Audit Report

OFFICE OF THE INSPECTOR GENERAL

MANAGEMENT AND CONTRACTING PRACTICES OF THE ARMY ENVIRONMENTAL POLICY INSTITUTE

Report No. 95-293

August 18, 1995

Department of Defense

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Acronyms

CERL	Construction Engineering Research Laboratory
COTR	Contracting Officer Technical Representative
FAR	Federal Acquisition Regulation
IPA	Intergovernmental Personnel Act
OPM	Office of Personnel Management

INSPECTOR GENERAL
DEPARTMENT OF DEFENSE
400 ARMY NAVY DRIVE
ARLINGTON, VIRGINIA 22202-2884

August 18, 1995

MEMORANDUM FOR AUDITOR GENERAL, DEPARTMENT OF THE ARMY

SUBJECT: Audit Report on Management and Contracting Practices of the Army Environmental Policy Institute (Report No. 95-293)

We are providing this audit report for review and comment. We performed the audit in response to a complaint to the Defense Hotline that the Army Environmental Policy Institute inadequately managed operations and insufficiently controlled contracting practices. We considered management comments on a draft of this report in preparing the final report.

DoD Directive 7650.3 requires that all recommendations be resolved promptly. As a result of management comments, we deleted Recommendation B.4. Several recommendations to Findings C and D remain unresolved, and others require completion dates. We request that the Army reconsider its position regarding the unresolved recommendations and provide completion dates for actions planned or taken as specified. Specific response requirements are at the end of Findings C and D. We request that management provide comments on the final report by October 18, 1995.

We appreciate the courtesies extended to the audit staff. Questions on the audit should be directed to Mr. Joseph P. Doyle, Audit Program Director, at (703) 604-9348 (DSN 664-9348) or Ms. Judith I. Padgett, Audit Project Manager, at (703) 604-9423 (DSN 664-9423). Appendix D lists the distribution of this report. The audit team members are listed inside the back cover.

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Assistant Inspector General
for Auditing

Office of the Inspector General, DoD

Report No. 95-293
(Project No. 4CD-5035)

August 18, 1995

Management and Contracting Practices of the Army Environmental Policy Institute

Executive Summary

Introduction. The audit was performed in response to a complaint to the Defense Hotline that the Army Environmental Policy Institute inadequately managed operations and insufficiently controlled contracting practices. The Army Environmental Policy Institute was a $6.4 million operation in FY 1994. From October 1990 through May 1994, the Army Environmental Policy Institute contracted for mission support, valued at $7.1 million, on 25 contracts.

Audit Objectives. The audit objectives were to evaluate the Army Environmental Policy Institute:

- o management of operations,
- o award and administration of contracts and contract delivery orders,
- o compliance with laws and regulations, and
- o implementation of a management control program.

Another objective of the audit was to determine the validity of the allegations made in the complaint to the Defense Hotline.

Audit Results. The Army Environmental Policy Institute needed to improve its management of operations and its contracting procedures. The Army Environmental Policy Institute had not established a management control program (Finding A) and had not established and implemented management practices and documentation procedures to comply with laws and regulations on contracting (Finding B) and on Intergovernmental Personnel Act agreements (Finding C). In addition, the Army Environmental Policy Institute and the Army Construction Engineering Research Laboratory incorrectly classified and funded contract delivery orders (Finding D). The allegations made to the Defense Hotline were substantiated except for a specific allegation that the Army Environmental Policy Institute operated with unqualified staff (Part I, Other Matters of Interest).

The Army Environmental Policy Institute could not provide assurance that assets were safeguarded, that products and services received were cost-effective, and that services met the needs of the Institute. In addition, management used an estimated $1.0 million of the wrong year Operations and Maintenance funds to acquire services and potentially violated the Antideficiency Act.

Establishing controls and procedures to manage operations and to award and administer contract delivery orders should produce future monetary benefits. However, we could

not quantify the amount because the amount will depend on future management decisions. See Part II for a discussion of the audit results and Appendix B for a summary of the potential benefits resulting from the audit.

Summary of Recommendations. We recommend that the Deputy Assistant Secretary of the Army (Environment, Safety, and Occupational Health) initiate a management control program at the Army Environmental Policy Institute. We recommend that the Director, Army Environmental Policy Institute, implement a management control program and specific management controls over operations, contracting, Intergovernmental Personnel Act agreements, and funding. We recommend that the Director, Army Environmental Policy Institute, review all Army Environmental Policy Institute delivery orders for classification and funding year. We also recommend that the Director, Army Construction Engineering Research Laboratory, request that the contracting officer modify contract delivery orders to use correct year funds and make accounting adjustments for funds incorrectly obligated.

Management Comments. The Army concurred with the recommendations to initiate and implement a management control program at the Army Environmental Policy Institute; to implement specific controls over operations, contracting, Intergovernmental Personnel Act agreements, and funding; and to review classification and funding year for all Army Environmental Policy Institute delivery orders. The Army nonconcurred with five of the recommended modifications and accounting adjustments on specific delivery orders to use correct year funds. See Part II for a discussion of management comments and Part IV for the complete text of management comments.

Audit Response. As a result of Army comments, we deleted a draft report recommendation to initiate a contracting action to recover $44,978 attributable to a reduction in delivered services on a delivery order. The Army comments regarding modifying and making accounting adjustments were not responsive. We disagree that the work on delivery order modifications met new requirements and therefore correctly funded. The new requirement rationale would create conditions that would also require adjustments, though different ones. Additional comments are needed from the Army on completion dates for some proposed actions and on modifying and making accounting adjustments to delivery orders to use correct year funds.

We request that the Army provide completion dates as specified and comment on the final report by October 18, 1995.

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Part I - Introduction

Audit Background

Complaint to the Defense Hotline. The Inspector General, DoD, was asked to investigate complaints to the Defense Hotline regarding the operations management and contracting practices of the Army Environmental Policy Institute (the Institute). The complainant alleged that:

- o the Institute did not comply with laws and regulations,
- o the Institute did not establish and carry out effective management controls,
- o the Institute did not employ an adequately qualified operations staff,
- o the Institute did not properly manage or execute its funding,
- o the Army did not adequately guide and oversee the Institute operations,
- o contractors provided services that the Institute did not specify in a contract,
- o contractors failed to provide services that the Institute did specify in a contract, and
- o contractors participated directly in Institute operations.

The Institute Organization and Responsibilities. The Institute was chartered on October 1, 1990, because of recommendations made at the 1988 and 1989 Senior Army Environmental Leadership Conferences. According to the charter, the Institute mission is:

> . . . to assist the Army Secretariat in developing proactive policies and strategies to address environmental issues that may have significant future impacts on the Army.

The Institute receives operations and maintenance funds that the Defense Appropriations Act specifically sets aside. Since its beginning in FY 1991, the funding for the Institute has increased: it was $4.4 million in FY 1992, $4.6 million in FY 1993, and $6.4 million in FY 1994.

The staff at the Institute is a small, multidisciplined one, authorized to be 14 permanent Federal staff members. Intergovernmental Personnel Act[1] (IPA) staff members, Short Form Research Contract[2] staff members, and temporarily assigned DoD staff members supplement the permanent staff. As of November 8, 1994, the Institute employed 7 permanent, 11 IPA, 9 Short Form Research Contract, and 4 temporarily assigned DoD staff members.

The Institute Support Activity. The Construction Engineering Research Laboratory (CERL), Army Corps of Engineers, Champaign, Illinois, supplied the Institute with administrative and support services. Although the Institute and CERL had not signed a Memorandum of Understanding, CERL supplied services consistent with CERL operating procedures.

One of the services CERL supplied the Institute was contract award and administration. From October 1, 1990, through May 31, 1994, CERL awarded 96 delivery orders, with a cumulative value of $7.1 million, on 25 firm-fixed-price, indefinite-delivery, indefinite-quantity contracts. The contracts were generally for studies and technical reports on environmental subjects, to be defined more precisely in delivery orders[3] placed on the contracts.

Audit Objectives

The audit objectives were to evaluate the Institute management of operations, award and administration of contracts and contract delivery orders, compliance with laws and regulations, and implementation of a management control program. An additional audit objective was to determine the validity of the allegations made in the complaint to the Defense Hotline.

[1]The Intergovernmental Personnel Act allows employees of a State or local government, an Indian tribal government, institutions of higher education, and other eligible organizations to serve in Federal agencies and Federal employees to serve in the above-named organizations.

[2]Short Form Research Contracts allow educational institutions and nonprofit organizations primarily engaged in scientific research to contract with the Federal government.

[3]Delivery orders are a contracting vehicle to precisely define the quantity of services and to obligate funds on an indefinite-quantity contract. Delivery orders are subject to the same laws and regulations as contracts.

Scope and Methodology

Review of Operations Transactions and Procedures. We examined transactions and reviewed the procedures used to plan and approve the Institute workload, to staff the Institute, to plan and approve travel, and to track and control funding. Specifically, we:

o compared the projects planned and approved to the projects in process and completed;

o compared the qualifications and experience described in the Institute permanent, IPA, Short Form Research Contract, and temporarily assigned DoD staff resumés with position descriptions and Office of Personnel Management (OPM) classification criteria;

o examined a judgmentally selected sample of travel vouchers filed by the Institute staff for project identification, justification, and approval;

o discussed the procedures to plan and approve projects with Institute staff members;

o discussed the procedures to identify, recruit, track, and evaluate IPA, Short Form Research Contract, and temporarily assigned DoD staff members with Institute staff members; and

o discussed the procedures to track and control funds with Institute and CERL staff members.

Review of Contracting Transactions and Procedures. CERL placed 96 delivery orders on the 25 contracts awarded for the Institute. For detailed analysis of the procedures to plan, approve, and oversee contracting actions, we selected a stratified statistical sample of 40 delivery orders, cumulatively valued at $2.9 million, placed on 14 of the Institute contracts. (See Appendix A for a discussion of the sampling plan.)

For the 40 delivery orders, we:

o reviewed contract files, delivery order files, statements of work, funding documents, payment records, and correspondence;

o compared statements of work and delivery schedules to the work completed and the products delivered;

o discussed the procedures to competitively award delivery orders with the Institute and CERL staff members; and

o reviewed the procedures to assign contracting officer technical representatives, approve statements of work, authorize payments, oversee contract performance, and accept services and products.

Computer-Processed Data. Delivery order and travel cost records used for sample selection purposes were computer-processed listings. We did not validate the reliability of the computer systems that generated the listings because we did not use the listings as the basis for our conclusions. Our audit conclusions are not affected by the reliability of the data.

Audit Period, Standards, and Locations. This economy and efficiency audit was performed May through November 1994. We reviewed documents dated from September 1991 through August 1994. The audit was conducted in accordance with the auditing standards issued by the Comptroller General of the United States, as implemented by the Inspector General, DoD. Accordingly, we included tests of management controls considered necessary. Appendix C lists the organizations visited or contacted during the audit.

Management Control Program

DoD Directive 5010.38, "Internal Management Control Program," April 14, 1987, requires DoD organizations to implement a comprehensive system of management controls that provides reasonable assurance that programs are operating as intended and to evaluate the adequacy of the controls.

Scope of Review of Management Control Program. We reviewed the Institute management controls for operations and for contract award and administration. We also evaluated the Deputy Assistant Secretary of the Army (Environment, Safety, and Occupational Health) policy and guidance provided to the Institute initiating a management control program. We limited our review of the management control procedures in effect at CERL to those controls pertaining to the Institute operations and contracting support.

Adequacy of Management Controls. The audit identified material management control weaknesses as defined by DoD Directive 5010.38. The Institute had not implemented a management control program as required by that directive.

Adequacy of Management's Self-Evaluation. The Institute had not conducted risk assessments, developed specific control objectives, or established control procedures. Because the Institute had no program in place, its management had not performed a self-evaluation. Details of the weaknesses are discussed in the findings.

Recommendations A.1., A.2., B.1., B.2., C.1., C.2., C.3., and D.1.a., if implemented, will correct the management control weaknesses. We could not quantify the amount of the potential monetary benefits that could be realized from correcting the management control weaknesses because the amount depends on future operations and the value of future contracting actions. See Appendix B for a summary of all the potential benefits resulting from the audit. We will provide a copy of the report to the senior official responsible for management controls in the Department of the Army.

Summary of Prior Audits and Other Reviews

Report No. 95-048, "Contracting Practices for the Use and Operations of DoD-Sponsored Federally Funded Research and Development Centers," December 2, 1994, determined whether federally funded research and development centers:

- o adhered to mission statements and sponsoring agreements,
- o developed overhead rates consistent with Government standards,
- o properly justified management fees, and
- o violated conflict of interest regulations.

The audit also determined whether DoD relationships with federally funded research and development centers violated conflict of interest regulations.

The audit report states that DoD federally funded research and development centers generally adhered to mission statements and sponsoring agreements and developed overhead rates consistent with Government standards. However, DoD sponsors did not sufficiently justify using federally funded research and development centers and did not properly justify management fees. In addition, DoD did not adequately ensure that personnel, particularly personnel employed under IPA agreements, avoided conflicts of interest.

The report recommends that DoD improve controls over screening and assigning work to federally funded research and development centers and over awarding management fees. Also, the report recommends that contracting officers control conflicts of interest by using appropriate contract clauses and by excluding federally funded research and development center personnel, assigned through IPA agreements to DoD, from overseeing other federally funded research and development center work.

The Office of the Assistant Inspector General for Auditing, DoD, did not receive management comments to the report in time to consider them in preparing the final report. The Office of the Assistant Inspector General for Auditing, DoD, issued an addendum, "Addendum to Final Audit Report on Contracting Practices for the Use and Operations of DoD-Sponsored Federally Funded Research and Development Centers," April 19, 1995, discussing management comments to the draft report and the audit evaluation of the comments. The addendum requested additional management comments to the recommendations, which the Office of the Assistant Inspector General for Auditing, DoD, had not received as of July 21, 1995.

Other Matters of Interest

Institute Employed Qualified Staff. The allegation that the Institute employed staff who were unqualified was not substantiated. The Institute employed staff who had education and experience commensurate with their assignments. The design of the Institute policy-formulating program incorporated temporarily assigned personnel from field organizations and non-DoD organizations, as well as a limited number of permanently assigned personnel, to gain the benefit of a variety of experience and expertise. Innovative and practical environmental policy recommendations depended on the input from many sources, which the temporary assignments made possible.

CERL Practices in Competing Contract Awards. Although we limited our review at CERL, we identified contracting practices that could restrict competition among contractors and have a negative impact on the cost of products and services from CERL-awarded contracts. We advised management about those contracting practices in a March 1995 management memorandum to the Director, CERL.

Part II - Findings and Recommendations

Finding A. Management Controls Over Operations and Contracting

The Deputy Assistant Secretary of the Army (Environment, Safety, and Occupational Health) (the Deputy Assistant Secretary) had not identified the Institute as an assessable unit and required it to establish a management control program. In addition, the Institute management had not assessed risk, developed specific control objectives, or established control procedures for its operations and contracting. The Deputy Assistant Secretary had not required, and Institute management had not implemented, a management control program because the Deputy Assistant Secretary and Institute management focused on establishing and stabilizing the organization as the priority. As a result, the Institute could not provide reasonable assurance that it:

o safeguarded assets against waste, loss, or unauthorized use;

o incurred obligations and costs that complied with applicable laws and regulations; or

o classified and funded expenditures properly.

