED98CO0002, RN96002001, and RR91172003, (see Attachment 3, pages 1 and 7).

1.19 Evaluate the current period of performance end date of March 15, 2003, for Contract RN96002001 and determine whether an earlier end date should be established and whether remaining work should be competed, (see Attachment 3, page 7).
1.20 Execute a modification to authorize the incentive payment under ED98CO0002, (see Attachment 3, page 1).

OTHER MATTERS

Contract Effective Dates and Signature Dates Did Not Always Agree

In 7 of 15 contracts reviewed, we found effective dates for 1 contract and 27 modifications did not agree with CO signature dates. We found the effective and signature dates varied by as much as 305 days. The discrepancy between the two dates creates a situation where contract terms are not clear. In the event of a contract dispute, the Department's position could be weakened by this ambiguity.

In a written response to the findings presented at the exit conference, CPO management acknowledged the dates noted were different and this was a valid issue. We suggest CPO resolve this issue by ensuring the dates agree, or inserting language into the contract to specify which date takes precedence. (We noted this issue in our review of the following contracts: ED98CO0002, ED99CO0079, ED99CO0113-Task Order 80, ED99CO0118, RJ96006501, RJ97184001, and RN96002001-Task Order 30.)

Program Office Documentation Was Not Merged with Official Contract Files

In our review of expired contracts, we noted that documentation maintained by the CORs was not merged with the official contract files maintained by CPO once a contract was completed. While Section XV.C.3 of the Directive requires program office contract files to be retained for the same period as the official contract files, maintaining separate files does not present a complete picture of contract performance. The lack of a consolidated contract file presents several weaknesses that may harm the Department's position if the contract becomes involved in a dispute. The current system of documenting receipt of contract deliverables in the official contract file does not provide clear evidence to identify specific deliverables and when they were received. (See further discussion of this issue under Item 2c, Attachment 2.) Program office staff turnover could result in lost information. Archived records may not be co-located in records retention centers if retired by separate offices.

In a written response to the findings presented at the exit conference, CPO management stated, “CPO acknowledges that the ideal condition for an expired contract file is to have all components consolidated into one location. Unfortunately, the Department does not have the space capacity to provide such an accommodation. Additionally, no requirement exists to have the documents consolidated; only that program files carry the same retention period as

contract files." We suggest Department staff consider developing and implementing a process, including the allocation of sufficient storage space, to ensure a consolidated record of contract performance is maintained. (We noted this issue in our review of the following expired contracts: ED98CO0041, ED99CO0148, RJ97184001, RN94004001-Task Order 35, RN94093001-Task Order 29, RR91172003, and RW97076118.)

OBJECTIVE, SCOPE, AND METHODOLOGY

The objective of our audit was to evaluate the Department's process for identifying and monitoring high-risk contracts. To accomplish our objective, we obtained an understanding of the controls in place at the Department over the contract monitoring process for OERI contracts. We reviewed the Federal Acquisition Regulation and applicable Departmental policies and procedures. We conducted interviews with CPO and OERI management and staff involved in the monitoring process and reviewed contract files.

In selecting a principal office to review, we obtained a listing of all active contracts as of April 19, 2001. We identified the number and dollar value of active contracts for each principal office. We excluded Federal Student Aid and interagency contracts due to previous audit coverage or planned future audits in these areas. As of April 19, 2001, OERI had 213 active contracts valued at $470,851,196, representing 56 percent of all active contract dollars. We selected OERI for review due to its high volume and value of contracts.

We evaluated the universe of active OERI contracts by dollar amount, by the number and dollar value of contracts assigned to individual CO, CS, and COR staff, and by contractors with multiple active contracts. We judgmentally selected 8 of the 213 active OERI contracts to include contracts of varying amounts, contracts managed by various CPO and OERI staff, and contractors with multiple awards. The eight active contracts selected were valued at $134,665,342, representing 29 percent of the total value of active OERI contracts.

CPO also provided a listing of all contracts that had expired during Fiscal Year (FY) 1999 and FY 2000. We initially selected a judgmental sample of 5 of the 37 OERI contracts that expired in FY 2000. During our review, we found closeout procedures had not been completed for the five expired contracts selected. CPO staff stated closeout procedures had not been completed for any of the OERI contracts that had expired during FY 1999 and FY 2000. In order to evaluate the closeout process, we judgmentally selected two additional expired contracts from a list of 45 OERI contracts subsequently compiled by CPO from files that were closed and awaiting retirement to the records center. Closeout procedures for these two contracts were completed in FY 1999 and FY 2000.

We reviewed the general terms and conditions for all 15 contracts discussed in the two previous paragraphs (8 active contracts and 7 expired contracts). Due to the size and number of task orders associated with four contracts (two active and two expired), we limited our review to one judgmentally selected task order for each of these contracts. As we selected a nonstatistical sample of contracts to review, our audit results may not be representative of the universe of OERI contracts.

We tested the accuracy, authenticity, and completeness of the universe of active contracts as of April 19, 2001, by comparing the listing provided by CPO with a report of contract payments from the Department of Education's Central Automated Processing System (EDCAPS). During our review of active contract files, we also confirmed information on the CPO listing to supporting documentation. We did not confirm the completeness of the list of contracts that had expired in FY 1999 and FY 2000, or the list of contracts for which closeout procedures had been completed. We were able to confirm the accuracy of the data on the listings for the seven expired contracts selected through review of supporting documentation in the contract files. We determined the CPO-provided data to be sufficiently reliable for meeting the audit's objective.

We performed our fieldwork at applicable Department offices in Washington, DC, during the period July 31, 2001, through February 12, 2002. We held an exit conference with Department officials on December 17, 2001. At the Department's request, we met again on February 12, 2002, to discuss CPO's written comments to the findings presented at the exit conference. We performed our audit in accordance with Government Auditing Standards appropriate to the scope of the review described above.

STATEMENT ON MANAGEMENT CONTROLS

We made a study and evaluation of the management control structure of the contract monitoring process for OERI contracts during the period of our review. Our study and evaluation was conducted in accordance with Government Auditing Standards.

For the purpose of this report, we assessed and classified the significant management control structure into the following categories:

- Compliance with contract terms;
- Invoice processing and payment; and
- General contract administration.

Department management is responsible for establishing and maintaining a management control structure. In fulfilling this responsibility, estimates and judgments by management are required to assess the expected benefits and related costs of control procedures. The objectives of the system are to provide management with reasonable, but not absolute, assurance that assets are safeguarded against loss from unauthorized use or disposition and that the transactions are executed in accordance with management's authorization and recorded properly, so as to permit effective and efficient operations.

Because of inherent limitations in any management control structure, errors or irregularities may occur and not be detected. Also, projection of any evaluation of the system to future periods is subject to the risk that procedures may become inadequate because of changes in conditions or that the degree of compliance with the procedures may deteriorate.

Our assessment disclosed conditions in the Department's management control structure over the contract monitoring process for OERI contracts, which in our opinion, results in more than a relatively low risk that errors, irregularities, and other inefficiencies may occur resulting in inefficient and/or ineffective performance.

