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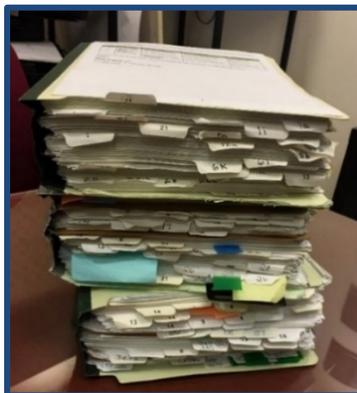
OFFICE OF INSPECTOR GENERAL

Operating efficiently and effectively

Improved Acquisition Planning Will Help EPA Reduce Hundreds of Millions of Dollars in High-Risk Contracts

Report No. 18-P-0038

November 15, 2017



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Abbreviations

CO	Contracting Officer
EPA	U.S. Environmental Protection Agency
EPAAG	EPA's Acquisition Guide
FAR	Federal Acquisition Regulation
FFP	Firm-Fixed-Price
FY	Fiscal Year
GAO	U.S. Government Accountability Office
OAM	Office of Acquisition Management
OARM	Office of Administration and Resources Management
OIG	Office of Inspector General
OMB	Office of Management and Budget

Cover photos: *Left:* Contract file. *Right:* EPA contractor office building. (EPA OIG photos)

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At a Glance

Why We Did This Review

The U.S. Environmental Protection Agency (EPA), Office of Inspector General (OIG), conducted this audit to address concerns identified in a previous audit regarding the agency's use of high-risk bridge contracts. Our audit objective was to determine whether the EPA is performing acquisition planning and conducting market research to promote competition and avoid high-risk contracting authorities.

The March 4, 2009, Presidential Memorandum on Government Contracting reports that noncompetitive and cost-reimbursement contracts have been misused across the federal government, resulting in wasted taxpayer resources, poor contractor performance and inadequate accountability. Office of Management and Budget Memorandum M-09-25, *Improving Government Acquisition*, issued on July 29, 2009, requires agencies to take action to reduce the use of high-risk contracting authorities.

This report addresses the following:

- *Operating efficiently and effectively.*

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Improved Acquisition Planning Will Help EPA Reduce Hundreds of Millions of Dollars in High-Risk Contracts

What We Found

The EPA's use of high-risk contracts could be reduced if the agency implements additional internal controls to strengthen and improve its acquisition planning process. Low-risk, firm-fixed-price contracts represented only nine percent of the agency's total contract obligations in the second quarter of FY 2017.

Other contracting vehicles pose higher risks to the EPA because they put the burden of cost risk on the government.

Without improving its acquisition planning process, the EPA may continue to spend hundreds of millions of dollars on high-risk contracts that waste taxpayer resources.

We also found that planning difficulties were cited as factors in each of the 10 sole source bridge contracts we sampled, which were awarded to extend existing contracts without full and open competition. The EPA allowed sole source contracts even when there was adequate time to plan and conduct a competitive award process. In addition, two of the sampled contracts did not document acquisition planning as required by EPA policy and federal regulations.

Recommendations and Planned Agency Corrective Actions

We recommend that the Office of Administration and Resources Management take the following actions:

- Require the use of low-risk contracts and only permit high-risk contracts when low-risk contracts are not possible.
- Tighten scrutiny of the contract type selection and require higher level approvals for high-risk contracts.
- Issue guidance or policy to program offices and contracting staff regarding requirements for sole source bridge contracts.
- Permit sole source bridge contracts only when adequate and timely planning has occurred and when serious injury to the EPA's mission would result from a lapse of service.
- Develop a tracking mechanism for bridge contracts.
- Issue a memorandum to remind staff of the importance of including acquisition planning documents as part of the official contract records.

We also recommend that the EPA Deputy Administrator issue an agencywide memorandum to advocate and support Office of Administration and Resources Management initiatives to achieve greater use of contracts that minimize risk and maximize value to the government, including reducing the use of high-risk contracts.

The EPA agreed with the recommendations and provided proposed corrective actions and completion dates. The proposed and completed corrective actions meet the intent of the recommendations.



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

THE INSPECTOR GENERAL

November 15, 2017

MEMORANDUM

SUBJECT: Improved Acquisition Planning Will Help EPA Reduce
Hundreds of Millions of Dollars in High-Risk Contracts
Report No. 18-P-0038

FROM: Arthur A. Elkins Jr.