Background

DoD Directive Establishes Management Control Policy. Policy set forth in DoD Directive 5010.38, "Internal Management Control Program," April 14, 1987, establishes that each DoD Component implement a comprehensive system for management control. According to the criteria that Directive 5010.38 describes, a management control system should:

o address all program and administrative activities that involve funds, property, and other assets for which managers are responsible;

o involve management at all levels; and

o assign responsibility and accountability for management control to the manager of each assessable unit.

Management Control Policy Applies to Assessable Units. An assessable unit as defined in DoD Directive 5010.38 is any:

> . . . organizational, functional, programmatic, or other proper subdivisions suitable for evaluating systems of internal management controls, and identifying program and administrative activities of applicable nature and size to facilitate a meaningful assessment.

Additional information regarding the nature of an assessable unit can be found in DoD Directive 5010.38, enclosure 4, "Guidance in Applying the Definition of Material Weakness," and enclosure 5, "IMC [Internal Management Control] Reporting Categories." Enclosure 4 discusses the levels to which management control weaknesses should be reported, and, therefore, at what level management controls should be applied--DoD level, component level, command level, installation level, or activity level. Enclosure 5 discusses the 15 management control reporting categories. The categories include procurement, contract administration, personnel, resource management, and support services. An assessable unit, then, could be the contract administration or the personnel office at a specific Army post.

The Institute is an Assessable Unit. The Institute meets the criteria for an assessable unit. It is an organization suitable for evaluating systems of management controls that are meaningful because the Institute management is responsible for program and administrative activities for funds specifically identified and expended for the Institute mission, as well as for property and other assets used by the Institute.

Army and Institute Efforts to Implement a Management Control Program

Deputy Assistant Secretary Efforts to Implement Program. The Deputy Assistant Secretary had not identified the Institute as an assessable unit and had not required the Institute to establish a management control program. As senior-level management for the Institute, the Deputy Assistant Secretary has a responsibility to provide training and guidance regarding the Institute management control program responsibilities and obligations. In addition, the Deputy Assistant Secretary has reporting and oversight responsibilities for any management control program that the Institute establishes.

After a July 27, 1994, discussion between the auditors and personnel from the Office of the Deputy Assistant Secretary about the first audit visit to the Institute, the Deputy Assistant Secretary issued a policy memorandum, "Internal Agency Management Control Measures," August 26, 1994, to the Interim Director of the Institute. The memorandum identified specific areas that required standard operating procedures to implement control measures: contracting, travel, IPA agreements, congressional interfaces, and physical security. Although the memorandum established the requirement for control procedures, it did not meet all DoD Directive 5010.38 requirements and did not formally establish a management control program.

Institute Efforts to Implement Program. The Institute had not independently identified a need to establish a management control program or to prepare and implement management control procedures. The Institute had not met the requirements of DoD Directive 5010.38 to assess risk areas, develop specific control objectives, and establish documented control procedures.

Comptroller General publication, "Standards for Internal Controls in the Federal Government," June 1, 1983, states that the specific standards for a management control system should include procedures to:

o document all transactions and significant events;

o record and classify transactions and significant events properly and promptly;

o require authorized persons approve and execute transactions and significant events;

o separate key duties and responsibilities among individuals;

o supervise staff and activities with qualified, available personnel; and

o limit access to and accountability for resources to authorized personnel.

Between May 16 and June 3, 1994, the Institute issued eight standard operating procedures to be applied to correspondence, travel, key and lock control, facility access, flexible work schedule, acquisition, publishing, and writing style and format. The standard operating procedures do not meet the requirements of DoD Directive 5010.38 to analyze risk and set control objectives. The standard operating procedures establish some of the controls specified by the Comptroller General over the operations identified.

Army and Institute Focus Was to Establish and Stabilize the Institute

In its 4-year history, the Institute reported to two different chains of command; had two acting directors, one interim director, and two permanently-appointed directors; and relocated from Champaign, Illinois, to Atlanta, Georgia. The changes created demands on the time and attention of the Institute staff and the Deputy Assistant Secretary and were a higher priority than establishing a management control program. Institute management used unwritten procedures in the Institute day-to-day operations before issuing standard operating procedures in May and June 1994. Because many of the staff were temporary, staff members did not apply the unwritten procedures consistently, if they were aware of the procedures at all.

Institute Management Needs to Provide Reasonable Assurance of Operations and Contracting Control

As a result of not implementing a management control program, the Institute could not provide reasonable assurance that it effectively controlled operations and contracting.

Safeguarding Assets Against Waste, Loss, or Unauthorized Use. The Institute operational practices and documentation did not ensure appropriate, effective use of assets. For example, travel could not be traced to specific projects, justifications, or reported outcomes to show that travel funds were prudently and appropriately spent. Projects that had similar topics could not be traced to a documented development and comparison approach to show that internal and contracted work were not inadvertently duplicated and funds wastefully used.

Travel Justifications. The Institute budgeted $700,000 in FY 1994 for travel. We judgmentally selected 77 of 804 travel transactions completed between November 1991 and June 1994 for review. Of the 77 transactions, 11 transactions were either duplicate submissions or unsupported by documentation.

Although the Institute staff adequately supported travel claims for reimbursement with invoices and receipts, they did not adequately justify the travel as mission-related. For example, nine of the documents justifying travel stated that the travel was, "in connection with activities as a Senior Fellow." Further, information about conferences or lessons learned acquired during travel did not become part of the Institute corporate knowledge through such means as trip reports and briefings. Travelers documented only 4 of the 77 trips with reports on travel activities.

Travel practices also did not minimize travel costs. For example, a student providing services under a Short Form Research Contract incurred travel costs of $24,712 from July 1992 through February 1993. Travel justifications for that student included project coordination with the Deputy Assistant Secretary, work that was not appropriate to the contract arrangement. Another employee conducted a workshop at a resort in Keystone, Colorado, where the hotel costs paid and reimbursed exceeded the maximum allowed by the Joint Travel Regulations without special justification. Although travel to resort areas is not prohibited by travel regulations, such travel, when other options are available, does not appear to be prudent use of Government resources.

Project Development, Prioritization, and Comparison of Results. The Institute did not have procedures to develop and prioritize projects to be included in the annual work plan. The annual work plan is the policy research and development topics the Institute proposes to pursue internally or contractually during a year.

Because the formal work plan did not include a process to record each project scope of work when management approved it, the Institute staff pursued and

awarded duplicate work. For example, contract DACA88-92-D-0009, delivery orders 0006 and 0016, and contract DACA88-92-D-0007, delivery order 0007, contained the same objectives. The delivery orders could not be traced to a documented plan that the Institute sought different approaches to its mission of monitoring environmental legislation in Congress. The contracts had different contractors, but the delivery orders did not yield alternative approaches to monitor environmental legislation. In fact, the contractors subcontracted the work to the same subcontractor. The subcontractor developed one proposed approach to monitoring environmental legislation for the three delivery orders rather than three approaches one would expect from three separate orders. An IPA at the Institute also worked on a project that duplicated those delivery orders for developing an approach to monitoring environmental legislation in Congress.

Staff members at the Institute pursued research on the same environmental topics. Because each environmental topic--solid waste management, for example--is complex and extensive, some forum should be used to compare results of research so staff members can benefit from one another's research and experience as well as avoid duplicating effort.

Compliance With Contracting Laws and Regulations. The Institute contracting practices and documentation did not comply with contracting laws and regulations. For example, unauthorized personnel modified delivery orders, provided contract oversight, and approved contractor billings. In addition, personnel did not record receipt of services or goods appropriately. Contracting practices and documentation are further discussed in Finding B.

Compliance With Intergovernmental Personnel Act Agreement Laws and Regulations. Another area in which the Institute practices and documentation showed that applicable laws and regulations were not followed was IPA agreements. For example, the Institute entered two agreements that did not comply with employment requirements and filed no reports that advised the OPM of IPA statistics. IPA agreement practices and documentation are further discussed in Finding C.

Compliance With Funding Laws and Regulations. The Institute classification and funding did not comply with funding laws and regulations because procedures did not ensure that delivery orders were funded with the correct year funds. The Institute funded an estimated 17 of the sampled delivery orders with wrong year funds. Delivery order classification and funding procedures are further discussed in Finding D.

Management Comments on the Finding and Audit Response

The Army concurred with the finding. However, the Army pointed out that the audit report did not recognize the requirements of Army Regulation 11-2, "Internal Management Control," September 14, 1990, or Army Regulation 11-2, "Management Control," August 1, 1994. According to the

Army interpretation of the 1990 Army Regulation 11-2, the Deputy Assistant Secretary was not expected to designate the Institute as an assessable unit, and the Institute was not required to assess risk.

Audit Response. The 1990 Army Regulation 11-2, paragraph 1-4, "Army Internal Management Control Policy," states:

> HQDA [Headquarters, Department of the Army] functional proponents who issue policies and requirements for a subtask must define the minimum essential requirements for adequate performance of the subtask, and devise prudent management control techniques for use in assuring the requirements are being accomplished.

The Institute should be an assessable unit under the 1990 Army Regulation 11-2 because it is a proponent of environmental policy. The Institute issues requirements for studies and requests other contracting support to develop and recommending Army environmental policy. In addition, the Institute did not meet the Army management control requirements stated in the 1990 Army Regulation 11-2, paragraph 1-16, "All Commanders and Managers," which states:

> Commanders and managers at all levels, in conjunction with, or in addition to program requirements imposed by senior officials will
>
> a. Apply the GAO Standards in all day-to-day operations.
>
> b. Enforce accountability for compliance with the GAO Standards, daily and periodic formal use of checklists, inclusion of responsibilities in performance agreements, and other requirements of this regulation . . . .

Recommendations and Management Comments

A.1. We recommend that the Deputy Assistant Secretary of the Army (Environment, Safety, and Occupational Health):

a. Designate the Army Environmental Policy Institute as an assessable unit and establish a specific date by which its management must implement a management control program as described in DoD Directive 5010.38, "Internal Management Control Program," April 14, 1987.

b. Provide guidance and training to Army Environmental Policy Institute management on the requirements of DoD Directive 5010.38.

c. Submit a statement of assurance to the designated management official on whether or not the Army Environmental Policy Institute management control system meets the DoD Directive 5010.38 standards, goals, and objectives.

Management Comments. The Army concurred. The Office of the Assistant Secretary of the Army (Installations, Logistics, and Environment) will designate the Army Environmental Policy Institute as an assessable unit. The Deputy Assistant Secretary of the Army (Environment, Safety, and Occupational Health) will provide training and guidance on management controls to the Institute and will submit a statement of assurance on the Institute management control program. The Army will complete the planned actions by July 30, 1995.

A.2. We recommend that the Director, Army Environmental Policy Institute, implement the requirements of DoD Directive 5010.38 to:

a. Assess the risk areas throughout the Army Environmental Policy Institute.

b. Develop specific management control objectives for the operations and contracting actions identified as risk areas.

c. Establish and implement management control procedures over all operations and contracting actions identified as risk areas.

Management Comments. The Army concurred. The Director, Army Environmental Policy Institute, will assess risk and develop management control objectives by July 30, 1995. The Director will implement final guidance on management control procedures by October 1, 1995.

Finding B. Compliance With Contracting Laws and Regulations

The Institute contracting practices and documentation for delivery orders from the audit sample did not comply with laws and regulations. The Institute:

o inappropriately requested specific contractors to support requirements for 37 delivery orders, valued at $2.81 million;

o inappropriately modified contract terms and requirements for 9 delivery orders, valued at $0.66 million;

o inadequately monitored contract performance for 22 delivery orders, valued at $1.49 million;

o inappropriately certified contract performance for 14 delivery orders, valued at $1.05 million; and

o erroneously omitted documenting receipt and acceptance of contract products and services for all 40 delivery orders, valued at $2.97 million.

The Institute did not comply with contracting laws and regulations because it did not have procedures that outlined, in writing, the steps necessary to contract for a requirement; required initial and periodic training of staff on contracting procedures; or established a monitoring or reporting system for contract actions. As a result, the Institute staff could not provide assurance that the products and services received were cost-effective and timely and complied with the contract statements of work.

Background

The Federal Acquisition Regulation (FAR) subpart 1.6, "Contracting Authority and Responsibilities," states that contracts may be entered into and signed on behalf of the Government only by contracting officers. The contracting officer has the authority and the responsibility to make sure all contracting actions comply with all requirements of law, executive orders, and regulations, as well as with all other applicable procedures, including clearances and approvals.

The success of a contracting officer in meeting contracting responsibilities depends, in part, on non-contracting personnel recognizing the contracting officer's authority and cooperating in the contracting process. Although CERL provided contracting support to the Institute, the Institute staff needed to understand the limitations and responsibilities of non-contracting personnel regarding requests for contractor support and execution of contacts.

Requesting Contract Support

The Institute staff inappropriately requested specific contractors to support requirements on purchase requests.

Requirements for Competition. The CERL contracting officer awarded multiple indefinite-delivery, indefinite-quantity contracts for the Institute requirements. The FAR subpart 6.1, "Full and Open Competition," states that the contracting officer shall provide for full and open competition through the use of the competitive procedure or a combination of competitive procedures best suited to the circumstances of the contracting action. Indefinite-delivery, indefinite-quantity contracts allow procurement of specific supplies or services during a fixed period of time, within stated limits.

Requesting Specific Contractor Support. To request products and services, the Institute staff completed Department of the Army Forms 3953, "Purchase Request and Commitment." For 37 of the delivery orders in the audit sample, valued at $2.81 million, the purchase requests included the name of the contractor that the Institute staff wanted to fill the request, even though more than one contract was available to fill the requirement.

When an organization orders products or services, it is not supposed to designate the contractor. The contracting officer should determine whether or not the requirement on the purchase request can be met by one or more active indefinite-delivery, indefinite-quantity contracts. When the requirements can be met by a delivery order against one or more contracts, the contracting officer negotiates the most advantageous delivery order. When the requirements cannot be met by a delivery order against an existing contract, the contracting officer must solicit a new contract. The Institute staff did not comply with contracting regulations when they specified contractors on purchase request forms.

Modifying Contract Terms and Requirements

The Institute staff inappropriately modified contract terms and requirements.

Requirements for Contract Modification. The FAR 43.102, "Policy," in FAR part 43, "Contract Modifications," states that only contracting officers are authorized to execute contract modifications. The FAR 43.102 further states that personnel who are not contracting officers shall not modify contracts, act as though they have authority to modify contracts, or direct a contractor to do work that should be subject to a contract modification.

Actions That Changed or Modified a Contract. The Institute staff verbally modified nine delivery orders, valued at $0.66 million, by adding, deleting, or changing the products and services to be delivered or by extending the delivery schedule. Any action that adds, deletes, or changes the products and services to be delivered, or that changes the delivery schedule, requires a written

modification to the contract. Whether or not a change results in a cost adjustment does not bear on the requirement for written modification by an authorized person.

For example, the Institute staff extended the delivery date on contract DACA88-91-D-0037, delivery order 17, from May 14, 1994, to December 31, 1994. The contracting officer did not modify the contract to authorize the schedule change or to show monetary adjustments for the change because the Institute staff did not notify the contracting officer of the change.