The following material weaknesses were noted and are discussed in the AUDIT RESULTS section of this report:

- Department staff did not always ensure compliance with contract terms; and
- Department staff did not always follow established regulations, policies, and procedures.

Nonmaterial weaknesses, which in the auditors' judgment are reportable conditions, are included under the OTHER MATTERS section of this report.

ADMINISTRATIVE MATTERS

Please provide us with your final response to each recommendation within 60 days of the date of this report indicating what corrective actions you have taken or plan, and related milestones.

The Chief Financial Officer has been designated as the primary action official for this report. The Assistant Secretary for the Office of Educational Research and Improvement has been designated as a collateral action official. Please coordinate your responses and corrective action plans as appropriate.

Please provide the Supervisor, Post Audit Group, Office of the Chief Financial Officer, and the Office of Inspector General with quarterly status reports on promised corrective actions until all such actions have been completed or continued followup is unnecessary.

We appreciate the cooperation given to us during this review. Should you have any questions concerning this report, please call Michele Weaver-Dugan at 202-863-9526. Please refer to the control number in all correspondence related to the report.

Sincerely,

Thomas A. Carter
Assistant Inspector General for Audit Services

Attachment 1 – Contract Risk Factors

The Department's Directive, C:GPA:2-110, "Contract Monitoring for Program Officials," dated January 12, 1987, includes the following as characteristics that affect contract monitoring. These factors may indicate that a contract or contractor may be higher risk and therefore require additional monitoring.

- Contract type,
- Technical complexity of the project,
- Dollar size of the contract,
- Degree of interrelatedness with other contracts or projects,
- Degree of critical subcontracting,
- Newly incorporated organizations,
- Firms with a history of performance or management problems,
- Emerging organizations, and
- Organizations without contract experience.

Attachment 2 – Detailed Discussion of Issues Noted

This attachment provides additional detail on the individual issues noted. The contracts involved are noted parenthetically at the end of each issue. See Attachment 3 for a listing of the issues noted by contract.

1. **Department Staff Did Not Always Ensure Compliance with Contract Terms.** In 8 of 15 contracts reviewed, Department staff did not always ensure compliance with contract terms and conditions.

   a. **Four contractors did not provide deliverables within specified timeframes** – In three contracts, 21 of 46 deliverables reviewed were received late. A fourth contractor did not provide any of the required quarterly progress reports since the contract began in January 1999.

   The Statements of Work for each contract included the requirements and due dates for deliverables. The Federal Acquisition Regulation (FAR) § 42.302(a)(31) and (58) include the following as functions of contract administration:

   - Performing production support, surveillance and status reporting, including timely reporting of potential and actual slippages in contract delivery schedules.
   - Ensuring timely submission of required reports.

   Department Directive (Directive), C:GPA:2-110, "Contract Monitoring for Program Officials," dated January 12, 1987, Section IX.D, requires the Contracting Officer's Representatives (COR) to read and understand the contract and their monitoring responsibilities. Section X.D states, "Contracts often require the contractor to submit routine reports of progress. In other cases, reports may be submitted as deliverables." Section X.F states, "Monitoring must measure the contractor's progress in producing deliverables." Section XII.A requires the COR to notify the Contracting Officer (CO) of any contractor performance problems, and lists the failure to submit required reports and deliverables on time as examples of deficient contractor performance.

   Neither the contracting staff nor Office of Educational Research and Improvement (OERI) staff took action to ensure all deliverables for these contracts were received. One COR was not aware the contractor was late in submitting progress reports. The COR indicated a modified schedule was acceptable, but no modification to revise the schedule had been issued. In another contract, the contractor did not submit any

progress reports. The COR for this latter contract stated she was not aware of the requirement for these reports.

In all four contracts, the CORs did not notify the COs of the contractors' deficient performance as required. As such, the COs could not take action to enforce the contract terms. Allowing contractors to make late deliveries, or to fail to provide some deliverables, weakens the Department's position should it later attempt to enforce scheduled deliveries of other items. Section XII.A.2 of the Directive states, "If a [COR] fails to initiate corrective action in the face of known performance deficiencies, such inaction could be judged to constitute a waiver of the Government's right later to demand remedy by the contractor."

In a written response to the findings presented at the exit conference, Contracts and Purchasing Operations (CPO) management stated, "CPO must ensure that all OERI deliverables received under its contracts are timely received, inspected, and accepted/rejected." CPO management further stated, "CPO must ensure that its OERI CORs adequately fulfill their duties under the delegation." (ED98CO0007, ED98CO0041, ED99CO0079, and RW97076118)

b. **One contractor did not comply with cost-sharing terms** – According to the contract terms, one contractor was required to provide cost-sharing of no less than $9,581. From a review of the invoices, we determined the contractor had provided only $4,728. The CO and COR were aware of the cost-sharing provision in the contract, but they had not monitored compliance to ensure the contractor provided the required amount. As a result, the Department overpaid the contractor by $4,853.

   In a written response to our findings presented at the exit conference, CPO management stated they have taken action to ensure the contractor shares the agreed amount of $4,853. (ED99CO0148)

c. **One contractor exceeded task order cost ceilings –** One contract task order included specific cost ceilings of $29,125 for other direct costs (ODC) and $4,602 for ODC overhead. Paragraph 7 of the task order stated, "The total specified amount for labor, materials, and materials overhead shall be considered ceilings which are not to be exceeded." Invoices submitted by the contractor exceeded the ODC ceiling by $60,516 and the ODC overhead ceiling by $9,561. Although the amounts were approved for payment, the CO did not modify the contract to authorize the increased ODC costs and overhead. The total costs billed were within the ceiling amount of the overall task order. Allowing changes in task order cost ceilings without a formal modification could indicate to the contractor that this practice is acceptable on other task orders. Allowing such changes on one task order could also set a precedent that could weaken the Department's position in the case of a dispute on this or another contract. (See Attachment 4, "Prior Course of Dealings Rule.")

In a written response to our findings presented at the exit conference, CPO management stated, "CPO must ensure that contract administrative matters such as timely formalizing contract modifications…are performed." (RN94093001-Task Order 29)

d. **One contractor exceeded task order hours ceiling** – One contract task order included a ceiling on the number of hours, stating, "[T]he level of effort shall not exceed 40 hours." The contractor exceeded this ceiling, billing a total of 43.8 hours under the task order, but it did not exceed the overall task order amount ceiling. No modification had been executed to authorize the increased hours. The COR was not aware the maximum hours had been exceeded, stating he was not monitoring individual details of the invoices, but he relied on other staff members in OERI to perform that function. Allowing changes in the task order hours ceiling could indicate to the contractor that this practice is acceptable on other task orders, possibly resulting in cost overruns. Allowing such changes on one task order could also set a precedent that could weaken the Department's position in the case of a dispute on this or another contract. (See Attachment 4, "Prior Course of Dealings Rule.")