A handwritten signature in black ink, appearing to read "Arthur A. Elkins Jr.", is written over the printed name.

TO: Mike Flynn, Acting Deputy Administrator

Donna Vizian, Acting Assistant Administrator
Office of Administration and Resources Management

This is our report on the subject audit conducted by the Office of Inspector General (OIG) of the U.S. Environmental Protection Agency (EPA). The project number for this audit was OA-FY16-0224. This report contains findings that describe the problems the OIG has identified and corrective actions the OIG recommends. This report represents the opinion of the OIG and does not necessarily represent the final EPA position. Final determinations on matters in this report will be made by EPA managers in accordance with established audit resolution procedures.

The Office of the Administrator is responsible for all offices within the EPA, including program offices that are involved in the acquisition process. The Office of Acquisition Management within the EPA's Office of Administration and Resources Management is responsible for planning, awarding and administering contracts. The Office of Acquisition Management works with various program offices to award contracts.

Action Required

In accordance with EPA Manual 2750, your offices provided completed and planned corrective actions and completion dates in response to OIG recommendations. Therefore, a response to the final report is not required. The OIG may make periodic inquiries on your progress in implementing these corrective actions. Please update the EPA's Management Audit Tracking System as you complete planned corrective actions. Should you choose to provide a final response, we will post your response on the OIG's public website, along with our memorandum commenting on your response.

We will post this report to our website at www.epa.gov/oig.

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Chapter 1

Introduction

Purpose

The U.S. Environmental Protection Agency (EPA), Office of Inspector General (OIG), conducted this audit to address concerns identified in a previous audit regarding the agency’s use of high-risk, sole source bridge contracts to continue the work performed under expiring contracts. Our audit objective was to determine whether the EPA is performing acquisition planning and conducting market research to promote competition and avoid high-risk contracting authorities.

Background

According to the Presidential Memorandum on Government Contracting issued on March 4, 2009, agency Inspectors General, the U.S. Government Accountability Office (GAO) and others have found that noncompetitive and cost-reimbursement contracts were misused, wasted taxpayer resources, and resulted in poor contractor performance and inadequate accountability. The presidential memorandum has been implemented through Office of Management and Budget (OMB) Memorandum M-09-25, *Improving Government Acquisition*, issued on July 29, 2009. The OMB memorandum sets a net \$40-billion-per-year savings target to be achieved through better acquisition and program practices. It also requires agencies to act to reduce the use of high-risk contracting authorities.

High-Risk Contracts

The EPA defines “high risk contracting authorities” as anything other than firm-fixed-price (FFP). Federal Acquisition Regulation (FAR) 16.104(a) states that “a fixed-price contract is ordinarily in the Government’s interest.” Figure 1 displays how cost-reimbursable contracts—such as cost-plus-fixed-fee and time-and-materials contracts—result in higher risks to the government, while contractors assume more of the risks in FFP contracts.

Figure 1: Risks of FFP versus cost-reimbursable contracts



Source: Department of Defense Contracting Officer Representative Handbook.

Risk factors should be addressed in the acquisition planning process, during which the personnel responsible for an acquisition work together to award a contract in a timely manner and at a reasonable cost.

Bridge Contracts

GAO has defined a “bridge contract” as either an “extension to an existing contract beyond the period of performance” or a “new, short-term contract awarded on a sole source basis to an incumbent contractor to avoid a lapse in service caused by a delay” in the follow-on contract. According to *Competitiveness in the Services Sector*, an Institute for Defense Analyses report dated March 2010, these types of contracts “are put in place when a delay in the acquisition process prevents the award of a competitive contract until after the contract in place is due to terminate.” Intended to be temporary, bridge contracts are awarded as modifications to current contracts or as U.S. General Services Administration orders to continue services until a new contract can be put in place. They can be sole source, which means they are awarded to the incumbent contractor without competition for the best possible price or value.

GAO Report No. GAO-16-15, *Defining and Tracking Bridge Contracts Would Help Agencies Manage Their Use*, issued in October 2015, states that the reviewed agencies “had limited or no insights into their use of bridge contracts.” The report reveals that the agencies did not have “agency-level policies to manage and track their use of bridge contracts” and that their acquisition regulations did not define bridge contracts.