Monitoring and Certifying Contract Performance

The Institute staff, acting in an unauthorized capacity, inadequately monitored and inappropriately certified contract performance.

Requirements for Monitoring and Certifying Contract Performance. Defense Federal Acquisition Regulation Supplement subpart 201.6, "Contracting Authority and Responsibilities," states that contracting officers may authorize a qualified person to represent and assist them in monitoring technical factors or administering a contract. The Institute and CERL did not officially designate contracting officer representatives, known at the Institute and CERL as contracting officer technical representatives (COTRs), until July 1994.

Delivery Order Documents Named Points of Contact. The Institute staff assumed that their designation as the points of contact in the delivery order documents constituted authority to monitor contractor performance and to fulfill administrative functions like certifying contractor performance. However, the contracting officer did not authorize Institute staff as COTRs and the Institute staff did not execute the responsibilities of monitoring and certifying contractor performance according to the FAR and the Defense Federal Acquisition Regulation. Permitting the contractor to disregard terms of the statement of work or the contract schedule was not an action within the authority of a COTR or any person other than a contracting officer. Certifying contractor performance without evidence of performance was a violation of the delivery order terms for delivery orders requiring periodic reporting, and a risk of nonperformance for delivery orders requiring products according to a schedule.

Monitoring and Administering Delivery Orders by Institute Staff. For 22 of the sampled delivery orders, valued at $1.49 million, the Institute staff did not notify the contracting officer when the contractor disregarded requirements for periodic reports and draft documents or delivered the periodic and draft reports late. For example, the Institute staff did not report that the products were delivered late for contract DACA88-90-D-0026, delivery order 0011, which ended September 30, 1992. The contractor delivered the products on November 17 and 18, 1992, and on July 15, 1994.

In addition, for 14 of the sampled delivery orders, valued at $1.05 million, the Institute staff certified contractor performance for progress payments without authorization and without evidence of progress or performance. For example, a member of the Institute staff signed billings certifying them for payment on contract DACA88-92-D-0006, delivery order 0004. The delivery order was paid in full January 21, 1994, even though the final report was not delivered until March 1994.

Receiving and Accepting Products and Services

The Institute staff erroneously omitted documenting receipt and acceptance of products and services.

Requirements for Receiving and Accepting Products and Services. The FAR 46.5, "Acceptance," states that acceptance shall be evidenced by execution of an acceptable certificate on an inspection or receiving report form. In addition, FAR 46.6, "Material Inspection and Receiving Reports," states:

> agencies shall prescribe procedures and instructions for the use, preparation, and distribution of material inspection and receiving reports and commercial shipping documents/packing lists to evidence Government inspection and acceptance.

Receiving and Accepting Products and Services by Institute Staff. The Institute staff received and accepted the products and services for all 40 of the sampled delivery orders without completing an inspection or receiving report form. Whether or not the Institute received the products on time could only be determined from billings, correspondence, and informal notes. Whether or not the Institute received a product that met the specifications and quality standards could only be assumed from the lack of negative correspondence and from the billing approvals on file. In September 1993, CERL began to request copies of the products so the contracting officer could determine whether the Institute received the products and could close the delivery order. However, the contracting officer could not evaluate the technical merits and the quality of the products.

Procedures Needed for Effective Contracting

Written Procedures and Training Needed for Continuity and Compliance. The Institute did not have written procedures or training that outlined the basic steps to take if a staff member identified a requirement that needed contractor support. Because the Institute staff did not have background and training in contracting, they needed specific guidance and regulatory

references regarding the duties, responsibilities, limitations, and procedures for contracting. In addition, because the Institute relied on temporary and non-Federal staff, written procedures and initial and periodic training on contracting would have provided a means to maintain continuity and compliance.

Monitoring or Reporting System Needed for Effective Contract Management. The Institute did not have a monitoring or reporting system that identified the Institute staff member responsible for specific delivery orders or that identified the major products and milestones for each contract. Again, because the Institute relied on temporary and non-Federal staff, a monitoring or reporting system would have provided a means to identify staffing changes that required a contracting action and to determine the status of delivery orders so the delivery orders could be effectively managed.

Contracting Practices Impact Products and Services Received

Reduced Cost-Effectiveness of Products and Services Received. As a result of unguided and inconsistent contracting practices, the Institute staff could not provide assurance that it received the most cost-effective products and services. The contracting officer awarded delivery orders without competing the requirements for the best price, and changes, reductions, and time extensions occurred without adjusting cost.

The FAR subpart 12.2, "Liquidated Damages," provides policies and procedures for assessing monetary damages or terminating a contract when a contractor does not complete work on time. Although the FAR states that liquidated damages clauses should be used only if timely delivery is unusually important, provisions for the clauses recognizes that timely delivery has value. The Government received no adjustment for untimely delivery of products even when the products were more than a year late, as they were for contract DACA88-92-D-0009, delivery order 0002. The period of performance for delivery order 0002 was April 22, 1992, through April 21, 1993. As of June 1994, the Institute point of contact did not have the products that were required according to the contract statement of work.

Limited Compliance of Products and Services Received With Statements of Work. The Institute staff could not provide assurance that it received products that complied with the terms of the written requirements in the statements of work or with the actual requirements of the Institute.

For example, on contract DACA88-92-D-0005, delivery order 0018, the products received did not comply with the products listed in the statement of work. The products received included a planning paper, "Use of Supercard for Educating Planners: a Case of Environmental Trends Information," and a prototype computer program (called Hypercard) on environmental information

installed on one of the Institute computers. The products requested in the statement of work were:

o monthly progress reports;

o a draft and final version of an informational white paper identifying alternative and proposed decisionmaking methodologies that may be used for policy formulation workshops;

o an agenda for and conduct of a training workshop; and

o a letter report evaluating the effectiveness of the decisionmaking methodology along with recommendations to improve implementation of the methodology, draft and final.

The planning paper received, on which the Institute point of contact appears as one of the three authors, identifies and discusses an information system to support decisionmaking, but does not discuss and compare decisionmaking methodologies. The products received did not meet the requirements as written in the statement of work.

Management Comments on the Finding and Audit Response

Management Comments. The Army partly concurred with the finding. The Army stated that competing delivery orders under indefinite delivery contracts would create restrictive, time-consuming, and redundant procedures. Further, the Army stated that it was not required to solicit bids among contractors with indefinite delivery contracts for similar scopes of work when the contractor strengths and weaknesses were known.

Audit Response. The FAR does not specifically discuss whether or not competitive procedures should be used to place orders when an organization awards multiple contracts for a single solicitation. In our opinion, part 6.001, "Applicability," requires further competition because the orders do not meet the conditions for exception in paragraph e.

Public Law 103-355, "Federal Acquisition Streamlining Act of 1994," October 13, 1994, offers specific guidance regarding multiple award contracts. According to section 2304c, "Task and Delivery Order Contracts: Orders," unless one of four conditions exists,

> . . . all contractors awarded such contracts shall be provided a fair opportunity to be considered, pursuant to procedures set forth in the contracts, for each task or delivery order in excess of $2,500 that is to be issued under any of the contracts . . . .

Although the law was not in effect at the time of our audit, it offers specific guidance for future use.

Recommendations and Management Comments

Deleted Recommendation. As a result of additional documents management provided subsequent to the issuance of the draft report, we deleted draft report Recommendation B.4. and the associated example, contract DACA88-02-D-0005, delivery order 19. The documents substantiated the Institute claim that it received papers from at least 12 workshops, which complied with the delivery order statement of work. The project files provided at the time of audit showed and supported that six workshops were held October 1992 through September 1993.

B. We recommend that the Director, Army Environmental Policy Institute, establish and implement procedures to:

1. Provide written guidance on the duties, responsibilities, limitations, and practices for contracting requests, modifications, oversight, certification, product receipt, and product acceptance.

Management Comments. The Army concurred. The Army Environmental Policy Institute will develop and implement the recommended procedures by August 1, 1995.

2. Require initial and periodic training for permanent and temporary staff on the duties, responsibilities, limitations, and practices for contracting requests, modifications, oversight, certification, product receipt, and product acceptance.

Management Comments. The Army concurred. The Army stated that formal training will continue to be performed as well as periodic updating and familiarization. The Army Environmental Policy Institute plans to obtain professional certified contracting officer representative training and retraining in July 1995.

3. Monitor and report the staff assignments to oversee and certify contractor performance on delivery orders, the status of products and services to be provided on delivery orders, and the status of contractor performance in meeting the schedule for delivery orders.

Management Comments. The Army concurred. The Army Environmental Policy Institute will maintain a list of current contracts and the contracting officer representative assigned to each. The Fort McPherson contracting office requires monthly reports on contractor performance and contract status from organizations to which it provides support services. Further, the Director, Army Environmental Policy Institute, will make certain that contracting officer representatives conduct regular, quality project reviews. Those actions are considered complete.

Finding C. Compliance With Intergovernmental Personnel Act Laws and Regulations

The Institute management practices and documentation did not comply with laws and regulations for initiating and executing Intergovernmental Personnel Act agreements. The Institute management did not:

o authorize and approve Intergovernmental Personnel Act agreements in compliance with the Institute charter and internally generated procedures,

o make reports on agreements and evaluate Intergovernmental Personnel Act agreement use in accordance with Office of Personnel Management procedures, or

o adequately supervise or oversee the performance of Intergovernmental Personnel Act personnel.

The noncompliance occurred because Institute management had other priorities and did not have a monitoring system for Intergovernmental Personnel Act transactions. As a result, the Institute management could not provide assurance that the Intergovernmental Personnel Act services received were cost-effective, met the goals of the Act, and met the needs and purposes of the Institute.

Background

Authorization of Temporary Personnel Assignments. The Intergovernmental Personnel Act (IPA) authorizes the temporary assignment of personnel between the Federal Government and State or local governments, institutions of higher education, Indian tribal governments, and other eligible organizations. Temporary assignments, commonly called IPA assignments, can be used to strengthen management capabilities, to assist the transfer and use of new technology, to involve State and local officials in implementing Federal policies and programs, and to enhance employee performance through developmental experience. IPA assignments permit civilian employees of Federal organizations to serve with eligible non-Federal organizations, or employees of eligible non-Federal organizations to serve with Federal organizations, for limited periods without loss of employee rights and benefits. However, no assignment may exceed 4 years in length.

The Role of OPM In IPA Agreements. By Executive Order 11589, April 1, 1971, the President delegated to the Civil Service Commission (now the OPM) the authority to issue the regulations necessary for administering the IPA. The OPM guidance on IPA agreements can be found in the Code of Federal

Regulations, code 5, chapter 334, "Temporary Assignments Under the Intergovernmental Personnel Act," and Federal Personnel Manual, supplement 990-1, book III. In addition to setting up the criteria for IPA agreements, code 5, chapter 334, establishes requirements that each Federal organization report the terms of and evaluations of IPA agreements to the OPM.

Eligibility Requirements for an IPA Assignment. To be eligible for an IPA assignment, an individual must be a permanent career employee of a qualifying organization for at least 90 days before an IPA assignment. The IPA does not specifically define the conditions for a non-Federal employee to be considered permanent career status. The Federal Government defines IPA-eligible persons as those holding appointments without limitations.

Personnel With IPA Agreements Represent a Significant Institute Resource. Personnel on assignment to the Institute under IPA agreements represented a significant part of the Institute financial and human resources. In FY 1994, the Institute allocated $1.5 million of its $6.4 million budget for IPA salaries and benefits. Of the 17 IPA agreements reviewed, 16 assignments were from educational institutions and 1 assignment was from a qualifying non-profit organization.

Authorizing and Approving IPA Agreements

The Institute management did not comply with the Institute charter and internal procedures when authorizing and approving IPA agreements. Institute management did not maintain evidence that IPA agreements were subject to an IPA review panel, to an analysis matching IPA agreements with specific Deputy Assistant Secretary tasks, or to a legal evaluation.

Charter Authorized Augmenting Staff. The Institute management did not document the relationship between each IPA assignment and specific tasks from the Deputy Assistant Secretary as specified in the charter document establishing the Institute. In the charter, the Under Secretary of the Army states that the Director of the Institute is authorized to:

> . . . temporarily augment the permanent staff with professional members drawn from academia, industry, regulatory agencies and/or installations as may be required to accomplish specific tasks from the Secretariat.

Of the 17 IPA agreements reviewed, 9 agreements described the projects to be accomplished with the non-specific phrase, "crucial Army policy studies and other activities."

Delegation and Revocation of Authority to Initiate IPA Agreements. The Institute management did not convene an IPA review panel and did not implement oversight procedures with legal counsel as stated in an internal memorandum. Until May 26, 1992, the Institute initiated IPA agreements through support services. On that date, a member of the Institute staff issued a

memorandum that assumed direct responsibility for IPA agreements and that proposed oversight procedures. The memorandum stated:

> Given the Institute's unique mission and status, inter alia, the Director believes that future agreements should benefit from a more appropriate level of oversight. The office of the General [Counsel] (OGC) will most likely provide this oversight. An IPA program review panel, under proper legal oversight, will insure that all future agreements will be guided in an impartial and objective manner.

Making Reports On and Evaluating IPA Personnel

Institute management did not make reports on agreements and evaluate IPA agreement use in accordance with OPM procedures.

Reporting Requirements For Each IPA Agreement. The Institute management did not submit copies of the IPA agreements that it initiated, modified, extended, terminated, or executed in accordance with the IPA. The IPA requires that all Federal agencies participating in IPA assignments submit copies to OPM of new assignment agreements within 30 days after signature. Management must also submit copies to OPM of agreements that it modifies, extends, or terminates before the original completion date. Of the 17 Institute IPA agreements reviewed, only the agreement signed by the Deputy Assistant Secretary for the interim director was forwarded to OPM.

Reporting Requirements on Agency Use of IPA Agreements. The Institute management did not develop and implement a system to evaluate and monitor its use of IPA agreements and did not submit annual reports to OPM for FYs 1992, 1993, or 1994.

In addition to submitting IPA agreements, OPM requires each Federal agency to evaluate and report its use of IPA agreements to OPM at the end of each fiscal year. Each agency using IPA agreements should develop a system to monitor program activities. Although the OPM guidance allowed for evaluation and monitoring systems designed to meet specific agency needs, the guidance also established minimum reporting requirements:

- o an evaluation of the impact and benefits of the IPA assignments,
- o an accounting of the number of employees whom the agency hired within 3 months of IPA assignment termination, and
- o a copy of internal agency guidelines and other material pertaining to IPA assignments.

Supervising and Overseeing IPA Personnel Performance

The Institute management did not adequately supervise or oversee the performance of IPA personnel.

Supervision and Oversight Requirements From OPM. The Institute management did not have procedures for supervising or overseeing IPA personnel or determining whether each agreement was beneficial to the Institute. The OPM regulations do not include specific statements regarding supervising or overseeing IPA personnel. However, in order to comply with the reporting requirements and to achieve the stated purpose of IPA agreements, supervision and oversight are necessary. Unless Institute management reviewed the work accomplished, it could not determine and report the impact and benefits of the IPA assignments and could not ensure that assignments were for sound public purposes and furthered the goals and objectives of the organizations.

Because the position descriptions for IPAs generally stated major duties and responsibilities in terms of working on environmental policy, performance was difficult to measure. For at least two IPA agreements, Institute management did not know the extent of effort received from the agreements.