   In a written response to the findings presented at the exit conference, CPO management stated, "CPO must ensure that contract administrative matters such as timely formalizing contract modifications…are performed." Further, CPO management stated, "CPO must ensure that its OERI CORs adequately fulfill their duties under the delegation." (RN96002001- Task Order 30)

e. **One contractor substituted labor categories** – In one task order, a contractor substituted one labor category for two other specified labor categories. Paragraph 8b of the task order required four hours of a project director and two hours of an administrative assistant. Instead, the contractor substituted six hours of a senior researcher. The Department paid the invoice documenting this substitution. The COR was aware of this substitution but did not request modification of the task order terms. The COR stated the issue resulted from a difference in interpretation of the terms in the contract. The COR stated the contractor was only concerned with staying within the total task order ceiling amount, rather than adhering strictly to the terms limiting labor categories and hours. No action was taken to correct the contractor's interpretation or to modify the task order requirements. Allowing the contractor to substitute labor categories could result in the Department not receiving the original level of expertise agreed upon. Furthermore, not clarifying the contractor's interpretation of terms could lead to similar misunderstandings in the future, as well as potentially damaging the Department's position if the interpretation is not clarified. (See Attachment 4, "Knowledge of the Other Party's Interpretation.")

   In a written response to our findings presented at the exit conference, CPO management stated, "CPO must ensure that contract administrative matters such as timely formalizing contract modifications…are performed." Further, CPO

management stated, "CPO must ensure that its OERI CORs adequately fulfill their duties under the delegation." (ED99CO0113-Task Order 80)

f. **One contractor did not provide annual reports of Government furnished property –** Section G.4 of a contract and the incorporated FAR § 45.505-14 required the contractor to provide an annual report of the total acquisition cost of Government property for which the contractor is accountable. The CO and COR both stated they had requested the required report but had not followed up to ensure the report was received. Without receipt of annual property reports, monitoring officials have no assurance that the property provided is being utilized, adequately controlled and safeguarded by the contractor. Department property is at risk for misuse or loss. Also, failing to enforce contract terms could harm the Department's position in the case of a dispute on this or other contracts. (See Attachment 4, "Prior Course of Dealings Rule.")

As a result of our audit, the CO sent another request to the contractor for the Government property report. In a written response to our findings presented at the exit conference, CPO management stated the annual report of Government furnished property had been received for this contract. (ED98CO0007)

2. **Department Staff Did Not Always Follow Established Regulations, Policies, and Procedures.** In 14 of 15 contracts reviewed, we found CPO and OERI staff did not always follow established regulations, policies, and procedures.

a. **In nine contracts, COs authorized payment of invoices without proper payment recommendations from the CORs –** COs authorized payment of 39 invoices totaling $2,956,164 without proper payment recommendations from the CORs. Specifically:

- Twenty-six invoices totaling $2,798,123 were paid without any payment approval recommendation from the COR;
- Nine invoices totaling $146,253 were paid based on incomplete information provided by the COR; and
- Four invoices totaling $11,788 were paid prior to receipt of payment recommendations from the COR.

Section IX.C.3 of the Directive states:

> The process of approving a contractor's invoices for payment must be carried out carefully and quickly if the Government's interests are to be protected and if the contractor is to be dealt with fairly…. The [COR] and CO must work cooperatively to ensure that both scrutiny and promptness occur with the processing of each invoice.

Section XI.C.1b of the Directive states:

> The CO is responsible for approving a contractor's invoices for payment, but only after review and advice from the COR (as well as the CO's own analysis) concerning the contents of the invoice and the contractor's performance relative to what is being billed.

We found contracting staff did not ensure CORs provided payment recommendations before payments were made. Contracting staff stated CORs were slow to return their recommendations, so payments were made to avoid Prompt Payment Act interest charges. Although we did not identify any erroneous payments in our review, there is a greater risk for erroneous or improper payments without the COR's independent review and payment recommendation.

In a written response to our findings presented at the exit conference, CPO management discussed this issue as it relates to whether or not a receiving report is required prior to payment. CPO management stated:

> CPO has made clear in several communications with the OIG that payments under cost-reimbursement contracts **do not** require a receipt in consideration that payments are not based on delivery of goods or services but based on reasonable costs incurred for the work performed. While CPO coordinates reviews of cost reimbursement vouchers with the COR, the contracting officer can approve a payment provided the CO has a reasonable basis to presume that work was performed satisfactorily at reasonable costs.
>
> Oracle will require receipts to make payments; however, CPO has made clear that for cost-reimbursement contracts, what is regarded as a 'receipt' is actually written evidence of COR review and recommendation of the reasonability of costs incurred. This is not unlike past practice. The exception is that Oracle Financials will not make a payment without COR written evidence regardless of whether the CO is in the position to make this determination solely.

Only three of the nine contracts cited in this section were cost-reimbursement contracts that would fall under CPO's response. Our concern is that COs authorize payments "…only after review and advice from the COR…" as is required by the Department's Directive. The Directive does not distinguish between types of contracts for this requirement. The independent invoice review by the COR provides for segregation of duties and helps ensure the appropriateness of payments made. We are encouraged to learn that Oracle Financials will incorporate this important internal control for all types of contract payments. (ED98CO0002, ED98CO0007, ED98CO0041, ED99CO0079, ED99CO0148, RJ97184001, RN94093001-Task Order 29, RN96002001-Task Order 30, and RW97076118)

b. **In seven contracts, CORs did not document or provide evaluations of contractor progress reports to the COs** – Seven contracts reviewed included requirements for contractor progress reports. All of the CORs for these contracts acknowledged they did not complete and provide written evaluations of contractor progress reports to the CO as required.

Section X.D.2c of the Directive requires the COR to make a written evaluation of each report submitted by the contractor. In addition, Section X.D.4b of the Directive requires all evaluations of reports made by the COR be provided to the CO. The information contained in the progress reports is generally technical in nature and outside the scope of the CO's expertise. Without feedback from the COR on the technical aspects of the progress reports, the CO is not being made aware of information that may indicate problems with contract progress and the need for future actions. In addition, the Department's interests could be harmed in the event of a dispute if the CO is not kept fully informed of contract performance issues.

In a written response to the findings presented at the exit conference, CPO management stated, "CPO acknowledges that the CO failed to ensure that the COR fulfilled his/her responsibilities in documenting his/her evaluation and assessment of contract submitted progress reports." CPO further stated, "CPO must ensure that its OERI CORs adequately fulfill their duties under the delegation." (ED98CO0002, ED98CO0007, ED99CO0148, RJ96006501, RN94093001-Task Order 29, RN95127001, and RN96002001-Task Order 30)

c. **In six contracts, CORs did not provide COs with timely or accurate deliverable acceptance recommendations** – COR acceptance recommendations for deliverables were untimely for two contracts. Acceptance recommendations were inaccurate for four contracts.

FAR § 52.246-6(e) states, "Unless otherwise specified in the contract, the Government shall accept or reject services and material at the place of delivery as promptly as practicable after delivery, and they shall be presumed to be accepted 60 days after the date of delivery unless accepted earlier." The Department uses a "Request for Invoice Review" form to notify the CO of receipt and acceptance or rejection of deliverables. However, the CORs submitted the form only when an invoice was received from the contractor. The CO received the forms between 77 and 300 days after receipt for seven of eight deliverables in the two contracts. By the time the COR notified the CO that a deliverable had been received through this process, acceptance of the deliverable had already been presumed under the FAR requirement.