Responsible Offices

The Office of the Administrator is responsible for all offices within the EPA, including program offices that have responsibilities in the acquisition process. The Office of Acquisition Management (OAM) within the EPA’s Office of Administration and Resources Management (OARM) is responsible for planning, awarding and administering contracts. OAM works with various program offices to award contracts.

Scope and Methodology

We conducted this performance audit from July 2016 through August 2017 in accordance with generally accepted government auditing standards. Those standards require that we plan and perform the audit to obtain sufficient, appropriate evidence to provide a reasonable basis for our findings and conclusions based on our audit objective. We believe that the evidence obtained provides a reasonable basis for our findings and conclusions based on our audit objective.

To answer our objective, we reviewed the following documentation:

- GAO-14-704G, *Standards for Internal Control in the Federal Government*, September 2014.
- OMB Circular A-123, *Management's Responsibility for Enterprise Risk Management and Internal Control*, July 15, 2016.
- *EPA's Acquisition Guide (EPAAG)*, January 2016.
- *EPA's Contracts Management Manual*, February 26, 2009.
- Presidential Memorandum on Government Contracting, March 4, 2009.
- OMB Memorandum M-09-25, *Improving Government Acquisition*, July 29, 2009.
- FAR 1.704, 4.802, 6.301, 6.302, 7.104, 16.103 and 16.104.

During its preliminary research, the OIG audit team judgmentally selected a sample of 10 bridge and high-risk cost contracts awarded in fiscal years (FYs) 2014, 2015 or 2016. During fieldwork, the team judgmentally selected an additional five sole source contracts awarded in FYs 2016 and 2017 for review. The total sample of 15 contracts—with a combined \$94,386,615 in funding actions—is listed in Table 1.

Table 1: EPA contract sample

#	Contract number	Funding action
1	EP-C-14-012	\$29,703,673
2	EP-C-16-001	29,141,267
3	EP-D-10-096	^a 0
4	EP-D-11-027	^a 0
5	EP-D-11-080	^a 0
6	EP-D-11-081	^a 0
7	EP-D-11-082	^a 0
8	EP-D-16-009	10,643,140
9	EP-G15H-00933	218,617
10	EP-G15H-00935	91,226
11	EP-G103-00003	87,264
12	EP-G159-00280	33,072
13	EP-W-08-036	237,028
14	EP-W-11-003	1,998,046
15	EP-W-15-006	22,233,282
Total		\$94,386,615

Source: OIG judgmental sample.

^a These contract actions did not require funding because obligated funds remained on the contracts.

In our sample of 15 contracts, 11 were bridge contracts. Of the 11 bridge contracts offered by the EPA, one was signed by the EPA and declined by the incumbent contractor; therefore, only 10 of the 11 sampled bridge contracts were finally awarded. In addition, 10 of the 11 bridge contracts were sole source. The remaining four contracts were cost-reimbursement, non-bridge contracts. Of the four non-bridge contracts offered by the EPA, one was protested by a competitor

and canceled. However, throughout this report, when we refer to the contract sample, we refer to all 15 sampled contracts because the EPA went through the planning process for each of the sampled contract actions.

We interviewed management within OAM and obtained contract documents from the EPA's Acquisition System and contract files. After reviewing these contract documents, we interviewed contracting and program staff regarding the sampled contracts. We also reviewed documentation provided by program staff.

Prior Report

In EPA OIG Report No. 13-P-0208, *EPA Should Increase Fixed-Price Contracting for Remedial Actions*, issued on March 28, 2013, we report that the EPA continued to rely on high-risk cost-reimbursement contracts and time-and-materials task orders in the Superfund remedial program. The report makes six recommendations; according to the EPA, all corrective actions were completed by March 11, 2016.

Chapter 2

EPA Needs to Decrease Use of High-Risk Contracts

Low-risk FFP contracts represented only nine percent of the agency's total contract obligations in the second quarter of FY 2017. According to the March 2009 Presidential Memorandum on Government Contracting, excessive reliance on cost-reimbursement contracts produces a risk that taxpayer funds will be spent on wasteful and inefficient contracts that are subject to misuse. The EPA did not sufficiently promote the use of FFP contracts instead of high-risk contracts to limit the government's risk. Because the EPA is not reaping the benefits of cost savings from FFP contracts, the agency is not able to use any saved funds for mission-critical activities.