One IPA agreement for the Institute included the following statement as the reason for the assignment:

> USAEPI [United States Army Environmental Policy Institute] is paying the full salary for . . . for a period of time but the work will be completed in part while . . . continues his university work. Because a concentrated effort will be required during the 2 month period that . . . is at USAEPI it is appropriate that USAEPI pay the full salary for this period.

The period of full salary was from May 21 through August 5, 1994, and cost $19,403. The IPA was not on site during June 1994, and when an Institute staff member attempted to contact the IPA, the staff member was told the IPA was out of the country. In a November telephone conversation, the IPA confirmed he had been out of the country on a non-Army concern, but stated that he had informed Institute management of the possibility of other commitments when the agreement was initiated in April.

Another IPA agreement for the Institute was for 50 percent of the person's time between June 1, 1994, and May 31, 1995, to do legislative tracking for the Institute, at a cost of $24,911. In an August 26, 1994, interview, the IPA described his responsibilities and accomplishments. The duties the IPA described did not match the legislative tracking responsibility outlined in his IPA agreement and did not include defined products or reporting requirements. The IPA explained that his ability to be a "broad thinker" was his major attribute and a principal duty. This IPA was located in a different city and state from the Institute and the means of communicating the concepts he developed was not evident from the IPA agreement or the interview.

A June 3, 1994, draft internal regulation on acquisition included a provision for the Institute director assigning IPAs to supervisors and project managers. The supervisor or project manager would then be responsible for the IPAs' work units and performance evaluations. The regulation did not provide any definitions or details regarding assignments, work units, or performance evaluations.

Priority Consideration and Effective Monitoring Needed For IPA Agreements

The Institute management did not comply with laws and regulations for IPA agreements because the procedures were not a priority and management did not have a monitoring system for IPA agreements.

Institute Management Considered IPA Support Essential. The Institute management regarded IPA personnel as an essential part of the staff. In interviews, the Institute management expressed the opinion that IPA personnel could bring prestige, credibility, and expertise to the Institute and, therefore, to Army environmental policy, that the Institute would not otherwise have. To get that prestige, credibility, and expertise, Institute management gave priority to obtaining the IPA agreements over implementing the procedures to initiate, execute, monitor, and report on the agreements.

Monitoring IPA Support. The Institute management did not have a monitoring system in place to:

o collect information such as documents expected and benefits derived as a result of an IPA agreement;

o point out critical events such as the beginning and ending dates, the document due dates, and the performance evaluation dates; or

o report exceptions in the IPA agreement initiation and execution process such as due dates missed or benefits not realized.

A monitoring system would enable the Institute to meet OPM reporting requirements and to better control operations conducted by IPA personnel.

Procedures Impacted IPA Agreement Costs and Effectiveness

The Institute management could not provide assurance that the IPA services received were cost-effective and met the goals and objectives of the Institute as a result of emphasizing agreements over procedures and of not monitoring agreements.

Cost-Effectiveness of IPA Services. The Institute management could not provide assurance that the Institute obtained cost-effective services as a result of the IPA agreements it entered. For example, one IPA agreement was for assistance with planning and supervising the renovation of the Institute office space at its new location in Atlanta, Georgia. The agreement was not cost-effective because it required the Institute to pay the IPA staff member $28,691 to monitor renovation services that the staff member's permanent employer had a contractual obligation to provide. The IPA agreement to monitor the renovation also created an organizational conflict of interest for the staff member.

In another example, the Institute management initiated five IPA agreements to review major environmental legislative issues, a project also the subject of two delivery orders and three short form research contracts. One legislative reviewer was also to serve as a liaison between the Institute and the University of Cincinnati (the IPA's permanent employer) and the College of Engineering at the university. The University of Cincinnati was the only university for which the Institute specified liaison duties in an IPA agreement, even though the Institute had contracts and agreements with at least seven other universities. In our opinion, liaison duties are a cost of doing business for the University and are not a cost-effective use of Government funds.

Meeting Institute Goals and Objectives. The Institute management also could not provide assurance that the IPA agreements resulted in services that met the goals and objectives of the Institute. For example, without formal means of communicating concepts and analyses to the Institute, Institute management could not demonstrate the contribution of IPA work to solving systemic Army environmental problems, to identifying Army environmental investment strategies and policies, or to eliminating solutions, strategies, and policies from Army consideration.

In one case, the Institute management improperly approved an IPA agreement to which they were not a party. Although Institute management expected to receive some benefit from the training developed by the IPA, the Institute did not fund the agreement, and the IPA developed the training specifically for CERL.

Management Comments on the Finding and Audit Response

Management Comments. The Army partly concurred with the finding. The Army stated that the Army Environmental Policy Institute management was not responsible for OPM requirements regarding IPA agreements because it relied entirely on the administrative procedures from its servicing administrative organization. According to the Army comments, the Civilian Personnel Office, Chicago District, Corps of Engineers, made the prescribed reports to the Office of Personnel Management.

Audit Response. Regardless of the actions by the servicing administrative organization, the reporting and oversight responsibilities for Intergovernmental Personnel Act agreements depend on the organization with which the agreement is made. The Office of Personnel Management had a record of only one Intergovernmental Personnel Act agreement from the Army Environmental Policy Institute, the interim director's agreement.

Recommendations, Management Comments, and Audit Response

C. We recommend that the Director, Army Environmental Policy Institute:

1. Require all staff members of the Army Environmental Policy Institute to comply with Office of Personnel Management regulations, its own charter, and other guidance regarding Intergovernmental Personnel Act agreements.

Management Comments. The Army concurred. The Army Environmental Policy Institute will process all Intergovernmental Personnel Act actions through the servicing Directorate of Civilian Personnel, convene a screening panel for all Intergovernmental Personnel Act applicants, and issue guidance regarding Intergovernmental Personnel Act agreements. The Army plans to complete action by August 1, 1995.

2. Establish procedures to:

a. Include measurable performance standards in the terms of each Intergovernmental Personnel Act agreement.

Management Comments. The Army partially concurred. The Army stated that Intergovernmental Personnel Act agreements entered into since November 1994 include approved performance objectives. The agreements also include specific functions or tasks, but Army management said it will establish performance standards separately from the agreements.

Audit Response. We consider the actions planned responsive to the recommendation. We request that the Army, in its response to the final report, provide a specific date by which the planned actions will be completed.

b. Match the terms of each Intergovernmental Personnel Act agreement to the goals and objectives of the Army Environmental Policy Institute.

Management Comments. The Army concurred. The Army Environmental Policy Institute will convene a screening panel to match agreements to its goals. Program managers will match agreements to annual work plan projects and strategic plan elements.

Audit Response. The planned actions are responsive to the recommendation. We request that the Army, in its response to the final report, provide a specific date by which the planned actions will be completed.

3. Establish a monitoring system to:

a. Collect data for Office of Personnel Management and other reporting purposes.

Management Comments. The Army nonconcurred. The Army stated that monitoring Intergovernmental Personnel Act agreements is the function of the servicing Directorate of Civilian Personnel, not the organization receiving the services and benefits. The Army further stated that the Army Environmental Policy Institute will provide needed and requested information to the servicing Directorate of Civilian Personnel for reporting purposes.

Audit Response. The Army comments are partially responsive to the recommendation. Among the Office of Personnel Management reporting requirements is an evaluation of the impact and benefits of the Intergovernmental Personnel Act assignments to the organization. The organization receiving the services and benefits is in the best position to gather and evaluate such information. We agree that the appropriate channel to submit data to the Office of Personnel Management is the servicing Directorate of Civilian Personnel. However, monitoring the impact and benefits is the responsibility of the organization receiving the services and benefits. In our opinion, the most effective means of providing the necessary data to the servicing Directorate of Civilian Personnel is through an established monitoring system rather than through periodic data calls. We ask that management reconsider its position on Recommendation C.3.a. and provide comments to the final report.

b. Notify management of critical events and due dates.

Management Comments. The Army concurred. The Army Environmental Policy Institute will notify the servicing Directorate of Civilian Personnel of critical Intergovernmental Personnel Act agreement events. The Army Environmental Policy Institute will include performance objectives, milestones, and periodic performance evaluations in the events it reports.

Audit Response. The planned actions are responsive to the recommendation. We request that the Army, in its response to the final report, provide a specific date by which the planned actions will be completed.

c. Report procedural exceptions.

Management Comments. The Army concurred. The Army Environmental Policy Institute will forward exceptions to the servicing Directorate of Civilian Personnel.

Audit Response. The planned actions are responsive to the recommendation. We request that the Army, in its response to the final report, provide a specific date by which the planned action will be completed.

4. Submit copies of all the required initial, modified, and extended Intergovernmental Personnel Act agreements and all required annual evaluation reports to the Office of Personnel Management.

Management Comments. The Army partially concurred. The Army states that the Army Environmental Policy Institute will submit initial, modified, and extended Intergovernmental Personnel Act agreements and annual evaluation reports to the servicing Directorate of Civilian Personnel for reporting to the Office of Personnel Management.

Audit Response. The planned actions are responsive to the intent of the recommendation. We request that the Army, in its response to the final report, provide a specific date by which the planned action will be completed.

Management Comments Required

Management is requested to do the following in response to the final report:

o Provide completion dates for the actions planned on Recommendations C.2.a., C.2.b., C.3.b., C.3.c., and C.4.

o Reconsider its response and provide comments to Recommendation C.3.a.

Finding D. Contract Classification and Funding

Classification and funding of delivery orders by the Institute management and the Construction Engineering Research Laboratory contracting officer did not comply with laws and regulations. The noncompliance occurred because the Institute and the Construction Engineering Research Laboratory did not have effective procedures to monitor the correct classification and funding of Institute delivery orders. As a result, the Institute used an estimated $1.01 million in wrong year Operations and Maintenance funds on 17 delivery orders. Correcting the Operations and Maintenance accounts could potentially result in violations of the Antideficiency Act.

Background

Funding for the Institute operations and contracting comes from the Operations and Maintenance appropriation, which is an annual appropriation. According to FAR 32.703-3, "Contracts Crossing Fiscal Years":

> a contract that is funded by annual appropriations may not cross fiscal years except when authorized by statute or when the contract calls for an end product that cannot feasibly be subdivided for separate performance in each fiscal year.

Classification of Delivery Orders Depends on Statement of Work. Whether one classifies a contract or delivery order as a completion-type or a level-of-effort-type action determines how the action must be funded. Completion-type contracts and delivery orders require a definite goal and a specific end product to be defined in the statement of work. Level-of-effort-type contracts and delivery orders require a generally defined statement of work and make provisions to more specifically define work by task orders issued at undetermined intervals as specific needs arise. The Comptroller General has ruled that the contracting agency is responsible for determining whether a contract type is completion or level-of-effort.

Year of Funding Depends on Classification of Delivery Orders. Completion-type contracts are funded from the appropriation available at the time of contract award. Level-of-effort-type contracts are funded from the appropriation available at the time the services are rendered. United States Code, title 31, section 1501(a)1(B), "Documentary Evidence Requirement for Government Obligations," states that an amount shall be recorded as an obligation only when supported by documentary evidence of a binding agreement between an agency and another person; when executed before the end of the availability period for obligation of the appropriation or fund; and when used for specific goods, work, or services.

United States Code, title 31, section 1502, "Balances Available," states that the balance of an appropriation or fund limited for obligation to a definite period is available only for paying expenses properly incurred during that period of availability or for completing contracts properly made within that period of availability and obligated consistently with section 1501. However, the appropriation or fund is not available for expenditure for a period beyond the period otherwise authorized by law.

Complying With Funding Laws and Regulations For Specific Delivery Order Classifications

The Institute management and the CERL contracting officer did not comply with United States Code, title 31, sections 1501 and 1502, or with the FAR when classifying and funding seven of the delivery orders in the sample. We estimate that 17 (17.9 percent) of the 96 delivery orders, or $1.01 million of the $7.14 million of delivery orders, were incorrectly classified and funded.[4] (See Appendix A for a discussion of the statistical analysis.)

Delivery Orders Classified as Completion-Type, Funded as Level-of-Effort-Type. The Institute management and the CERL contracting officer classified four delivery orders as completion-type, but funded them as level-of-effort-type. Those four delivery orders had statements of work that identified a definite goal and specific end products. The CERL contracting officer modified the delivery order statements of work, at the Institute's request, to provide more specific information about the end products required. The Institute funded the delivery order modifications for the four delivery orders from the year they modified the delivery order rather than from the year they awarded the delivery order.

A General Accounting Office publication, "Principles of Federal Appropriations Law," chapter 5, part B, section 7, "Contract Modifications and Amendments Affecting Price," states:

> The reasoning is that a change order [modification] does not give rise to a new liability, but instead only renders fixed and certain the amount of the government's pre-existing liability to adjust the contract price. Since that liability arises at the time the original contract is executed, the subsequent price adjustment is viewed as reflecting a bona fide need of the same year in which funds were obligated for payment of the original contract price.

The modifications to the four delivery orders did not give rise to new liabilities; therefore, the modifications should be funded from the same year as the award.

[4]At a 95-percent confidence interval, the ranges of these estimates are from 10 (10.9 percent) to 29 (29.7 percent) delivery orders, and the value from $.43 million to $1.72 million.

For example, the CERL contracting officer awarded contract DACA88-90-D-0037, delivery order 0012, valued at $63,986, in FY 1992. The contractor was to develop an inventory of environmental technology and policy organizations and an integrated hazardous waste strategy. In FY 1993, the contracting officer modified delivery order 0012 to require a specific technical review and critique of an Institute report concerning an integrated hazardous waste strategy. Although that modification occurred in FY 1993, the work was within the scope of the end product described in the delivery order statement of work awarded and funded in FY 1992. The CERL contracting officer should have funded the modification with FY 1992 funds, but instead used FY 1993 funds.

Delivery Order Classified and Funded as Completion-Type, Work Was Level-of-Effort-Type. The Institute management and the CERL contracting officer classified and funded one delivery order as a completion-type delivery order, even though the statement of work generally defined the work and made provisions for services to be provided on an as-needed basis.

The CERL contracting officer awarded contract DACA88-90-D-0026, delivery order 0013, valued at $50,164, in September 1991. The delivery order was for the contractor to conduct literature surveys and retrievals on selected environmental topics for the Institute. The specific environmental topics would be issued at undetermined intervals as the Institute identified environmental information requirements. The CERL contracting officer classified delivery order 0013 as a completion-type delivery order and funded it with FY 1991 funds. However, because the contractor was to provide services as needed, and the services did not start until FY 1992, the CERL contracting officer should have classified the delivery order as a level-of-effort-type delivery order and funded it in the year the services were provided, FY 1992.

Delivery Orders Classified and Funded as Completion-Type, Delivery Orders Funded In Wrong Year. The Institute management and the CERL contracting officer appropriately classified and funded two delivery orders as completion-type, but the product described in the statements of work could not feasibly be subdivided so that any performance could take place in the funding year. The two delivery orders were funded from a fiscal year in which no bona fide need existed.

"Principles of Federal Appropriations Law," chapter 5, part B, section 3, "Prior Years' Needs," states:

> The essence of the [bona fide needs] rule is simply that an appropriation may be validly obligated only to meet a legitimate need existing during the period of availability. Under this concept, payments are chargeable to the year in which the obligation took place, even though not actually disbursed until a later year, as long as the need existed when the funds were obligated.