The "Request for Invoice Review" form does not provide an option for listing individual deliverables. Instead, the form provides options to check as follows:

> Work has ( ) or has not ( ) been satisfactorily performed and all required reports and/or deliverables currently due have ( ) or have not ( ) been delivered and accepted under the above contract.

Instructions on the form indicate that the COR should attach a separate statement to specify any contract deficiencies.

The CORs for these contracts acknowledged the "Request for Invoice Review" form did not always accurately reflect the status of all deliverables due for the period of performance under review.

Delays in the delivery schedule and infrequent invoicing necessitate more specific documentation of the receipt of deliverables. Use of a general form to indicate all deliverables due have been received is ineffective. The CORs should report specific receipt and recommendations for acceptance or rejection to the CO for each deliverable to ensure the Government's rights are protected.

In a written response to our findings presented at the exit conference, CPO management related this issue back to the invoice payment issue discussed previously under item 2a. However, this issue is distinct as it relates only to the process for accepting or rejecting deliverables. Without a specific form or methodology whereby the COR can notify the CO of the status of deliverables as they are received and evaluated, the CO cannot take timely action to reject unsatisfactory deliverables and enforce contract terms and schedules. When the COR does not notify the CO of deliverable acceptance or rejection until an invoice is received, and that invoice is received more than 60 days after the deliverable, acceptance of the deliverable has already been presumed under the FAR. The Department would be in a significantly weakened position to reject the deliverable at that time. Further, the COR certification checked on the "Request for Invoice Review" form would further weaken the Department's position in a dispute over unsatisfactory performance or a late or unacceptable deliverable.

CPO management also stated in their written response, "CPO acknowledges that it needs improvement in tracking deliverables…." "CPO must ensure that all OERI deliverables received under its contracts are timely received, inspected, and accepted/rejected." CPO management further stated, "CPO must ensure that OERI CORs adequately fulfill their duties under the delegation." (ED98CO0002, ED98CO0007, ED99CO0113-Task Order 80, RJ96006501, RN94004001-Task Order 35, and RN94093001-Task Order 29)

d. **In five contracts, CPO staff did not complete closeout procedures timely –** Closeout procedures for five of the seven expired contracts reviewed were not completed timely. FAR § 4.804-1(a)(2) requires files for firm-fixed-price contracts to be closed within six months. FAR § 4.804-1(a)(3) requires files for contracts requiring settlement of indirect cost rates to be closed within 36 months.

Four of the five contracts noted were fixed price contracts. One contract had expired in FY 1999 and two in FY 2000. As of our review on September 27, 2001, the closeout process had not been completed. The six-month time limit had been exceeded for all three contracts. The fourth fixed price contract expired on March 31, 1998, but closeout procedures were not completed until November 25, 1998, two months past the six-month maximum time limit. The fifth contract included indirect costs. Final payment was made on September 30, 1995. Contract closure occurred on December 7, 1999, 14 months beyond the 36-month maximum time limit.

Contracting staff stated contract closeouts have a low priority in comparison with other workload. While we acknowledge workload must be prioritized, the closeout process ensures all appropriate actions have been taken with respect to the contract, all deliverables have been received, and funds paid were appropriate. If any funds are due the Government, recouping overpayments becomes more difficult as time passes and personnel change. Additionally, the Department loses its ability to reuse excess funds if they are not deobligated from expired contracts in a timely manner.

In a written response to the findings presented at the exit conference, CPO management stated, "CPO must ensure that contract administrative matters such as…performing timely closeouts are performed." (ED98CO0041, RN94004001-Task Order 35, RN94093001-Task Order 29, RR91172003, and RW97076118)

e. **In three contracts, CPO staff did not maintain the Statements of Work and/or contractors' proposals in the official contract files** – Official contract files did not contain the Statements of Work, contactors' proposals, or both for three contracts reviewed. FAR § 4.803(a)(8) and (10) specify that the solicitation (containing the Statement of Work) and the contractor's technical, management, and cost/price proposals are records to be included in the official contract files. In the event of a contract dispute, the Government's position would be weakened due to the lack of adequate documentation of the scope of work and other agreements originally made under the contract.

In a written response to the findings presented at the exit conference, CPO management reported the documents had been found in the file room for two of the three contracts. (ED98CO0002, RN96002001-Task Order 30, and RR91172003)

f. **In two contracts, COs did not complete modifications appropriately –** Modifications were either not completed or not completed timely in two contracts reviewed. Specifically:

- The period of performance for one contract originally expired on October 31, 1999. The contractor was verbally authorized to continue performance through March 31, 2000. A modification to extend the period of performance had not been completed at the time of our review on September 27, 2001.

- The period of performance for a task order originally expired on February 13, 1999. On September 30, 1999, the period of performance was extended through March 31, 2000. During the seven-month interim period, the contractor continued to perform work on the task, even though there was no modification in place. During this period, the contractor also submitted, and the Department paid invoices for work performed between February 13, 1999, and September 30, 1999.

FAR § 43.201(a) states the CO is generally permitted to make "[U]nilateral changes, in designated areas, within the general scope of the contract. These are accomplished by issuing written change orders on Standard Form 30, Amendment of Solicitation/Modification of Contract (SF 30)…." FAR § 4.101 requires COs to sign contracts on behalf of the United States. FAR § 43.201(c) states:

> The contracting officer may issue a change order by telegraphic message under unusual or urgent circumstances; provided, that –
>
> (1) Copies of the message are furnished promptly to the same addressees that received the basic contract;
> (2) Immediate action is taken to confirm the change by issuance of a SF 30;
> (3) The message contains substantially the information required by the SF 30 (except that the estimated change in price shall not be indicated), including in the body of the message the statement, "Signed by (Name), Contracting Officer"; and
> (4) The contracting officer manually signs the original copy of the message.

COs indicated they often bundle several changes into one modification. While this can be efficient, if a modification is significantly delayed while other changes are being considered, the Department's position to enforce contract terms may be vulnerable while there is no written agreement of the changes.

In a written response to the findings presented at the exit conference, CPO management stated, "CPO acknowledges that the CO did not follow up timely with written modifications to the verbal authorities given." CPO management further stated, "CPO must ensure that contract administrative matters such as timely formalizing contract modifications…are performed." (RJ97184001 and RN94093001-Task Order 29)

g. **In two contracts, unauthorized Government personnel rejected deliverables** – CORs for two contracts acknowledged either they or other OERI staff routinely rejected contractor deliverables and required rework before accepting the

deliverables. Under the COR letter of appointment, the authority regarding deliverables is limited to recommending final acceptance or rejection to the CO. The CO is the only Department official who has the authority to accept or reject deliverables. Section XII.A of the Directive requires the COR to notify the CO of any contractor performance problems. In addition, Section XII.B.1 of the Directive states, "The CO is the sole official to take formal action in response to performance problems. The [COR] should not try to remedy the situation."

The COR for one contract was not aware that asking for rework of submitted deliverables constituted a rejection on behalf of the Department. The COR for the other contract acknowledged he was exceeding his authority but stated if he were to involve the CO every time work is rejected, overall contract performance would be delayed.