Memoranda, Regulations and Guidance Promote Low-Risk Contracts

In accordance with the March 2009 Presidential Memorandum on Government Contracting, OMB Memorandum M-09-25, *Improving Government Acquisition*, issued in July 2009, directs agencies to reduce their use of cost-reimbursement, time-and-materials, and labor-hour contracts because these high-risk contracting authorities pose overspending risks.

FAR 16.103(a) explains that agencies should negotiate a contract type and price that result in reasonable contractor risk and give the contractor the most incentive for efficient and economical performance. FAR 16.103(d) requires, among other things, federal agencies to maintain documentation that shows why a contract type was selected; why that contract type will meet the government's need; and how the government will manage the additional risk and burden of a cost-reimbursement contract, if selected. FAR 16.104(d) notes that as requirements recur, "the cost risk should shift to the contractor, and a fixed-price contract should be considered."

EPAAG Section 7.1.1 requires that the agency perform acquisition planning, considering such questions as "What are the risks associated with the contract type?"

EPA Relies on High-Risk Contracts

Even after issuance of the presidential and OMB memoranda, the EPA still relied heavily on high-risk contracts, as shown in Table 2.

Table 2: Number and value of active contracts—second quarter FY 2017

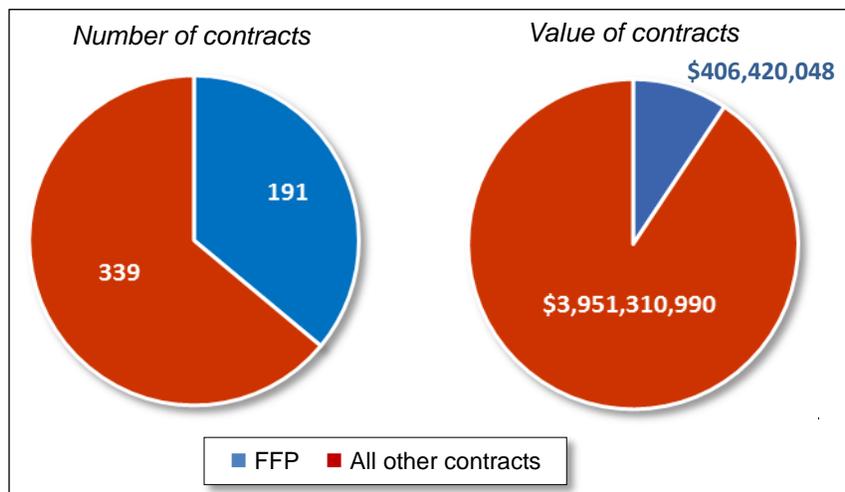
Award type ^a	Number of contracts	Total contract obligation	Maximum potential value
Cost	1	\$3,245,541	\$0
Cost-plus-fixed-fee	79	1,742,810,247	3,629,225,842
Cost-sharing	1	5,638,950	25,959,148
FFP	191	406,420,048	1,195,279,635
Fixed price	3	52,389,017	0
Fixed-price economic price adjustment	11	21,980,540	390,164,523
Fixed-price incentive	2	22,050,733	36,536,448
Indefinite-quantity	180	1,192,481,670	6,210,483,229
Labor-hour	3	6,118,236	27,497,545
Requirements	9	8,785,090	18,310,515
Time-and-materials	50	895,810,966	2,704,114,874
Totals	530	\$4,357,731,038	\$14,237,571,759

Source: OIG analysis of the EPA’s second quarter FY 2017 data. The OIG did not independently verify the EPA data.

^a This table does not include blanket purchase agreements, purchase card orders, purchase orders or basic ordering requirements.

In the second quarter of FY 2017, the majority (over 60 percent) of the EPA’s contracts were still not FFP, as shown in Figure 2. Furthermore, Figure 2 demonstrates that the dollar value of the EPA’s FFP contract obligations represented only nine percent of the agency’s total contracting dollars.

Figure 2: EPA contract types and values as of second quarter FY 2017



Source: OIG analysis of EPA data as of second quarter FY 2017. The OIG did not independently verify the EPA data.