The statements of work for the two delivery orders were for monitoring specific sessions of Congress. Each delivery order was funded in the last quarter of the

fiscal year before the session of Congress met. Therefore, the need to monitor the session of Congress did not exist until the first quarter of the fiscal year following the funding year.

For example, the CERL contracting officer awarded contract DACA88-92-D-0009, delivery order 0006, valued at $89,339, in August 1992 to monitor and report on environmental legislation discussed by and introduced at the first session of the 103rd Congress. The CERL contracting officer funded delivery order 0006 with FY 1992 funds. The first session of the 103rd Congress began in January 1993. Therefore, the bona fide need for delivery order 0006 arose in FY 1993, and the CERL contracting officer should have used FY 1993 funds.

Effective Monitoring Procedures Needed to Correctly Classify and Fund Delivery Orders

The Institute Procedures to Monitor Delivery Order Classification and Funding. The Institute management did not have a system to monitor its requests for delivery orders and the corresponding awards made on its behalf for correct classification and proper year funding. Institute management depended completely on the support services provided by CERL to classify and fund delivery orders even though the use of funds was the Institute's responsibility.

CERL Procedures to Monitor Delivery Order Classification and Funding for the Institute. The CERL did not have effective procedures for monitoring the Institute delivery orders for correct classification and proper funding. The contract files did not contain documentation of monitoring procedures such as legal or technical reviews regarding the delivery orders awarded on behalf of the Institute. Because CERL no longer provides contracting support to the Institute, the CERL contracting officer will not need procedures to monitor Institute delivery orders. However, the CERL will need procedures to correct funding errors on the delivery orders awarded during the period of its support to the Institute.

Classification and Funding of Delivery Orders Impacted Several Fiscal Years

As a result of ineffective procedures to monitor classification and funding, the Institute obligated $427,142 in Operations and Maintenance funds on seven delivery orders with the wrong fiscal year funds. The dollar amount of Operations and Maintenance funds obligated in the wrong fiscal year is shown by contract and fiscal year in the table below. Adjustments to fund the seven delivery orders from the correct fiscal years could result in Antideficiency Act violations.

Operations and Maintenance Funds Obligated in the Wrong Fiscal Year

Contract Number	Delivery Order Number	Fiscal Year Obligated	Fiscal Year Should Be Obligated	Amount Erroneously Classified
DACA88-90-D-0026	0013	1991	1992	$ 50,164
DACA88-92-D-0009	0006	1992	1993	89,339
DACA88-90-D-0037	0012	1993	1992	25,595
DACA88-92-D-0005	0008	1993	1992	35,327
DACA88-92-D-0007	0007	1993	1994	195,250
DACA88-92-D-0003	0017	1994	1993	7,467
DACA88-91-D-0008	0007	1994	1993	24,000
Total Operations and Maintenance funds from wrong years				**$427,142**

United States Code, title 31, section 1341, "Limitation, Exceptions, and Penalties," prohibits any officer or employee of the United States from making or authorizing obligations or disbursements from any appropriation or fund in excess of the amount available, except as authorized by law. An Antideficiency Act violation occurs when a subdivision of funds is overobligated, overdisbursed, or obligated in advance of appropriations.

DoD Directive 7200.1, "Administrative Control of Appropriations," May 7, 1984, implements Federal law on appropriations and prescribes the policy and procedures to be followed regarding a violation of the Antideficiency Act. DoD Directive 7200.1 assigns responsibility to the Secretaries of the Military Departments and the Directors of the Defense agencies for investigating any apparent violations of the Antideficiency Act and for reporting violations as required by Federal law.

Management Comments on the Finding and Audit Response

Management Comments. The Army partly concurred with the finding. The Army stated that the Army Environmental Policy Institute management relied on the contracting and fund classification services from CERL until FY 1995 when the Army Environmental Policy Institute staff included a budget analyst to certify funds.

Audit Response. The reason for partial concurrence is unclear. The report points out that the Army Environmental Policy Institute relied on services provided by CERL. The report states that Institute and CERL procedures for monitoring the classification and funding of Institute delivery orders were not effective.

Recommendations, Management Comments, and Audit Response

D.1. We recommend that the Director, Army Environmental Policy Institute:

a. Establish procedures to monitor delivery orders for correct classification and funding.

Management Comments. The Army partially concurred with the recommendation. The Army Environmental Policy Institute developed a contracting standard operating procedure in June 1994 to ensure that personnel process contracts appropriately, receive proper training, maintain contracting officer representative files, and follow the FAR. The Army also stated that the Army Environmental Policy Institute will rely on the contracting officer at Fort McPherson, Georgia, to make sure that the Army Environmental Policy Institute processes contracts appropriately and maintains contract files properly.

Audit Response. The actions are responsive to the recommendation. We request that the Army, in its response to the final report, provide a specific date by which the Army Environmental Policy Institute completed the agreement regarding the responsibilities of the contracting officer at Fort McPherson.

b. Review the classification and funding of the 56 delivery orders that we did not review in detail, and initiate accounting adjustments as necessary.

c. Follow the procedures in DoD Directive 7200.1, "Administrative Control of Appropriations," to report any violations of the Antideficiency Act, and initiate action against the responsible officials if accounting adjustments cause an overobligation.

Management Comments. The Army concurred and stated that the Army Environmental Policy Institute will review the 56 unaudited delivery orders and follow the procedures in DoD Directive 7200.1 as necessary.

Audit Response. The planned actions are responsive to the recommendation. We request that the Army, in its response to the final report, provide a specific date by which the planned actions will be completed.

D.2. We recommend that the Director, Construction Engineering Research Laboratory, request that the contracting officer who awarded the Army Environmental Policy Institute delivery orders:

a. Modify contract DACA88-90-D-0026, delivery order 0013, to deobligate $50,164 of FY 1991 Operations and Maintenance funds and obligate $50,164 of FY 1992 Operations and Maintenance funds.

b. Modify contract DACA88-92-D-0009, delivery order 0006, to deobligate $89,338.59 of FY 1992 Operations and Maintenance funds and obligate $89,338.59 of FY 1993 Operations and Maintenance funds.

Management Comments. The Army concurred with Recommendations D.2.a., and D.2.b. The Army Environmental Policy Institute will request that the contracting officer modify the contracts to deobligate Operations and Maintenance funds from the incorrect fiscal year and to obligate funds from the year of the bona fide need.

Audit Response. The planned actions are responsive to the recommendations. We request that the Army, in its response to the final report, provide a specific date by which the planned actions will be completed.

c. Modify contract DACA88-90-D-0037, delivery order 0012, to deobligate $25,595 of FY 1993 Operations and Maintenance funds and obligate $25,595 of FY 1992 Operations and Maintenance funds.

d. Modify contract DACA88-92-D-0005, delivery order 0008, to deobligate $35,327 of FY 1993 Operations and Maintenance funds and obligate $35,327 of FY 1992 Operations and Maintenance funds.

Management Comments. The Army nonconcurred and stated that the modifications to the delivery orders were new work, gave rise to a new liability, and were therefore properly funded with FY 1993 Operations and Maintenance funds. The Army also stated that the fact that the Army Environmental Policy Institute could have placed a new delivery order, because neither statute or regulation limits the number of delivery orders an organization may place against a basic contract, was evidence of proper funding.

Audit Response. The Army comments are not responsive to the recommendations. If the modifications were for new work sufficiently different to be considered outside the scope of the original delivery order, then the delivery order was a level-of-effort-type order.

The work described in the modification to contract DACA88-90-D-0037, delivery order 0012, described work that was independent of the other tasks in the delivery order. The delivery order should therefore be treated as a level-of-effort-type delivery order.

The work described in the modification to contract DACA88-92-D-0005, delivery order 0008, was to supplement Task 4 of the original delivery order. The modification specifies that the contractor should document the supplemental work and incorporate the work into the final report. Because the final report was an FY 1992 requirement, all work incorporated into that final report was also an FY 1992 requirement.

The Army Environmental Policy Institute modified the delivery orders using another year's Operations and Maintenance funds, an indicator that the Army Environmental Policy Institute was treating the delivery orders as

level-of-effort-type orders. The Army Environmental Policy Institute should then have funded the delivery orders from the year in which the contractor rendered services.

If the Army chooses to treat contract DACA88-90-D-0037, delivery order 0012, and contract DACA88-92-D-0005, delivery order 0008, as level-of-effort-type delivery orders, then the Army should modify the delivery orders to obligate the Operations and Maintenance funds current in the year the contractor rendered the services. Contract DACA88-90-D-0037, delivery order 0012, and contract DACA88-92-D-0005, delivery order 0008, would then be funded with Operations and Maintenance funds for services rendered in FYs 1992, 1993, and 1994.

We ask that management reconsider its position on Recommendations D.2.c., and D.2.d. in comments on the final report.

e. Modify contract DACA88-92-D-0007, delivery order 0007, to deobligate $195,250 of FY 1993 Operations and Maintenance funds and obligate $195,250 of FY 1994 Operations and Maintenance funds.

Management Comments. The Army nonconcurred with Recommendation D.2.e. The Army stated that the delivery order statement of work was somewhat ambiguous because the objective and background paragraphs referred to the second session of the 103rd Congress, while the tasks discuss only the 103rd Congress and do not limit the work to the second session. The Army further stated that monitoring Congress and developing a best method for monitoring Congress were nonseverable tasks and bona fide needs of FY 1993.

Audit Response. The Army comments are not responsive to the recommendation. The Army Environmental Policy Institute awarded contract DACA88-92-D-0009, delivery order 0016, to a contractor to develop a best method for monitoring Congress and for monitoring the first session of the 103rd Congress. Contract DACA88-92-D-0007, delivery order 0007, awarded to a different contractor, described the same work except it was for the second session of the 103rd Congress. The contractors on both of those delivery orders, which have periods of performance that overlap between October 1, 1993, and February 1, 1994, had the work performed by the same subcontractor. To be awarded to two separate contractors, the work to monitor the first and second sessions of the 103rd Congress must have been severable and the statement of work for contract DACA88-92-D-0007, delivery order 0007, must be for the second session of the 103rd Congress. We ask that management reconsider its position on Recommendation D.2.e. in comments on the final report.

f. Modify contract DACA88-92-D-0003, delivery order 0017, to deobligate $7,467 of FY 1994 Operations and Maintenance funds and obligate $7,467 of FY 1993 Operations and Maintenance funds.

g. Modify contract DACA88-91-D-0008, delivery order 0007, to deobligate $24,000 of FY 1994 Operations and Maintenance funds and obligate $24,000 of FY 1993 Operations and Maintenance funds.

Management Comments. The Army nonconcurred with Recommendations D.2.f., and D.2.g. for the same reasons it nonconcurred with Recommendations D.2.c. and D.2.d., except the year for which the Army contends funding was appropriate is FY 1994.

Audit Response. The Army comments are not responsive to the recommendations. The work described in the modification to contract DACA88-92-D-0003, delivery order 0017, added a workshop to the original delivery order task to design and conduct demonstration environmental forecasting meetings and workshops. The modification specifically states that the additional workshop was in support of accomplishment of Task 2 of the original delivery order. Because Task 2 was an FY 1993 requirement, then the additional workshop in support of that task was also an FY 1993 requirement.

The work described in the modification to contract DACA88-91-D-0008, delivery order 0007, adds a specific purpose monitoring apparatus to the test and evaluation requirements defined in the original delivery order. The modification specifically states that, "[The] letter report [on results of all tasks identified under the original delivery order] shall include results of the added task describing the prototype apparatus." If the letter report was a bona fide need of FY 1993, then the additional work was also a need of FY 1993.

If the modifications were for new work sufficiently different to be considered outside the scope of the original delivery order, then the delivery order was a level-of-effort-type order. The Army Environmental Policy Institute modified the delivery orders using another year's Operations and Maintenance funds, an indicator that the Army Environmental Policy Institute was treating the delivery orders as level-of-effort-type orders. The Army Environmental Policy Institute should then have funded the delivery orders from the year in which the contractor rendered services.

If the Army chooses to treat contract DACA88-92-D-0003, delivery order 0017, and contract DACA88-91-D-0008, delivery order 0007, as level-of-effort-type delivery orders, then the Army should modify the delivery orders to obligate the Operations and Maintenance funds current in the year the contractor rendered the services. Contract DACA88-92-D-0003, delivery order 0017, would then be funded with Operations and Maintenance funds for services rendered in FYs 1993 and 1994. Contract DACA88-91-D-0008, delivery order 0007, would be funded with Operations and Maintenance funds for services rendered in FYs 1993, 1994, and 1995.

We ask that management reconsider its position on Recommendations D.2.f., and D.2.g. in comments on the final report.

Management Comments Required

Management is requested to do the following in response to the final report:

o Provide completion dates for the actions planned on Recommendations D.1., D.2.a., and D.2.b.

o Reconsider its responses and provide comments to Recommendations D.2.c., D.2.d., D.2.e., D.2.f., and D.2.g.

Part III - Additional Information

Appendix A. Sample Methodology and Projections

Sample Design

Staff from the Audit Planning and Technical Support Directorate developed a statistical sample to evaluate contracting and funding practices at the Institute.

Sample Purpose. The purpose of the sample was to estimate the number of delivery orders in error due to procedural or funding practices. The sample results provided data to determine the number of errors, the percent of the population in error, and the dollars in error.

Universe Represented. The audit covered delivery orders awarded for the Institute for the period October 1, 1990, through May 31, 1994. During that period, the Institute reported to the Army Corps of Engineers for FYs 1991 through 1992 and to the Office of the Assistant Secretary of the Army (Environment, Safety, and Occupational Health) for FYs 1993 through 1994. While reporting to the Army Corps of Engineers, the Institute placed 56 contract delivery orders, valued at $4.03 million. While reporting to the Assistant Secretary of the Army (Environment, Safety, and Occupational Health), the Institute placed 40 contract delivery orders, valued at $3.11 million.

Sampling Design. The Audit Planning and Technical Support staff designed a stratified sample of the 96 contract delivery orders placed by the Institute, valued at $7.14 million, to incorporate the time periods under the different reporting lines. The sample consisted of 40 contract delivery orders, valued at $2.97 million, 20 contract delivery orders from each time period.

Sample Results

Examination of the sample items showed procedural and funding errors. The procedural errors, discussed in Findings A and B, were not statistically analyzed. Discussion of the funding error analysis follows.

Confidence Interval Table. The table below states the statistical projections for the sample data at a 95-percent confidence level:

Confidence Interval of Funding Errors Analysis

Institute Funding Errors	Lower Bound	Point Estimate	Upper Bound
Number of delivery orders with errors in funding classification	10	17	29
Percent of delivery orders with errors in funding classification	10.9	17.9	29.7
Dollars affected by errors in funding classification (millions)	$ .43	$1.01	$1.72

Confidence Interval Statement. With a 95-percent level of confidence, the number of delivery orders with funding errors in the population of 96 delivery orders ranged from 10 to 29 delivery orders. The most likely number of delivery orders with funding errors is 17 delivery orders.