In cost reimbursement contracts, when OERI staff rejected contractor work without the CO's knowledge, the Department lost its ability under FAR § 52.246-5(d) to require the contractor to perform the services again for no additional fee. Additionally, for time and materials contracts, the profit portion of any rework is to be excluded from the hourly rate for the correction in accordance with FAR § 52.246-6(f). Sufficient records on the rejected deliverables were not available to allow us to calculate the monetary losses created by the COR and other OERI staff who rejected deliverables.

In addition to a monetary effect, the failure to notify the CO of rejected deliverables could constitute a waiver of the Department's rights in the event of dispute. In a written response to the findings presented at the exit conference, CPO management stated, "CPO accepts the OIG finding that the COR was operating outside the scope of his/her authority in rejecting deliverables without the CO providing the final rejection." CPO management also acknowledged, "CPO must ensure that OERI CORs adequately fulfill their duties under the delegation." (ED98CO0002, and RN94093001-Task Order 29)

h. **In two contracts, COs extended periods of performance beyond maximum time limit** – The periods of performance for two contracts were extended beyond the 66-month maximum time limit for service contracts. FAR § 17.204(e) limits the term of service contracts to five years. FAR § 37.111 allows for the extension of service contracts for recurring and continuing service requirements by an amount not to exceed six months. FAR § 52.216-22, when incorporated, also limits the extensions on the period of performance to six months to allow for completion of task orders if the task orders were issued within the authorized dates for issuing orders.

The period of performance for one contract was originally December 11, 1995, through December 10, 2000. A modification added new work to the contract and extended the period of performance through September 1, 2001 – two months past the maximum 66-month limit for service contracts. The period of performance for

another contract was originally September 30, 1996, through September 29, 2001. Subsequent modifications extended the period of performance through March 15, 2003 – more than 11 months beyond the maximum 66-month limit.

The COs acknowledged in both cases that the contracts were extended in error and that the maximum time periods were exceeded. Extending the contracts beyond the maximum time limits gives the appearance of limiting competition as other contractors are unable to bid upon the continuing work.

In a written response to our findings presented at the exit conference, CPO management stated, "CPO acknowledges that the contract and task order were extended beyond the maximum time period for service contracts." CPO management further stated, "CPO must ensure that the regulatory restriction on the life of service contracts is not violated." (RJ96006501 and RN96002001-Task Order 30)

i. **In two contracts, COs did not provide written COR delegations –** A change in the assigned COR was not confirmed in writing as required for two contracts. The CO made no written notification to the contractors, and no letter delegating authority was issued to the new CORs.

Section G of both contracts states, "The [COR] may be changed by the Government at any time, but notification of the change…will be provided to the Contractor by the Contracting Officer in writing." In addition, Section VI.A.5d of the Directive states the CO, "Issues to the [COR] for each contract a memorandum outlining the [COR's] basic contract monitoring responsibilities and limitations, and explains this information to the extent judged appropriate." Without such delegation notices, it may not be clear to the contractor or the COR the extent and limitations on the COR's authority.

In a written response to the findings presented at the exit conference, CPO management stated, "CPO acknowledges that COR delegations were not provided." CPO further stated, "CPO must ensure that contract administrative matters such as…issuing COR delegations…are performed." CPO also stated a COR delegation letter had been issued for one contract. A delegation letter was not issued for the other contract since the contract had already expired. (RJ97184001 and RN96002001-Task Order 30)

j. **In two contracts, CPO and program office staff did not document receipt of deliverables** – At the time of our audit fieldwork, the official contract files and the COR files did not contain the deliverables, or evidence of their receipt, for two contract task orders. The official contract files for one of the task orders did not indicate which of the 12 deliverables had been received. Additionally, the COR stated he did not track when deliverables had been received and was unable to produce documentation supporting the delivery of 10 of 12 deliverables. Subsequent to the audit fieldwork, CPO notified the auditors that the deliverables had been

located.

Section X.N.1 of the Directive states, "The purpose of detailed record-keeping is to build a complete history of each project so that information is not lost or forgotten…." Section X.N.2 of the Directive states, "As a general rule, the [COR] should document every significant action taken or conversation held in the course of monitoring or administering a contract."

Without complete records of deliverable receipt and acceptance, the Department may not be able to determine whether the contractors have complied with the agreements made. Complete documentation is also required to support the Department's position in the event of a contract dispute.

In a written response to the findings presented at the exit conference, CPO management stated they accepted our finding, "that the COR was negligent in his/her duties in documenting and tracking deliverables. CPO also acknowledges that it needs improvement in tracking deliverables, but reasserts that the deliverables that were unable to be located during the audit field work were subsequently located." (RN94004001-Task Order 35 and RN96002001-Task Order 30)

k. **In one contract, the CO authorized an incentive payment without appropriate documentation** – A payment for one contract included a performance award in the amount of $20,000 that had not been approved by a contract modification or other documentation from the CO. FAR § 52.216-10, "Incentive Fee," subparagraph (f) requires the contract be modified to reflect the incentive fee. The clause states, "The total allowable cost and the adjusted fee determined as provided in this clause shall be evidenced by a modification to this contract signed by the Contractor and Contracting Officer." The CO did not ensure that a modification was completed to authorize payment. As a result, the incentive fee represents an unsupported payment to the contractor.

In a written response to our findings presented at the exit conference, CPO management stated, "CPO acknowledges that the contracting officer did not abide by the provisions of the contract to issue a bilateral modification effecting the incentive payment." CPO management further stated, "A contract modification to approve the incentive payment has been issued…" for this contract. (ED98CO0002)

Attachment 3 – Issues Noted by Contract

This attachment lists the issues noted for each contract, in contract number order. See Attachment 2 for further information on each issue.

ED98CO0002 – Westat, Inc. – Early Childhood Longitudinal Study, $21,541,386 (Active)

1. ***Contracting Officer (CO) authorized payment of invoices without proper payment recommendations from the Contracting Officer's Representative (COR)*** – The COR did not provide payment recommendations on three of four invoices (invoices 40, 41, and 42), totaling $1,794,272.
2. ***COR did not document or provide evaluations of contractor progress reports to the CO.***
3. ***COR did not provide CO with timely or accurate deliverable acceptance recommendations*** – The COR stated there are often delays in the delivery schedule that are not reflected on the "Request for Invoice Review" form when completed. This causes actual contract performance to stray from the contract schedule. The COR acknowledged the CO has no way of knowing if the contract is proceeding according to schedule as stated in the "Request for Invoice Review" forms submitted with invoices.
4. ***Contracts and Purchasing Operations (CPO) staff did not maintain the Statement of Work and/or contractor's proposals in the official contract file*** – The contractor's proposal, which is incorporated into the contract, was not found in the official contract file. Subsequent to our fieldwork, CPO staff stated they located the contractor's proposal.
5. ***Unauthorized Government personnel rejected deliverables*** – The COR acknowledged he was exceeding his authority in rejecting deliverables, but he stated if he were to involve the CO every time work was rejected, overall contract performance would be delayed.
6. ***CO authorized an incentive payment without appropriate documentation*** – Invoice 41 included a performance award in the amount of $20,000. The CO did not issue a modification to approve the incentive payment as required by the contract. As stated in item 1 above, the COR also did not provide a payment recommendation for this invoice.
7. ***Contract effective dates and signature dates did not always agree*** – Modifications 0019, 0020, 0022, and 0023 had different effective dates and signature dates.