Our sample of 15 contracts focused on EPA’s high-risk contracts and included 11 bridge contracts. As shown in Table 3, 10 of these 11 bridge contracts (all but EP-G159-00280) were high-risk. The 10 high-risk bridge contracts—totaling \$2,632,181 in contract actions—were also sole source, enabling the incumbent contractors to continue their work without having to compete for a new award;

however, awarding contracts without competition poses higher risks to the government.

Table 3: Sampled bridge contracts

Contract number	Bridge issue date	Contract type
EP-D-10-096	December 21, 2016	Cost-plus-fixed-fee
EP-D-11-027	June 30, 2016	Cost-plus-fixed-fee
EP-D-11-080	January 24, 2017	Indefinite-delivery-indefinite-quantity
EP-D-11-081	Not awarded	Indefinite-delivery-indefinite-quantity
EP-D-11-082	January 19, 2017	Indefinite-delivery-indefinite-quantity
EP-G15H-00933 ^a	May 11, 2016	Time-and-materials
EP-G15H-00935 ^a	June 29, 2016	Time-and-materials
EP-G103-00003 ^a	August 31, 2016	Cost-plus-fixed-fee
EP-G159-00280 ^a	September 21, 2015	FFP
EP-W-08-036	January 14, 2016	Cost-plus-fixed-fee
EP-W-11-003	March 10, 2016	Cost-plus-fixed-fee

Source: OIG analysis of contract files and the EPA's Acquisition System files.

^a These are U.S. General Services Administration contracts.

For the remaining four non-bridge contracts in our sample, the EPA did not issue FFP contracts despite the presidential and OMB memoranda. Two Contracting Officers (COs) said that they did consider a low-risk contract but did not successfully advocate for or obtain one. Table 4 lists the four sampled cost-reimbursement contracts, which represent \$91,721,362 in contract actions.

Table 4: Sampled cost-reimbursement contracts

Contract number	Contract award date	Contract type
EP-C-14-012	May 27, 2014	Cost-plus-fixed-fee
EP-C-16-001	November 23, 2015	Cost-plus-fixed-fee
EP-D-16-009	February 25, 2016	Cost-plus-fixed-fee
EP-W-15-006	April 27, 2015	Cost-plus-fixed-fee

Source: OIG analysis of contract files and the EPA's Acquisition System files.

High-Risk Contract Explanations

Per FAR 16.103(d), COs are required to explain the need for high-risk contract vehicles in the formal written acquisition plans for high-risk contracts. However, we found that the provided explanations regarding why cost-reimbursement contracts were needed or how the government's risk would be managed were not convincing. Instead, the explanations included only general language about uncertainties and the need for services. For example, a contract for wastewater and drinking water support (EP-C-16-001) cites "the level of effort and the scope and nature of the required tasks cannot be specified with sufficient clarity to allow for reasonable cost certainty" as justification for using a high-risk contract type. Yet, the same requirements have been contracted for since 1990; there should be sufficient history to attempt a FFP contract for at least some of the requirements. The contract documentation also recognizes the government's additional risks and burden to manage a cost-reimbursement contract:

The Government understands the risks associated with not using a FFP contract, but has determined that adequate safeguards are in place ... to mitigate the inherent risk in a cost reimbursable contract.

The safeguards identified in the contract documentation include detailed annual invoice reviews and the ability to review contractor accounting systems to address the government's risk of paying more than necessary. However, we were told that the contract's Project Officer only infrequently inquired about high costs and asked for cost justifications. In addition, the contract requirements were renewed via high-risk contracting vehicles for over 25 years. According to the Project Officer, these high-risk vehicles were the only way the agency could make sure the program requirements continued to be covered.

EPA Did Not Emphasize Use of FFP Contracts

The EPA did not sufficiently emphasize low-risk contracts or compliance with requirements to limit the government's risk. After we shared our discussion document with the EPA, the agency agreed that a FFP contract clearly reduces price uncertainty but also stated that a CO must not blindly pursue FFP contracts. The EPA said that COs must consider that, although FFP contracts may reduce the uncertainty of the acquisition in one area, they may increase the uncertainty in other areas.