With a 95-percent level of confidence, the dollar amounts affected by funding errors in the population ranged from $.43 million to $1.72 million. The most likely dollar amount affected by funding errors is $1.01 million. This interval is not symmetric because the lower bound was adjusted to reflect the actual sample finding.

Appendix B. Summary of Potential Benefits Resulting From Audit

Recommendation Reference	Description of Benefit	Amount and/or Type of Benefit
A.1., A.2.	Management Controls. Establishes the DoD Management Control Program.	Nonmonetary.
B.1., B.2., C.1., C.2., C.3., D.1.a.	Management Controls. Establishes consistent procedures and reduces the potential for errors, fraud, waste, and abuse.	Undeterminable. Amount depends on future operations and the value of future contracting actions.
B.3., C.4.,	Compliance with Regulations or Laws. Meets documentation, reporting, and performance requirements for contracts and agreements.	Nonmonetary.
D.1.b.	Compliance with Regulations or Laws. Applies funds properly.	Nonmonetary.
D.1.c.	Compliance with Regulations or Laws. Identifies and reports Antideficiency Act violations and directs appropriate personnel action.	Nonmonetary.
D.2.	Compliance with Regulations or Laws. Applies funds properly and obligates the correct year funds.	Nonmonetary.

Appendix C. Organizations Visited or Contacted

Office of the Secretary of Defense

Deputy Under Secretary of Defense (Environmental Security), Washington, DC

Department of the Army

Deputy Assistant Secretary of the Army (Environment, Safety, and Occupational Health), Washington, DC
  Army Environmental Policy Institute, Champaign, IL
Army Forces Command, Fort McPherson, GA
  Contracting Division, Fort Gillem, GA
  Resource Management, Fort Gillem, GA
  Civilian Personnel, Fort McPherson, GA
Army Corps of Engineers, Washington, DC
  Construction Engineering Research Laboratory, Champaign, IL
Army Environmental Center, Aberdeen, MD

Defense Organization

Defense Contract Audit Agency, Chicago Region, Chicago, IL

Non-Government Organizations

Massachusetts Institute of Technology, Cambridge, MA
University of Cincinnati, Cincinnati, OH
University of Illinois, Champaign, IL

Appendix D. Report Distribution

Office of the Secretary of Defense

Under Secretary of Defense (Comptroller)
  Deputy Chief Financial Officer
    Director, Management Improvement
  Deputy Comptroller (Program/Budget)
Deputy Under Secretary of Defense (Environmental Security)
Assistant to the Secretary of Defense (Public Affairs)
Director, Defense Logistics Studies Information Exchange

Department of the Army

Assistant Secretary of the Army (Financial Management and Comptroller)
Assistant Secretary of the Army (Installations, Logistics, and Environment)
  Deputy Assistant Secretary of the Army (Environment, Safety, and Occupational Health)
    Director, Army Environmental Policy Institute
Commander, Army Forces Command
Commander and Chief of Engineers, U.S. Army Corps of Engineers
  Director, Construction Engineering Research Laboratory
Commander, Army Environmental Center
Auditor General, Department of the Army

Department of the Navy

Assistant Secretary of the Navy (Financial Management and Comptroller)
Auditor General, Department of the Navy

Department of the Air Force

Assistant Secretary of the Air Force (Financial Management and Comptroller)
Auditor General, Department of the Air Force

Other Defense Organizations

Director, Defense Contract Audit Agency
Director, Defense Logistics Agency
Director, National Security Agency
  Inspector General, National Security Agency

Non-Defense Federal Organizations and Individuals

Office of Management and Budget
Technical Information Center, National Security and International Affairs Division, General Accounting Office

Chairman and ranking minority member of each of the following congressional committees and subcommittees:

Senate Committee on Appropriations
Senate Subcommittee on Defense, Committee on Appropriations
Senate Committee on Armed Services
Senate Committee on Governmental Affairs
House Committee on Appropriations
House Subcommittee on National Security, Committee on Appropriations
House Committee on Government Reform and Oversight
House Subcommittee on National Security, International Affairs, and Criminal Justice, Committee on Government Reform and Oversight
House Committee on National Security

Part IV - Management Comments

Department of the Army Comments

DEPARTMENT OF THE ARMY
OFFICE OF THE ASSISTANT SECRETARY
INSTALLATIONS LOGISTICS AND ENVIRONMENT
110 ARMY PENTAGON
WASHINGTON DC 20310-0110

May 12, 1995

MEMORANDUM FOR DEPARTMENT OF DEFENSE INSPECTOR GENERAL (AUDITING)

SUBJECT: Comments to the Draft Department of Defense Inspector General Audit Report, "Management and Contracting Practices of the Army Environmental Policy Institute"

The Army's comments to the subject report are at Tab A. The background and history of the Army Environmental Policy Institute (AEPI) are at Tab B.

The AEPI, with the assistance of specialists from the U.S. Army Construction Engineering Research Laboratories (USACERL), Champaign, Illinois, and Fort McPherson, Atlanta, Georgia, will correct all identified deficiencies and make accounting adjustments as required in accordance with Army regulations. The AEPI will be identified as an assessable unit in accordance with Army Regulation 11-2 and the Director will be designated as the Assessable Unit Manager. A standard operating procedure concerning the selection and management of Intergovernmental Personnel Act (IPA) employees is being developed and will be implemented by July 1, 1995. Some accounting adjustments will be initiated immediately with others to follow, if required, after a review of all contracts by AEPI and USACERL.

My Deputy for Environment, Safety and Occupational Health is the point of contact for this action. He can be reached at (703) 695-7824.

Robert M. Walker
Assistant Secretary of the Army
(Installations, Logistics & Environment)

Attachments

cf:
Auditor General, US Army Audit Agency

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ARMY COMMENTS

FINDING A. INTERNAL MANAGEMENT CONTROLS OVER OPERATIONS AND CONTRACTING

The Deputy Assistant Secretary of the Army (Environment, Safety, and Occupational Health) (DASA(ESOH)) had not identified the Institute as an assessable unit and required it to establish an internal management control program. In addition, the Institute management had not assessed risk, developed specific control objectives, or established control procedures for its operations and contracting. The DASA(ESOH) had not required, and Institute management had not implemented, an internal management control program because DASA(ESOH) and Institute management focused on establishing and stabilizing the organization as the priority. As a result, the Institute could not provide reasonable assurance that it:

- safeguarded assets against waste, loss or unauthorized use;

- incurred obligations and costs that complied with applicable laws and regulations; or

- classified and funded expenditures properly.

Command Comments. Concur. Management controls that had been established by Army Regulations (AR) and other policy directives in the functional areas cited were not effectively implemented. The Institute will work closely with the management control staffs at HQ, Forces Command and the Office of the Assistant Secretary of the Army (Financial Management and Comptroller) to implement a management control process that meets the requirements of DOD Directive and AR 11-2, Management Control.

The audit report fails to recognize, however, that DOD Directive 5010.38 provides broad policy guidance and gives substantial latitude to DOD Components in structuring their management control programs. DOD Components have exercised this latitude to implement programs that vary in many respects, yet still meet the requirements of the DOD Directive. AR 11-2 establishes the Army's management control process and provides detailed guidance on its implementation, but the audit failed to evaluate the Institute's management controls in the context of this Army policy and process, or even to recognize that they exist. As a result, the finding contains mis-statements and fails to note specific cases where the Institute failed to meet Army management control requirements. The following are several examples:

The finding indicates that DASA(ESOH) failed to identify the Institute as an assessable unit. However, under the Army management control policy in effect at the time, he was not expected to do so. The DOD Directive allows considerable latitude in this area, defining assessable units as any "....organizational, functional, programmatic, or other proper subdivisions..." suitable for evaluation. This Army management control policy

1

established assessable units on a functional, rather than an organizational, basis. The Army restructured its management control process effective on 1 October 1994. Under this revised policy, Army assessable units are now defined as organizations headed by senior managers no lower than Colonel or GM-15.

In a similar vein, the finding indicates that "....the Institute management had not assessed risk .... for its operations and contracting." and that "...the Institute had not met the requirements of DOD Directive 5010.38 to assess risk areas..." However, the DOD Directive does not specify how risk assessments are to be conducted, only that DOD Components segment themselves into assessable units (with the latitude described above) and conduct risk assessments on those units. Army management control policy in effect at the time required that formal risk assessments be conducted by HQDA policy proponents on a functional basis, rather than by managers in the field.

RECOMMENDATIONS FOR CORRECTIVE ACTION

1. We recommend that the DASA(ESOH):

a. Designate the Army Environmental Policy Institute as an assessable unit and establish a specific date by which its management must implement an internal management control program as described in DOD Directive 5010.38, "Internal Management Control Program," April 14, 1987.

Command Comments. Concur. This recommendation would not have been appropriate under Army management control policy in effect at the time of the audit; however, under the restructured management control process, effective 1 October 1994, Army commands and agencies are segmented into assessable units on an organizational basis. By 30 June 1995, the Army Environmental Policy Institute will be designated as an assessable unit of the Office of the Assistant Secretary of the Army (Installations, Logistics and Environment). As an assessable unit manager, the Director of the Institute will be responsible for ensuring that all required management control evaluations are scheduled and conducted, and will certify the results of these evaluations in accordance with AR 11-2. By 30 July 1995, the Institute will implement a management control program in accordance with DOD Directive 5010.38 and AR 11-2.

b. Provide guidance and training to Army Environmental Policy Institute management on the requirements of DOD Directive 5010.38.

Command Comments. Concur. Training is being conducted to ensure that management control requirements of AR 11-2 are being implemented. All Institute staff members are required to view the Army's management control video "Internal Management Control-The Age of Accountability". DASA(ESOH) will provide guidance to the Director of the Institute along with the letter designating the AEPI as an assessable unit and him as the assessable unit manager. A Management Control Plan for the Institute is being developed

and will be in place by 30 July 1995. Training sessions will be held to inform and instruct the staff concerning SOPs and the Director's management control guidance.

c. Submit a statement of assurance to the designated management official on whether or not the Army Environmental Policy Institute internal management control system meets the DOD Directive 5010.38 standards, goals, and objectives.

Command Comments. Concur. In FY 95, the DASA(ESOH) will submit a feeder statement to the Assistant Secretary of the Army (Installations, Logistics and Environment). In this feeder statement, the DASA(ESOH) will explicitly address the extent to which the Institute has implemented a management control process that meets the requirements of the DOD Directive and AR 11-2.

2. We recommend that the Director, Army Environmental Policy Institute implement the requirements of DOD Directive 5010.38 to:

a. Assess the risk areas throughout the Army Environmental Policy Institute.

Command Comments. Concur. The requirements of AR 11-2 will be implemented as required, risks will be assessed and incorporated into a Management Control Plan which will be in place by 30 July 1995.

b. Develop specific control objectives for the operations and contracting actions identified as risk areas.

Command Comments. Concur. Operations, administrative and contracting actions identified as risk areas will have specific control objectives. A Management Control Plan will be in place by 30 July 1995. Assessment of risks should be completed by 30 July 1995 with the assistance of Operating Agency -22 and Fort McPherson.

c. Establish and implement internal management control procedures over all operations and contracting actions identified as risk areas.

Command Comments. Concur. The Director will work closely with the management control staffs at HQ, Forces Command and the Office of the Assistant Secretary of the Army (Financial Management and Comptroller) to implement a management control process that meets the requirements of DOD Directive and AR 11-2. This includes designation of the Institute as an assessable unit (and the Director as the assessable unit manager), the provision of management control training to the Institute's management and staff, the establishment of a five-year Management Control Plan, the execution of that plan by conducting the necessary management control evaluations, and the submission of an annual feeder statement to the DASA(ESOH) on the status of the Institute's management controls. Guidance in the form of standing operations procedures has been completed in most high risk areas. For the remainder, interim guidance will be in effect no later than 30 July 1995 and final guidance will be in effect 1 October 1995.

FINDING B. COMPLIANCE WITH CONTRACTING LAWS AND REGULATIONS

The Institute management contracting practices and documentation did not comply with laws and regulations for:

- requesting contract support for 37 of the delivery orders in the audit sample, valued at $2.81 million,

- modifying contract terms and requirements for 9 of the delivery orders in the audit sample, valued at $0.66 million,

- monitoring contract performance for 22 of the delivery orders in the audit sample, valued at $1.49 million,

- certifying contract performance for 14 of the delivery orders in the audit sample, valued at $1.05 million, and

- receiving and accepting contract products and services for all of the delivery orders in the audit sample, valued at $2.97 million.

The Institute did not comply with contracting laws and regulations because it did not have procedures that outlined, in writing, the steps necessary to contract for a requirement; required initial and periodic training of staff on contracting procedures; or established a monitoring or reporting system for contract actions. As a result, the Institute staff could not provide assurance that the products and services received were cost-effective and timely and complied with the contract statements of work.

Command Comments. Partly Concur. The Institute relied on the supporting organization to originate and distribute guidance required for managing contracting functions. The staff attended Contracting Officer's Representative (COR) course and ethics training; however, formal COR duties were not assigned to the Institute staff until July 1994 (after the initiation of the DOD IG Audit). Institute staff depended on the USACERL Contracting Officer and staff to advise on contracting requirements and procedures. In June, 1994, the AEPI initiated a contracting Standard Operating Procedure (SOP) to ensure that the staff received proper guidance. Future operations through the Contracting Office at Fort McPherson will provide a framework for improved contract administration, monitoring, guidance, and training.

The report discussion (p. 18) indicates that Institute staff improperly designated specific contractors to perform under Indefinite Delivery Contracts (IDCs). The Contracting Officer has broad discretion in awarding delivery orders under IDCs which have been competed. The Institute had no authority and exercised no power to override the Contracting Officer's recognized authority to select a contractor. The report presents a restrictive, time consuming, redundant formula for using IDCs within the context of other

safeguards simultaneously operating. The Report suggests that managers do not have a responsibility to recommend the best contractor, or provide expert knowledge and information concerning Government requirements to the Contracting Officer. The Audit Report inappropriately seeks to take away a customer's right to suggest a supplier known, on professional experience, to be highly or optimally likely to deliver exactly what is needed. It is not required to solicit bids between contractors who hold IDCs for similar scopes of work, when it is known that one has particular strengths or weaknesses within the range of the scope.

RECOMMENDATIONS FOR CORRECTIVE ACTION

We recommend that the Director, Army Environmental Policy Institute, establish and implement procedures to:

1. Provide written guidance on the duties, responsibilities, limitations, and practices for contracting requests, modifications, oversight, certification, product receipt, and product acceptance.

Command Comments. Concur. The Institute will formalize contracting procedures consistent with the supporting Contracting Office guidance. The Institute Contracting SOP, is being revised to reflect the current Contracting Officer's requirements. The SOP will be finalized by 30 June 1995 and will establish requirements for project selection, approval to initiate a contract request, internal records keeping, production and maintenance of basic files, records of training, evaluation of products for technical acceptability; and delegation of Director's authorities to other staff members.

The Institute with the guidance of the supporting contracting office will develop and implement by 1 August 1995: a) project selection procedures ; b) project monitoring; c) quality reviews/control; d) triggers for timely modification/termination of DOs when requirements (but not scopes) change; and (e) the close out of contracts when all deliverables have been received.

2. Require initial and periodic training for permanent and temporary staff on the duties, responsibilities, limitations, and practices for contracting requests, modifications, oversight, certification, product receipt, and product acceptance.