ED98CO0007 – Aspen Systems Corporation – EDPUBS, $42,023,813 (Active)

1. ***Contractor did not provide deliverables within specified timeframes*** – Four of six monthly progress reports (October and November 2000, April and June 2001) were received late. In addition, 12 of 22 monthly expenditure reports (October 1999 through March 2000, June, August and October 2000, and January through March 2001) were received late. The COR was not aware the contractor was late in submitting these reports. The COR indicated a modified schedule was acceptable, but no modification to incorporate this change had been issued.
2. ***Contractor did not provide annual reports of Government furnished property*** – The contractor did not provide annual reports of the total acquisition cost of Government property for which the contractor is accountable.
3. ***CO authorized payment of invoices without proper payment recommendations from the COR*** – The COR did not provide payment recommendations on 2 of 12 invoices (invoices VR0079 and VR0085), totaling $414,001.
4. ***COR did not document or provide evaluations of contractor progress reports to the CO.***
5. ***COR did not provide CO with timely or accurate deliverable acceptance recommendations*** – The "Request for Invoice Review" forms submitted with invoices were inaccurate because the required reports due had not been received on time. The COR acknowledged that the form did not always accurately reflect the status of all deliverables due for the period of performance under review.

ED98CO0041 – Dancing Dots Braille Music – Small Business Innovative Research (SBIR) Phase II, $250,000 (Expired)

1. ***Contractor did not provide deliverables within specified timeframes*** – The first deliverable was received 26 days late. The date the Government took receipt for the remaining 11 deliverables could not be determined from the official contract files or COR files.
2. ***CO authorized payment of invoices without proper payment recommendations from the COR*** – The COR did not provide payment recommendations on 1 of 12 invoices (invoice 8), totaling $20,833.
3. ***CPO staff did not complete closeout procedures timely*** – The contract expired on September 30, 2000. As of the date of our review on September 27, 2001, closeout procedures had not been completed. The six-month maximum time limit for completing fixed price contract closeouts had been exceeded.
4. ***Program office documentation was not merged with official contract files*** – Documentation maintained by the program office was not merged with the official contract file at the expiration of the contract.

ED99CO0079 - Northern Marianas Department of Education – Cooperative Education Statistics System, $139,484 (Active)

1. ***Contractor did not provide deliverables within specified timeframes*** – Both the 1999 Technology Development Project and the State Data Improvement options required progress reports to be submitted to the COR 60 days after award of task and once every 90 days thereafter until work was completed. These progress reports could not be found in the official contract file or the COR's files. When questioned about the missing reports, the COR stated she was not aware of the requirements for the progress reports.
2. ***CO authorized payment of invoices without proper payment recommendations from the COR*** – The COR did not provide payment recommendations on six of six invoices (invoices 1, TO1DEL1, 3, 4, 5, and 6), totaling $131,791.
3. ***Contract effective dates and signature dates did not always agree*** – The basic contract and modifications 0001, D010, D020, and D030 had different effective dates and signature dates.

ED99CO0113-Task Order 80 – American Institutes of Research – International Education Activities, Task Order Value $192,433 (Active)

1. ***Contractor substituted labor categories*** – The contractor substituted one labor category for two other specified labor categories. Paragraph 8b of the task order required four hours of a project director and two hours of an administrative assistant. Instead, the contractor substituted six hours of a senior researcher.
2. ***COR did not provide CO with timely or accurate deliverable acceptance recommendations*** – The COR used the "Request for Invoice Review" form to notify the CO of receipt and acceptance/rejection of deliverables, however, the forms were only submitted to the CO when an invoice was received from the contractor. The time from the receipt of the deliverables to submission of the "Request for Invoice Review" form ranged from 77 to 117 days for three of four deliverables. Because significant time (over 60 days) had elapsed between the date of receipt and the date the COR forwarded the acceptance recommendation to the CO, acceptance of the deliverables had already been presumed.
3. ***Contract effective dates and signature dates did not always agree*** – Modification D080 had different effective dates and signature dates

ED99CO0118 – Ablelink Technologies – SBIR Phase II, $124,997 (Active)

1. ***Contract effective dates and signature dates did not always agree*** – Modifications 0001 and 0003 had different effective dates and signature dates.

ED99CO0148 – Educational Development Center, Inc. – Reform Model's Capacity, $520,973 (Expired)

1. ***Contractor did not comply with cost-sharing terms*** – The contract required cost-sharing by the contractor of no less than $9,581. The contractor provided cost sharing in the amount of $4,728, leaving a balance due to the Government in the amount of $4,853.
2. ***CO authorized payment of invoices without proper payment recommendations from the COR*** – The COR did not provide payment recommendations on 6 of 16 invoices, (invoices 1, 2, 3, 7, 10 and 12), totaling $192,453.
3. ***COR did not document or provide evaluations of contractor progress reports to the CO.***
4. ***Program office documentation was not merged with official contract files*** – Documentation maintained by the program office was not merged with the official contract file at the expiration of the contract.

RJ96006501 – Northwest Regional Education Laboratory – Regional Education Laboratory, $29,824,246 (Active)

1. ***COR did not document or provide evaluations of contractor progress reports to the CO.***
2. ***COR did not provide CO with timely or accurate deliverable acceptance recommendations*** –The COR stated there are often delays in the delivery of products due under the contract terms. These delays are not reflected on the "Request for Invoice Review" forms submitted with invoices. The COR acknowledged the CO has no way of knowing if the contract is proceeding according to schedule.
3. ***CO extended period of performance beyond maximum time limit*** – The period of performance was originally December 11, 1995, through December 10, 2000. Modification 17, dated September 27, 1999, added new work to the contract and extended the period of performance through September 1, 2001 – two months past the maximum 66-month time limit for service contracts.
4. ***Contract effective dates and signature dates did not always agree*** – Modifications 17, 18, 19, 20, 21, 23, and 24 had different effective dates and signature dates.

RJ97184001 – National Academy of Sciences – Evaluation of Voluntary National Testing, $3,088,299 (Expired)

1. ***CO authorized payment of invoices without proper payment recommendations from the COR*** – The COR did not provide payment recommendations on four of eight invoices (invoices 027, 028, 029, and 030), totaling $147,576.
2. ***CO did not complete contract modification appropriately*** – The period of performance originally expired on October 31, 1999. The contractor was authorized to continue performance through March 31, 2000. A modification to extend the period of performance had not been completed as of our review on September 26, 2001.

3. ***CO did not provide written COR delegation*** – A change in the assigned COR was not made in writing as required. Written notice was not provided to the contractor, nor was the new COR provided with a delegation letter.
4. ***Contract effective dates and signature dates did not always agree*** – Modifications 0001, 0002, 0003, and 0004 had different effective dates and signature dates.
5. ***Program office documentation was not merged with official contract files*** – Documentation maintained by the program office was not merged with the official contract file at the expiration of the contract.