COs and program staff provided various explanations for the use of high-risk contracts. For example, although the CO ultimately determines the contract type, the program offices provide the requirements for the contract and may press for the continued use of high-risk contracts. In addition, EPA management has not issued specific direction to promote the use of lower risk contracts. One OAM Team Lead indicated that a message from the OAM Director encouraging more FFP contracts would be helpful.

Through interviews with EPA staff, we determined that the EPA did not routinely utilize or consider the use of FFP contracts instead of high-risk contracts for the following reasons:

- The needed work was broad, had uncertainties or was sporadic.
- Staff did not realize that FFP or hybrid contracts were possible, although they often had more than 5 years of history with the contract work being performed.
- Staff were more familiar with the contract types they previously awarded.

We also found that COs and program staff often provided different reasons for not considering FFP contracts, as outlined in Table 5.

Table 5: Reasons why COs and program staff did not consider FFP contracts

COs	Program staff
<ul style="list-style-type: none"> • Despite a long history with a specific contract, program staff could not specify the work that needed to be done. • By the time a contract reached the CO, the decision to award a cost contract was already made. • Program staff were not open to considering a FFP contract. • Program staff would not be happy and would be annoyed with a FFP contract. • COs considered the contract type to be mainly the program staff's decision. 	<ul style="list-style-type: none"> • FFP contracts may be an option but, for research work, it would be difficult. • Program staff were unaware that hybrid contracts were possible. FFP options were not discussed for parts of the contract because program staff did not realize that an entire contract did not have to be FFP. • The CO determined the type of contract to be used. • Although they understood they should consider moving away from high-risk contract types when issuing new contracts, program staff did not realize this movement was a requirement.

Source: OIG interviews of EPA staff.

Risky Contracts Cannot Reap Benefits of Cost Savings

High-risk contracts present the highest risk to federal government dollars. According to OMB Memorandum M-09-25, reliance on contracts other than FFP provides the contractor with little incentive to control costs. However, the EPA has not emphasized, as required by the FAR, the importance of negotiating a contract type and price “that will result in reasonable contractor risk and provide the contractor with the greatest incentive for efficient and economical performance.” The fact that cost-reimbursement contracts require more oversight and monitoring, per FAR 16.103(d)(1), also means that there is an additional oversight burden for the government. As a result, the EPA is not reaping the benefits of cost savings from FFP contracting. The high-risk contract decisions that we sampled—with a combined value of millions of dollars—did not support that higher risk contract vehicles were necessary.

EPA Recognizes Risk and Is Taking Steps to Address

The EPA has recognized that acquisition planning should be improved. The Federal Managers’ Financial Integrity Act requires that federal agencies report annually on the soundness of their internal controls and financial systems. Each EPA program office submits a Federal Managers’ Financial Integrity Act Assurance Letter each year, which OARM then summarizes and submits to the President and Congress along with a risk assessment. In its FY 2016 letter, OARM reported that its internal controls were adequate to reasonably ensure protection against fraud, waste, abuse and mismanagement. However, the attached risk assessment recognized that the EPA had delays in contract awards and was not maximizing the use of FFP contracts.

Furthermore, OAM decided in 2017 that the “Determination and Findings” form for time-and-materials contracts—which, per FAR 1.704, must provide “enough facts ... to clearly and convincingly justify the specific determination made” (e.g., statements of fact or rationale for the contract type selected)—must be approved and signed at a level higher than the current approval delegation. This decision means that only OAM Division Directors or higher have signatory authority for these forms. Similar treatment is under consideration for all cost-reimbursement type contracts and should provide additional oversight over high-risk contracts.

In its written response to our discussion document, OAM recognized that contract type determination write-ups for the use of high-risk contracts must be more substantive, detailed and robust, as well as provide technical details that fully support the decision to award a contract that is not FFP. To further address issues raised in this audit, the OAM Office Director identified a training and course development plan that includes training on contract types. According to the EPA, this plan is nearing completion and is expected to be rolled out in FY 2018. In addition, the EPA reported that OAM is re-engineering business processes and will include best practices and lessons learned from offices that have successfully converted program requirements to another, lower-risk contract type.

Recommendations

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

1. Update policy and procedures to require the use of low-risk contracts, and only permit high-risk contracts when low-risk contracts are not possible.
2. Implement controls to tighten scrutiny of the contract type selection, and require higher level approvals for all high-risk contracts.