Command Comments. Concur. Training, in accordance with the requirements of the Ft. McPherson Director of Contracting (DOC), will continue for staff whose duties require it. Periodic updating and familiarization training will occur as needed in addition to scheduled formal training. Key personnel have received: informal training from USACERL 1991-1993; certified COR training through USACERL auspices 14 October 1993; informal indoctrination by Ft. McPherson DOC 30 November 1994; ethics training annually by USACERL; and contract-familiarization training 2 May 1995. Action started February 1995 to secure professional, certified COR training/re-training. This training is

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expected to be accomplished in July 1995 by FORSCOM Contracting's office. The Institute completed annual ethics training conducted by Ft. McPherson Legal Services 30 November 1994 and will continue to be on their training calendar.

3. Monitor and report the staff assignments to oversee and certify contractor performance on delivery orders, the status of products and services to be provided on delivery orders, and the status of contractor performance in meeting the schedule for delivery orders.

Command Comments. Concur. Current contracting officer representative (COR) assignments are filled by the Directors nomination and the Contracting Officer's appointment. The budget analyst maintains a listing of contracts and corresponding CORs. Both the official file maintained by the Contracting Officer and the COR file maintained by the Institute will document staff assignments and responsibilities and contractors' performance and actions. Fort McPherson Contracting Officer procedures require monthly reports on contractor performance and contract status. The Director will ensure that quality project reviews are conducted on a regular basis.

Deleted

4. Initiate a contracting action to recover $44,978 attributable to a reduction from 12 to 6 in the number of workshops conducted on contract DACA88-92-D-0005, delivery order 19.

4.a Command Comments. Partly concur. The DOD IG team did not interview the designated technical point of contact for this DO. The delivery order was intended to support Army environmental policy analysis in evaluation of past environmental policy mechanisms in the United States and examine new market based approaches to environmental management. The former produced working papers which provided the required historical and analytical information expected. The latter took the form of Institute "purchase" of a $19k+ share ($12k in direct costs plus $7+ k in indirect and overhead costs) in a series of expert workshops, their advance papers and a peer reviewed published proceedings (the latter is still in preparation, due in large part to the rigorous and time consuming peer review process). In terms of products, the Institute received the advance papers of the twelve expert workshops and had staff members attend several of them. (Note: these were seminars to generate data, information and dialogue not training workshop/seminars to which the Institute had to send "students" in order to benefit.) The workshop series is complete. The production of a product ("proceedings") from such an intellectual endeavor typically takes up to three years, including rounds of peer reviews. Please refer to Attachment 1 to TAB A for dates and a more detailed explanation of this contract and deliverables.

The Institute erred in not recognizing that the long, arduous process of producing a peer reviewed publication often extends far beyond a typical delivery order period of one year. As a consequence, a further error occurred: not seeking a "no-cost" extension to allow the full peer review process to run its course. The government received the bulk of its benefits via the analysis of past policy mechanisms (approx. $70+ k: $44+ k in direct costs plus $26+ k in indirect and overhead costs). It received a significant portion of the market

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based approaches products via the advance papers and some attendances; not only for the twelve workshops financially supported , but for a total of sixteen. Given the high quality of the partners/participants and the contractor, there is every reason to expect the ultimate product will be received, of high quality and helpful to the Army in devising ways to manage environmental issues in an unfamiliar regime guided by market based philosophies. An after-the-fact, no-cost extension of the delivery order will be initiated by 30 June 1995. (Note: indirect plus overhead costs only equaled 60% of direct costs, compared to normal commercial contractors' 140-160% markups.)

4.b Potential Monetary Benefits. "$44,978 O&M funds put to better use."

Deleted.

Command Comment. Nonconcur. The Government received value in excess of the dollars expended and will extend the contract at no cost to the Government to allow for the official reception of a final peer reviewed product.

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FINDING C. COMPLIANCE WITH INTERGOVERNMENTAL PERSONNEL ACT LAWS AND REGULATIONS

The Institute management practices and documentation did not comply with laws and regulations for initiating and executing Intergovernmental Personnel Act agreements. The Institute management did not:

- authorize and approve Intergovernmental Personnel Act agreements in compliance with the Institute charter and internally generated procedures,

- make reports on agreements and evaluate Intergovernmental Personnel Act agreement use in accordance with Office of Personnel Management procedures, and

- adequately supervise or oversee the performance of Intergovernmental Personnel Act personnel.

The noncompliance occurred because Institute management had other priorities and did not have a monitoring system for Intergovernmental Personnel Act transactions. As a result, the Institute management could not provide assurance that the Intergovernmental Personnel Act services received were cost-effective, met the goals of the Act, and met the needs and purposes of the Institute.

Command Comments. Partly Concur. The Institute Intergovernmental Personnel Act management practices and documentation did not fully comply with laws and regulations for initiating and executing Intergovernmental Personnel Act (IPA) agreements. The Institute management relied entirely upon the administrative procedures from its servicing administrative organization for several years then began to administer more of the program independently. IPA personnel were selected after interviews and approval by the Director and informal evaluations performed; however, a formal evaluation process did not exist. Reports on IPA agreements continued to be performed by the AEPI's servicing Civilian Personnel Office, (Chicago District, Corps of Engineers) in accordance with Office of Personnel Management procedures.

RECOMMENDATIONS FOR CORRECTIVE ACTION

We recommend that the Director, Army Environmental Policy Institute:

1. Require all staff members of the Army Environmental Policy Institute to comply with Office of Personnel Management regulations, its own charter, and other guidance regarding Intergovernmental Personnel Act agreements.

Command Comments. Concur. Also the Institute will ensure that all IPA actions are processed to and through the servicing Directorate of Civilian Personnel (DCP), which is the appropriate route. A screening panel will screen IPA applicants to ensure that charter

requirements are being met. An SOP providing guidance to the staff will be completed by 1 August 1995.

2. Establish procedures to:

a. Include measurable performance standards in the terms of each Intergovernmental Personnel Act agreement.

Command Comments. Partly Concur. Since November 1994, the Director has directed that each IPA develop and have approved performance objectives similar to those required for Civil Service staff. This practice will continue and be included in appropriate SOPs. Training of senior and support staff on the conduct of the IPA program will be provided by the servicing DCP annually. Specific functions or tasks will be incorporated in agreements, but "performance standards" will be developed and evaluated separately.

b. Match the terms of each Intergovernmental Personnel Act agreement to the goals and objectives of the Army Environmental Policy Institute.

Command Comments. Concur. The screening panel will ensure that IPA's are matched to the needs of the Institute. Program managers will ensure that IPA agreements are matched with annual work plan projects and strategic plan elements.

3. Establish a monitoring system to:

a. Collect data for Office of Personnel Management and other reporting purposes.

Command Comments. Non-concur. The recommendation incorrectly implies that the Institute should perform these functions. These are functions of the servicing DCP. The Institute will ensure that all IPA agreements are processed through the servicing DCP so that they can perform the functions required, to include data collection and reporting. The Institute will provide information needed and requested by the servicing DCP to properly perform its functions.

b. Notify management of critical events and due dates.

Command Comments. Concur. Assumption: "Notify management" means "Notify servicing civilian personnel management." Additionally, key events will be referenced to the individually approved performance objectives and milestones, and then tied to the respective performance evaluations, at mid-year and end of year evaluations. The servicing DCP will support this activity.

c. Report procedural exceptions.

Command Comments. Concur. Exceptions will be forwarded to the servicing DCP.

4. Submit copies of all the required initial, modified, and extended Intergovernmental Personnel Act agreements and all required annual evaluation reports to the Office of Personnel Management.

Command Comments. Partly Concur. All IPA agreements, modifications, and extensions will be processed through DCP, Fort McPherson. Feeder information appropriately originating at the Institute will be provided to the servicing DCP and all required annual IPA evaluation reports will go to the servicing DCP.

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FINDING D. CONTRACT CLASSIFICATION AND FUNDING

Classification and funding of delivery orders by Institute management and the Construction Engineering Research Laboratory contracting officer did not comply with laws and regulations. The noncompliance occurred because the Institute and Construction Engineering Research Laboratory did not have effective procedures to monitor the correct classification and funding of Institute delivery orders. As a result, the Institute used an estimated $1.01 million in wrong year Operations and Maintenance funds on 17 delivery orders. Correcting the Operations and Maintenance accounts could potentially result in violating the Antideficiency Act.

Command Comments. Partly Concur. The Institute Charter and TDA does not allow for acquiring the staff with the knowledge or the responsibility to determine the classification of fiscal year funding required for delivery orders. As the initiator of required contracts, the Institute can and did request actions concerning contracting and funding. However, it is incumbent on the contracting officer to decide appropriate contracting mechanisms and vehicles and upon the budget analyst to determine appropriate funding classifications and cost codes. The Institute purchased and relied upon certified contracting and fund classification services from USACERL. During an interim period in FY95, the Institute has had a budget analyst to certify funds, and such internal controls have been in effect.

RECOMMENDATIONS FOR CORRECTIVE ACTION

1. We recommend that the Director, Army Environmental Policy Institute:

a. Establish procedures to monitor delivery orders for correct classification and funding.

Command Comments. Partially Concur . Funding, purchasing, and contracting laws are very complex and require specialized training. The Institute will, as long as a budget analyst is on staff, ensure that funds are classified and certified in accordance with applicable laws and Army regulations. In the future this function may be performed by another Army agency or organization under an inter-service support agreement. The Contracting Officer at Fort McPherson, GA, as the contracting approval authority, has accepted the responsibility for ensuring that inappropriate contracts are not processed, and that official contract files are maintained. The Institute developed a contracting SOP, dated June 1994, to ensure that inappropriate contracts are not processed, personnel are properly trained, appropriate COR files are maintained and the Federal Acquisition Regulations are followed.

b. Review the classification and funding of the 56 delivery orders that we did not review in detail, and initiate accounting adjustments as necessary.

Command Comments. Concur. A preliminary review of the 56 contracts will be conducted. If indicated, the contracts will be reviewed in detail by representatives of both

USACERL and the Institute to determine if accounting adjustments are required consistent with the interpretation of legal counsel.

c. Follow the procedures in DOD Directive 7200.1, "Administrative Control of Appropriations," to report any violations of the Antideficiency Act, and initiate action against the responsible officials if accounting adjustments cause an overobligation.

Command Comments. Concur. If it is determined that Antideficiency Act violations occurred, all violations will be reported and, if warranted, additional actions against the responsible officials will be taken.

2. We recommend that the Director, Construction Engineering Research Laboratory, request that the contracting officer who awarded the Army Environmental Policy Institute delivery orders:

a. Modify contract DACA88-90-D-0026, delivery order 0013, to deobligate $50,164 of FY 1991 Operations and Maintenance funds and obligate $50,164 of FY 1992 Operations and Maintenance funds.

Command Comments. Concur. The bona fide need for the services provided under this delivery order did not arise until 1992 (all services were provided in 1992) and the services were severable, requiring the agency to obligate funds available at the time the services were rendered. Therefore, USACERL will deobligate $50,164 of FY 1991 O&M funds and obligate $50,164 of 1992 O&M funds.

D O. Summary: Awarded - 30 September 1991; Performance Period - 12 months; Amount - $50,164; Funds Obligated - 1991 Reimbursable O&M (2020); Tasks - To provide access to the University of Illinois Graduate School of Library Science, Information Retrieval Management Service. Do on-line searches as needed, compile data as needed, provide resource team, conduct trends analyses as needed.

b. Modify contract DACA88-92-D-0009, delivery order 0006, to deobligate $89,338.59 of FY 1992 Operations and Maintenance funds and obligate $89,338.59 of FY 1993 Operations and Maintenance funds.

Command Comments. Concur. The bona fide need for these services did not arise until FY 1993. The delivery order requires the contractor to monitor the first session of the 103rd Congress, which was not convened until January, 1993, well into FY 1993. Therefore, USACERL will deobligate $89,338.59 of FY 1992 O&M funds and obligate $89,338.59 of FY 1993 O&M funds.

D.O. Summary: Awarded - 20 August 1992; Performance Period - 12 months; Amount - $89,338.59; Funds obligated - 1992 Direct O&M (2020); Tasks - To initiate a program to monitor and assess environmental issues raised in the 103rd Congress and evaluate their impact to the Army particularly in the clean-up of contaminated sites. In particular, Task

l states, "Starting with the beginning of the 103rd Congress, initiate a program to monitor..."

c. Modify contract DACA88-90-D-0037, delivery order 0012, to deobligate $25,595 of FY 1993 Operations and Maintenance funds and obligate $25,595 of FY 1992 Operations and Maintenance funds.

Command Comments. Nonconcur. USACERL modified a $63,986 delivery order to add new work in the amount of $25,595 (a description of the work is set forth below). USACERL obligated funds current at the time the modification was issued. The IG claims that the modification did not give rise to a new liability and therefore should have been funded from funds available when the delivery order was issued. In support of its position, the IG quotes a paragraph from A GAO publication "Principles of Federal Appropriations Law" regarding how to treat change orders.

USACERL disagrees with the IG and asserts that the new work resulted in a new liability properly chargeable to appropriations available at the time the modification was issued. Specifically, the work is sufficiently different from, and exceeds the general scope of, the original delivery order as to be considered outside the scope of the original delivery order (but within scope of the underlying contract).{1} Moreover, the modification was made pursuant to a supplemental agreement, as noted on the Standard Form 30, and not pursuant to the change order clause of the contract. For these reasons, the price increase resulting from the modification did not involve an antecedent liability enforceable by the contractor and therefore it was proper to charge appropriations available at the time the modification was issued.

Additionally and to further buttress the argument that the new work amounts to a new liability, USACERL could have issued a separate delivery order for the new work rather than a modification to an existing delivery order. There is nothing in statute or regulation prohibiting an agency from issuing as many delivery orders as it desires up to the ceiling on the basic contract. Moreover, as in this case, you would expect the delivery orders to be somewhat related to one another because they all arise from the same basic contract. Had USACERL chosen to issue another delivery order, USACERL would have been required to obligate 1993 money (which is what was obligated) for all of the additional work. Therefore, it seems illogical to require USACERL to deobligate 1993 funds and obligate 1992 funds for this new work.

D.O. Summary: Awarded - 15 September 1992; Performance Period - 15 months (ending December 14, 1993); Funds Obligated - 1992 Direct O&M (2020); Amount - $63,986; Tasks - To provide environmental policy formulation support and documentation to AEPI, by identifying organizations across DOD that are involved in recommending and implementing environmental technology and policy. As a part of this, the contractor is to review investment in hazardous waste management and technology by the Army and the nation.

Modification Summary: Issued - 14 July 1993; Change in Performance Period - none; Modification Amount - $25,595; Modification Funds - 1993 Direct O&M (2020); Modification Tasks - To have the contractor review and critique an AEPI-generated report on health and environmental risks of depleted uranium.

d. Modify contract DACA88-92-D-0005, delivery order 0008, to deobligate $35,327 of FY 1993 Operations and Maintenance funds and obligate $35,327 of FY 1992 Operations and Maintenance funds.