RN94004001-Task Order 35 – Pelavin Associates, Inc. – International Activities, Task Order Value $219,514 (Expired)

1. ***COR did not provide CO with timely or accurate deliverable acceptance recommendations*** – The COR used the "Request for Invoice Review" form to notify the CO of receipt and acceptance/rejection of deliverables. However, the COR submitted the "Request for Invoice Review" form to the CO only when an invoice was received from the contractor. The time from the receipt of the deliverables to submission of the "Request for Invoice Review" form ranged from 138 to 300 days for four of four deliverables. Because significant time (over 60 days) had elapsed between the date of receipt and the date the COR forwarded the acceptance recommendation to the CO, acceptance of the deliverables had already been presumed.
2. ***CPO staff did not complete closeout procedures timely*** – The contract expired on August 14, 1999. As of our review on September 27, 2001, closeout procedures had not been performed. The six-month limit for performing these procedures had already expired.
3. ***CPO and program office staff did not document receipt of deliverables*** – At the time of the audit fieldwork, the official contract files and the COR's files did not contain the deliverables, or evidence of their receipt, for Task Order 35. Subsequent to our fieldwork the COR notified the audit team that the deliverables had been located.
4. ***Program office documentation was not merged with official contract files*** – Documentation maintained by the program office was not merged with the official contract file at the expiration of the contract.

RN94093001-Task Order 29 – Westat, Inc. – Statistical Analysis and Technical Development, Task Order Value $147,330 (Expired)

1. ***Contractor exceeded task order cost ceilings*** – The task order included specific cost ceilings of $29,125 for other direct costs (ODC) and $4,602 for ODC overhead. Paragraph 7 of the task order stated, "The total specified amount for labor, materials and materials overhead shall be considered ceilings which are not to be exceeded." Invoices submitted by the contractor exceeded the ODC ceiling by $60,516 and the ODC overhead ceiling by $9,561. The overall task order amount was not exceeded.
2. ***CO authorized payment of invoices without proper payment recommendations from the COR*** – The CO authorized payment of 4 of 12 invoices (invoices 990353, 990569,

990937, and 991212), totaling $11,788, prior to receipt of payment recommendations from the COR. The COR did not provide payment recommendations on one additional invoice (invoice 001067), for $27,325.

3. ***COR did not provide CO with timely or accurate deliverable acceptance recommendations*** – The "Request for Invoice Review" form submitted with accompanying invoices indicated that all deliverables due had been received. The COR stated, however, at the conclusion of the period of performance, very few deliverables on the task had been completed.
4. ***COR did not document or provide evaluations of contractor progress reports to the CO.***
5. ***CPO staff did not complete closeout procedures timely*** – The contract period of performance expired March 31, 2000. As of our review on October 1, 2001, closeout procedures had not been performed and the six-month maximum time limit had been exceeded.
6. ***CO did not complete contract modification appropriately*** – The period of performance for Task Order 29 expired on February 14, 1999. On September 30, 1999, the period of performance for the contract was extended to March 31, 2000. During the interim period, the contractor continued to perform work on the task, even though there was no modification in place. The contractor submitted, and the Department paid, invoices for work performed between February 14, 1999, and September 30, 1999.
7. ***Unauthorized Government personnel rejected deliverables*** – The COR stated the task leaders often reject deliverables and require contractor rewrites even though the CO has retained the responsibility to accept/reject deliverables. The COR was not aware that asking for rework of submitted deliverables constituted a rejection on behalf of the Department.
8. ***Program office documentation was not merged with official contract files*** – Documentation maintained by the program office was not merged with the official contract file at the expiration of the contract.

RN95127001 – American Institutes of Research – Education Statistics Institute, $36,969,800 (Active)

1. ***COR did not document or provide evaluations of contractor progress reports to the CO.***

RN96002001-Task Order 30 – MPR Associates – Statistical Analysis, Task Order Value $373,291 (Active)

1. ***Contractor exceeded task order hours ceiling*** – The task order included a ceiling for the number of hours, stating, "the level of effort shall not exceed 40 hours." The contractor exceeded this ceiling, billing a total of 43.8 hours under the task order.
2. ***CO authorized payment of invoices without proper payment recommendations from the COR*** – The COR did not provide payment recommendations on 1 of 10 invoices (invoice 54), for $19,874. The COR did not fully complete the "Request for Invoice Review" form on 9 of 10 invoices (invoices 52, 53, 55, 56, 57, 58, 59, 60, and 61), totaling

$146,253. The form included no indication that work was satisfactorily performed and all required reports and/or deliverables due had been delivered and accepted under the contract. There was also no payment recommendation noted on the form.

3. ***COR did not document or provide evaluations of contractor progress reports to the CO.***
4. ***CPO staff did not maintain the Statement of Work and/or contractor's proposals in the official contract file*** – The Statement of Work and contractor's proposals, both of which are incorporated into the contract, were not found in the official contract files. Subsequent to our fieldwork, CPO staff located the Statement of Work.
5. ***CO extended period of performance beyond maximum time limit*** – The period of performance began on September 30, 1996, and was to continue until September 29, 2001. Subsequent modifications extended the period of performance to March 15, 2003, 11 months beyond the 66-month maximum period authorized for service contracts.
6. ***CO did not provide written COR delegation*** – A change in the assigned COR was not made in writing as required. Written notice was not provided to the contractor, nor was the new COR provided with a delegation letter.
7. ***CPO and program office staff did not document receipt of deliverables*** – The Statement of Work for Task Order 30 included 12 deliverables. No documentation was found in the official contract files or COR files to indicate which of the 12 deliverables had been received. In addition, the COR and the Task Leader stated they did not track specific task order deliverables. The Task Leader stated all 12 deliverables had been received and were satisfactory. However, he was not able to produce any documentation supporting delivery dates for other than the two final products.
8. ***Contract effective dates and signature dates did not always agree*** – Modifications 0007, 0009, 0010, 0011, and D281 had different effective dates and signature dates.

RR91172003 – University of California, Santa Cruz – School Reform, $693,716 (Expired)

1. ***CPO staff did not complete closeout procedures timely*** – The final payment was issued on September 30, 1995, indicating the contract was physically complete. Contract closeout procedures were performed on December 7, 1999 – 14 months beyond the 36-month maximum time limit for indirect cost contract closeouts.
2. ***CPO staff did not maintain the Statement of Work and/or contractor's proposals in the official contract file*** – The Statement of Work was not found in the official contract file.
3. ***Program office documentation was not merged with official contract files*** – Documentation maintained by the program office was not merged with the official contract file at the expiration of the contract.

RW97076118 – Mei Technology Corporation – SBIR Phase II, $49,998 (Expired)

1. ***Contractor did not provide deliverables within specified timeframes*** – The Department received four of six contract deliverables, (third, fourth, fifth and Final Report), after their due dates.
2. ***CO authorized payment of invoices without proper payment recommendations from the COR*** – The COR did not provide payment recommendations on two of two invoices (invoices 1 and S412), totaling $49,998.
3. ***CPO staff did not complete closeout procedures timely*** – The contract expired on March 31, 1998. Closeout procedures were performed on November 25, 1998 – two months past the six-month maximum time limit for fixed price contracts.
4. ***Program office documentation was not merged with official contract files*** – Documentation maintained by the program office was not merged with the official contract file at the expiration of the contract.