Command Comments. Nonconcur. USACERL modified an $86,528 delivery order to add new work in the amount of $35,327 (a description of the work is set forth below). USACERL obligated funds current at the time the modification was issued. The IG claims that the modification did not give rise to a new liability and therefore should have been funded from funds available when the delivery order was issued. In support of its position, the IG quotes a paragraph from a GAO publication "Principles of Federal Appropriations Law" regarding how to treat change orders.

USACERL disagrees with the IG and asserts that the new work resulted in a new liability properly chargeable to appropriations available at the time the modification was issued. Specifically, the work is sufficiently different from, and exceeds the general scope of, the original delivery order as to be considered outside the scope of the original delivery order (but within scope of the underlying contract).{2} Moreover, the modification was made pursuant to a supplemental agreement, as noted on the Standard Form 30, and not pursuant to the change order clause of the contract. For these reasons, the price increase resulting from the modification did not involve an antecedent liability enforceable by the contractor and therefore it was proper to charge appropriations available at the time the modification was issued.

Additionally and to further buttress the argument that this new work amounts to a new liability, USACERL could have issued a separate delivery order for the new work rather than a modification to an existing delivery order. There is nothing in statute or regulation prohibiting an agency from issuing as many delivery orders as it desires up to the ceiling on the basic contract. Moreover, it makes no difference whether the delivery orders are related in some fashion. In fact, given that the delivery orders are issued pursuant to a single basic contract, you would expect them to be somewhat related, as they are in this case. Therefore, USACERL could have chosen to issue another delivery order and had it done so, it would have been required to obligate 1993 money (which is what it did obligate in this case) for all of the additional work. Therefore, it seems illogical to require USACERL to deobligate 1993 funds and obligate 1992 funds for this new work.

D.O. Summary: Awarded - 15 May 1992; Performance Period -14 months (July 1993); Funds Obligated - 1992 Direct O&M (2020), Award Amount - $86,528; Tasks - To develop a policy model that can assess the desirable relative usage of fresh surface and groundwater resources on a macro-scale.

Modification Summary: Issued - 30 July 1993; Change in Performance Period - Extended to July, 1995; Amount - $35,327; Modification Fund Cite - 1993 Direct O&M (2020); Modification Tasks - To perform conditional probability analysis of rainfall depth, duration, intensity and elapsed time between rainfalls for different class groups of rain depth and duration. Assess merit of incorporating results in the risk component of the surface and ground water usage decision.

e. Modify contract DACA88-92-D-0007, delivery order 0007, to deobligate $195,250 of FY 1993 Operations and Maintenance funds and obligate $195,250 of FY 1994 Operations and Maintenance funds.

Command Comments. Nonconcur. The requirement was for more than just a report on the second session of the 103rd Congress. The statement of work required the delivery of a report describing best methods for monitoring legislation as well as a report on legislation introduced in the entire 103rd Congress (not just the second session of the 103rd Congress), which was convened in January, 1993. The statement of work is non-severable in nature and a bona fide need existed for the services in 1993. Therefore, it was appropriate to obligate 1993 money for the effort. Note that this nonconcurrence is based solely on the statement of work.

D.O. Summary: Awarded - September 30, 1993; Performance Period - 12 months or 30 days after the conclusion of the 103rd Congress, whichever occurs first; Funds Obligated - 1993 Reimbursable O&M (2020); Award Amount - $195,250; Tasks - To provide AEPI with a report describing the best approach to monitor legislation based on cost and comprehensive coverage of Congressional trends and issues; to monitor all environmental legislation which has been introduced in the 103rd Congress; and for selected environmental legislation provide in-depth analysis. Note that the delivery order is somewhat ambiguous. The objective and background paragraphs reference the second session of the 103rd Congress but the tasks discuss the "103rd Congress" and do not limit it to the second session. In addition, the tasks require the contractor to describe the best approach to monitor legislation.

f. Modify contract DACA88-92-D-0003, delivery order 0017, to deobligate $7,467 of FY 1994 Operations and Maintenance funds and obligate $7,467 of FY 1993 Operations and Maintenance funds.

Command Comments. Nonconcur. USACERL modified a $48,920 delivery order to add new work in the amount of $7,467 (a description of the work is set forth below). USACERL obligated funds current at the time the modification was issued. The IG claims that the modification did not give rise to a new liability and therefore should have been funded from funds available when the delivery order was issued. In support of its position, the IG quotes a paragraph from a GAO publication "Principles of Federal Appropriations Law" regarding how to treat change orders.

USACERL disagrees with the IG and asserts that the new work resulted in a new liability properly chargeable to appropriations available at the time the modification was issued. Specifically, the work is sufficiently different from, and exceeds the general scope of, the original delivery order as to be considered outside the scope of the original delivery order (but within scope of the underlying contract).{3} Moreover, the modification was made pursuant to a supplemental agreement, as noted on the Standard Form 30 and not pursuant to the change order clause of the contract. For these reasons, the price increase resulting from the modification did not involve an antecedent liability enforceable by the contractor and therefore it was proper to charge appropriations available at the time the modification was issued.

Additionally and to further buttress the argument that this new work amounts to a new liability, USACERL could have issued a separate delivery order for the new work rather than a modification to an existing delivery order. There is nothing in statute or regulation prohibiting an agency from issuing as many delivery orders as it desires up to the dollar limitation on the basic contract. Moreover, it makes no difference whether the delivery orders are related in some fashion. In fact, given that the delivery orders are issued pursuant to a single basic contract, you would expect them to be somewhat related, as they are in this case. Therefore, USACERL could have chosen to issue another delivery order and had it done so, it would have been required to obligate 1994 money (which is what it did obligate in this case) for all of the additional work. Therefore, it seems illogical to require USACERL to deobligate 1994 funds and obligate 1993 funds for this new work.

D.O. Summary: Awarded - 6 July 1993; Performance Period - 9 months (5 April 1994); Funds Obligated - 1993 Direct O&M (2020); Award Amount - $48,920; Tasks - To design an environmental forecasting process to assist in developing environmental policy for the Army.

Modification Summary: Issued - 7 February 1994; Change in Performance Period - Extended to 5 July 1994; Modification Amount - $7,467; Modification Fund Cite - 1994 Direct O&M (2020); Modification Tasks - Conduct a 1.5 - 2 day workshop for AEPI personnel to demonstrate forecasting processes.

g. Modify contract DACA88-91-D-0008, delivery order 0007, to deobligate $24,000 of FY 1994 Operations and Maintenance funds and obligate $24,000 of FY 1993 Operations and Maintenance funds.

Command Comments. Nonconcur. USACERL modified a $65,583 delivery order to add new work in the amount of $24,000 (a description of the work is set forth below). USACERL obligated funds current at the time the modification was issued. The IG claims that the modification did not give rise to a new liability and therefore should have been funded from funds available when the delivery order was issued. In support of its position, the IG quotes a paragraph from a GAO publication "Principles of Federal Appropriations Law" regarding how to treat change orders.

USACERL disagrees with the IG and asserts that the new work resulted in a new liability properly chargeable to appropriations available at the time the modification was issued. Specifically, the work is sufficiently different from, and exceeds the general scope of, the original delivery order as to be considered outside the scope of the original delivery order (but within scope of the underlying contract).{4} Moreover, the modification was made pursuant to a supplemental agreement, as noted on the Standard Form 30 and not pursuant to the change order clause of the contract. For these reasons, the price increase resulting from the modification did not involve an antecedent liability enforceable by the contractor and therefore it was proper to charge appropriations available at the time the modification was issued.

Additionally and to further buttress the argument that this new work amounts to a new liability, USACERL could have issued a separate delivery order for the new work rather than a modification to an existing delivery order. There is nothing in statute or regulation prohibiting an agency from issuing as many delivery orders as it desires up to the dollar limitation on the basic contract. Moreover, it makes no difference whether the delivery orders are related in some fashion. In fact, given that the delivery orders are issued pursuant to a single basic contract, you would expect them to be somewhat related, as they are in this case. Therefore, USACERL could have chosen to issue another delivery order and had it done so, it would have been required to obligate 1994 money (which is what it did obligate in this case) for all of the additional work. Therefore, it seems illogical to require USACERL to deobligate 1994 funds and obligate 1993 funds for this new work.

D.O. Summary: Awarded - 30 July 1993; Performance Period -12 months (29 July 1994); Funds Obligated - 1993 Direct O&M (2020); Award Amount - $65,583; Tasks - To assess the potential of the microbial mat remediation process to barrier systems and to determine if this would be an effective technology for the Army to use.

Modification Summary: Issued - 6 September 1994; Change in Performance Period - Extended to 31 December 1994; Modification Amount - $24,000; Modification Funds - 1994 Direct O&M (2020); Modification Tasks - To design and build a prototype apparatus that is capable of monitoring contaminant migration.

ATTACHMENT 1 TO TAB A

The monitor of this contract does not recall the IG team asking questions concerning this contract or issue. The person on the staff who provided the response, was obviously not the responsible party. Further review has added valuable insight concerning this action. A two part IDO contract was awarded to the University of Illinois; Subpart A, "Evaluation of Past Environmental Policy Mechanisms" and Subpart B, "Workshops on Market-Based Approaches to Environmental Policy." Herein may lie some cause of the initial confusion.

Part A. According to the project file records, a complete set of satisfactory deliverables were received. IG findings did not concern itself with this contract section.

Part B. Twelve workshops were performed. A week prior to each workshop, the contract monitor received a read ahead paper on the topic to be presented and discussed, as well as time and location of the workshop. All workshops were held in Chicago, IL. The edited proceedings from the workshop will be published in a forthcoming volume. No press date is currently available but published copies will be sent to the AEPI upon completion.

A total of sixteen workshops were provided on market based approaches to environmental policy and are listed below. The AEPI contracted for twelve. Four additional workshops were provide as a part of a larger university initiative:

1-CO2 Emissions Trading
2-Urban Smog and SCAQMD's RECLAIM Program
3-Permits versus Taxes
4-Urban Smog Emissions Trading: A pre-Feasibility Analysis for Ozone Control
5-Market Incentives for Water Pollution Control
6-SO2 Trading Impacts on A Utility
7-Industrial Energy Efficiency and Conservation
8-Integrating Emission Trading into Acid Rain Compliance Planning
9-Green Fees: Fiscal Instruments for Sustainable Development
10-Myths Surrounding the Use of Economic Incentive-Based Regulations
11-Cost Effective Quality Compliance: NOX Reductions
12-An Assessment of Automotive Industry/Government Coop Research
13-USEPA Pollution Prevention Project, Implications of Yorktown
14-The Revealed Demand for Public Goods: Evidence from Endangered and Threatened Species
15-Origins and Development of the Illinois Employee Commute Options Program
16-Tradable Permits for O3 Control

According to the terms of the contract, the University was to provide "publishable proceedings". Proceedings were received prior to presentation at the workshop. It was recognized early on that a final fully published series of these papers was beyond the bounds of a one year contract. The publication process in the peer review literature can

take several years. The AEPI staff was negligent in failing to extend the contract to allow for the peer review process.

FOOTNOTES TO TAB A

(1) The statement of work in the original delivery order required the contractor to provide environmental policy support, by identifying organizations across DOD that are involved in recommending and implementing environmental technology and policy. The modification requires the contractor to critique an AEPI-generated report on the risks associated with depleted uranium.

(2) The statement of work in the original delivery order requires the contractor to develop a policy model that can assess the desirable relative usage of fresh surface and groundwater resources on a macro-scale. The modification requires the contractor to conduct conditional probability analysis of rainfall depth, duration, intensity and elapsed time between rainfalls and to determine whether the results should be incorporated in the risk component of the water usage decision.

(3) The statement of work in the original delivery order requires the contractor to design an environmental forecasting process to assist in developing environmental policy for the Army. The modification requires the contractor to demonstrate forecasting processes.

(4) The statement of work in the original delivery order requires the contractor to assess the potential of the microbial mat remediation process to barrier systems and to determine if this would be an effective technology for the Army to use. The modification requires the contractor to design and build a prototype apparatus that is capable of monitoring contaminant migration.

□

BACKGROUND AND HISTORY

Concept of AEPI Operations

The Institute was designed to be a relatively small, economical, flexible organization which draws upon academia and others as resources are required to meet Army environmental needs for policy studies, recommendations, trends analysis, forecasting, and monitoring of environmental legislation. The Institute manpower authorizations (six) recognize a core of environmental scientific, engineering, strategic planning and policy analyst skills. Administrative, contracting, and financial support is to be acquired from other supporting Army organizations.

Background And History

The origins of the Army Environmental Policy Institute can be traced to two Senior Environmental Leadership Conferences (SELC), Airlie House, Warrenton, VA, and Morehouse College, Atlanta, GA, 1988 and 1989 (SELC I and SELC II), respectively. After action reports called for "establishing an environmental policy institute to address long-range environmental issues and to position the Army to deal with emerging issues in a systematic, proactive manner".

The Institute began operations with two Federal employees. By the end of FY 94, the permanent staff grew to six Federal employees. In a 1993 manpower study, USAFISA set the total manpower requirement for AEPI at approximately 54. The recommended mix included 14 full-time Federal employees with the remainder as visiting Fellows from other government agencies, academia, and universities. This requirement was based on the 1993 mission and workload. Of the six Federal employee positions available in FY 94, there were five professional and one administrative support personnel. The support agreement with the United States Army Construction Engineering Research Laboratory (USACERL) provided for contracting office support, funds certification, transportation office support, property book support, library support and other support activities. From the onset of operations until July 1994, it was intended for the AEPI to operate under the management and contracting procedures, internal management control program, management practices, documentation procedures, and financial management control of USACERL. This was consistent with the overall philosophy of the Institute as reflected in the Charter, Parts F. 4. and 5.

The Institute Charter, dated 13 September 1990, designated the Assistant Chief of Engineers as the origin of administrative support. That necessitated co-location of the Institute in the vicinity of Army facilities that had trained staff, methods and procedures to perform all major administrative support functions. The Institute reimbursed USACERL for the costs of this support.

As depicted below, the Institute has been a developing organization with a dynamic history. With the stability of a permanent location, the support of Fort McPherson, GA, and a new permanent Director, the Institute staff is looking forward to many years of productive, value-added policy analyses.

Critical Milestones in AEPI History

- February 1990, the Under Secretary of the Army approved the establishment of an Army Environmental Policy Institute, "ultimately to be established on a university campus, but initially will be established at the U. S. Army Construction Engineering Research Laboratory".
- An Implementation Plan for the Establishment of the AEPI was prepared in April 1990.
- June 1990, a small cadre of staff from the Environmental Division, USACERL, became the transition team to plan and organize necessary administrative space and logistical support requirements.
- July 1990, an administrative support agreement between USACERL and the Institute was signed into effect.
- September 1990, the AEPI Charter was signed by the Under Secretary of the Army.
- October 1990, appointment of Acting Director, Dr. R. K. Jain
- November 1990, office space leased (located across the street from USACERL).
- January 1991, a workplan was developed, staffed, and approved.
- April 1991, Dr. R. K. Jain selected as Director.
- May 1992, Mr. R. E. Riggins selected as Acting Director .
- September 1993, Dr. S. Shelton selected as Interim Director.
- September 1994, Dr. E. W. Novak selected as Director .
- October 1994, the Institute relocated to Georgia Institute of Technology, Atlanta, GA.

Audit Team Members

This report was prepared by the Contract Management Directorate, Office of the Assistant Inspector General for Auditing, DoD.

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