Attachment 4 -- Rules That Aid Contract Interpretation

The rules for contract interpretation were obtained from Chapter 11 of the Contract Administration II manual provided to Contracting Officers and Contract Specialists during required training. The rules are profiled in a hierarchical order as follows:

I. The Mutual Intent of the Parties (Cardinal Rule) – The cardinal rule is the highest rule of contract interpretation. It requires that a contract be interpreted to carry out the mutual intent of the parties as manifested in the contract at the time the contract was signed.

II. Secondary Rules
When the cardinal rule cannot be applied because either the mutual intent of the parties is unclear or they never had the same intent, then secondary rules must be applied.

1) Whole Instrument Rule – This rule presupposes that the most probable intent can best be determined by giving reasonable meaning to all parts of a contract (words, sentences, or paragraphs) without rendering any portion being rejected or treated as meaningless.

2) Expressed Language Rule – If a disputed interpretation cannot be resolved by the whole instrument rule, the next step is the expressed language rule. When the expressed language in a contract is subject to only one reasonable interpretation, that interpretation should prevail.

3) Conduct of the Parties – The rationale behind this rule is that the interpretation the parties place upon a contract provision during its performance demonstrates their intent. Once the interpretation of the contract becomes controversial, a party's behavior is apt to be a ploy to buttress its litigation position.

4) Knowledge of the Other Party's Interpretation – In this rule a party who willingly and without protest enters into a contract with knowledge of the other party's conflicting interpretation of contract language and fails to question that interpretation will be held to have acquiesced to the interpretation of the other party.

5) Prior Course of Dealings Rule – This rule states that the parties' actions on past similar contracts are taken as strong evidence of their intent regarding the present contract.

6) Custom in the Trade Rule – This rule arises from the expectation that performance standards normally used in the trade at the place of performance would be observed unless the parties expressly agreed otherwise.

7) Miscellaneous Maxims – Miscellaneous maxims are a combination of mechanical rules that are used to infer the most probable intent of the parties. Some more common examples include:

- Specific statements take precedence over general statements.
- Handwritten or typed language controls over printed language.
- Words, symbols, and marks will be given their common and normal meaning, unless it is clearly shown that they were used in a technical sense or have some other meaning accorded to them by the parties.

8) Order of Precedence Rule – An order of precedence is an agreement between the parties on how inconsistencies in the contract should be resolved.

9) Interpretation Against the Drafter – Interpreting a contract against the drafter is the rule of last resort, only to be used when all other rules have been exhausted. This mechanical rule places the consequences for a lack of clarity on the party responsible for the draftsmanship.

UNITED STATES DEPARTMENT OF EDUCATION

Attachment 5

OFFICE OF THE CHIEF FINANCIAL OFFICER

THE CHIEF FINANCIAL OFFICER

SEP 12 2002

MEMORANDUM

TO : Michele Weaver-Dugan, Director
Operations Internal Audit Team
Office of the Inspector General

FROM : Jack Martin

SUBJECT : Draft Audit Report Control No. ED-OIG/A19-B0009, *Department of Education's Process for Identifying and Monitoring High Risk Contracts that Support OERI Programs*

This memorandum provides a written response following our review of an Office of Inspector General (OIG) draft report of the audit on the Department's general contract monitoring of selected Office of Educational Research and Improvement (OERI) contracts. This response is issued in coordination with OERI management for which the Office of the Chief Financial Officer (OCFO) has received full authority from OERI to respond on their behalf. In your report, you conclude that Department staff did not always ensure compliance with contract terms and conditions or follow established regulations, policies, and procedures in monitoring OERI contracts. As a result, the Department could not ensure that the terms of the contracts were followed and contract obligations were met which may or may not result in inefficient and/or ineffective contract performance. The OIG findings resulted in joint recommendations to OCFO and OERI, as well as to OCFO specifically.

OCFO's Contracts and Purchasing Operations (CPO) management provided extensive written comments to the findings initially presented at the OIG exit conference in January 2002. The draft report incorporates CPO comments to the detailed OIG findings as well as what CPO considers the major areas of improvement evolving from the OIG review. We believe it important to reemphasize these key areas:

1. CPO must ensure that all OERI deliverables received under its contracts are timely received, inspected, and accepted/rejected.
2. CPO must ensure that contract administrative matters such as timely formalizing contract modifications, issuing Contracting Officer Representative (COR) delegations, and performing timely closeouts are performed. CPO must also ensure that the regulatory restriction on the life of service contracts is not violated.
3. CPO must ensure that its OERI CORs adequately fulfill their duties under the delegation.
4. OERI must ensure that its CORs satisfactorily perform all aspects of contract monitoring.

To this end, OCFO and OERI **concur with the OIG recommendations** as each recommendation aligns with our view on what should be the target areas of improvement in ensuring good contract

management. OERI has already taken action to ensure that its CORs are trained and certified. OERI further intends to send a memorandum to OERI program managers specifically highlighting the importance of their duties and the duties of their CORs in ensuring that the contractor resources they utilize contribute to the delivery of accountable results at a reasonable cost within the terms of the contract; and that those associated duties are diligently executed.

More specifically, the memorandum will make clear the expectations that:

1. OERI staff are aware of and adhere to regulations, policies, and procedures that apply to their responsibilities as contract managers, including the characteristics that affect contract monitoring.
2. OERI staff are familiar with the terms and conditions of the contracts they are responsible for managing.
3. Contract terms are enforced.
4. CORs provide timely invoice payment recommendations to contracting officers before payment is made.
5. CORs document and provide written evaluations of contractor reports to the contracting officers.
6. CORs track and keep COs fully informed of the status of all deliverables.
7. COR recommendations to accept or reject deliverables are accurate and timely, only authorized personnel accept or reject deliverables, and documentation of deliverable receipt and acceptance is maintained.

CPO has already taken action on the following recommendations:

1.14. A letter was issued on January 4, 2002 to the contractor requesting a recovery of the $4,853 due the Department. The contractor acknowledged owing this amount.
1.15. Modification D281 was issued to cover the increase of 3.8 hours.
1.16. Modification D081 was issued to authorize the labor substitution of 4 hours and 2 hours split between the project director and the secretary to 6 hours of a senior researcher.
1.17. A formal appointment of COR was issued on January 16, 2002.
1.18. The statement of work and contractor's proposal are incorporated into the contract file, with the exception of expired contract RR91172003.
1.19. CPO will evaluate the condition for this recommendation and take corrective action, if required.
1.20. Modification 0024 was issued January 23, 2002 to authorize a $20,000 incentive fee.

Upon issuance of the final report, OCFO and OERI will continue this collaboration to develop a comprehensive action plan that will not only improve contract monitoring within OERI, but Department-wide.

Thank you for this opportunity to provide additional comments. We trust that you will consider this response in the preparation of your final audit report.