We recommend that the EPA Deputy Administrator:

3. Issue an agencywide memorandum to advocate and support Office of Administration and Resources Management initiatives to achieve greater use of contracts that minimize risk and maximize value to the government, including reducing the use of high-risk contracts.

Agency Response and OIG Evaluation

The EPA agreed with Recommendations 1 through 3 and provided planned corrective actions with completion dates. According to the agency’s response, OAM will complete the following actions for Recommendations 1 and 2:

- **Recommendation 1.** Review acquisition policy and procedures to ensure that contract type selection is emphasized and “that the use and discussion of firm-fixed price contracts is given serious consideration” during the planning phase. Communicate and collaborate with stakeholders to assure the clarity of policy and procedure updates and that implementation of these updates “is supportive of program goals and objectives.” The OIG confirmed with the EPA that relevant “policy and procedures would be updated and low-risk contracts would be required unless it is not possible.” The estimated completion date is March 31, 2018.
- **Recommendation 2.** Enhance oversight and enforcement of FAR and EPAAG procedures “that require documentation of the rationale for contract type selection” when it is not FFP, including determination and findings preparation and approval for time-and-materials and labor-hour contracts. Exercise “greater scrutiny of contract type discussions, decisions and supporting documentation” based on an “analysis of current needs, issues, and vulnerabilities.” The estimated completion date is March 31, 2018.

In response to Recommendation 3, the acting Deputy Administrator will issue an agencywide memorandum informing staff of OARM initiatives and “emphasizing the importance of participation and compliance.” The estimated completion date is December 31, 2017.

The EPA’s planned corrective actions meet the intent of Recommendations 1 through 3, which are therefore resolved with corrective actions pending.

Chapter 3

EPA Needs to Do More to Avoid Sole Source Bridge Contracts

Planning difficulties were cited as factors in each of the 10 sole source bridge contracts that we sampled, per the written justifications for conducting other than a full and open competition included in the contract files. According to the FAR, however, a lack of advance planning does not justify contracting without full and open competition. Furthermore, per OMB Memorandum M-09-25, noncompetitive contracts present a price risk to the government. The EPA has not sufficiently emphasized the requirement to reduce spending on sole source contracts and has allowed sole source contracts even when there was adequate time to plan for a competitive award process. Also, the EPA does not define or identify bridge contracts, and the agency does not have policies to manage and track their use. When noncompetitive contracts are used, the agency risks overpaying for goods and services. With limited insight into the extent and volume of bridge contracts, the EPA cannot identify, analyze and reduce the risks associated with achieving the contract objectives.

Federal Directives, Guidance and Standards Promote Competitive Awards, Require Risk Management

Federal regulations, memoranda and EPA policy emphasize the benefits of and need for a competitive award process. The Presidential Memorandum on Government Contracting notes that the risk of excessive reliance on sole source contracts is that taxpayer funds will be spent on wasteful and inefficient contracts that are subject to misuse. OMB Memorandum M-09-25 specifies that “non-competitive contracts present a risk because there is not a direct market mechanism for setting the contract price.” FAR 6.301(c)(1) states, “Contracting without providing for full and open competition shall not be justified on the basis of ... [a] lack of advance planning by the requiring activity.” Also, FAR 7.104(b) states, “Requirements and logistics personnel should avoid issuing requirements on an urgent basis ... since it generally restricts competition and increases prices.”

In addition, Section 7.1.1 of the EPAAG underscores that, without proper acquisition planning, the EPA may face harmful consequences:

... the result may be poorly defined requirements, lack of competition, and ultimately, a detrimental effect on the agency’s ability to receive mission critical goods and services.

There are some exceptions to the competitive award process. FAR 6.302 outlines circumstances that permit other than full and open competition:

- FAR 6.302-1—Only one responsible source and no other supplies or services will satisfy agency requirements.
- FAR 6.302-2—Unusual and compelling urgency (i.e., when the agency’s need for the supplies or services is of such an unusual and compelling urgency that the government would be seriously injured).
- FAR 6.302-3—Industrial mobilization; engineering, developmental, or research capability; or expert services.
- FAR 6.302-4—International agreement.
- FAR 6.302-5—Authorized or required by statute.
- FAR 6.302-6—National security.
- FAR 6.302-7—Public interest.

Government internal control standards describe management responsibilities regarding risk assessment and addressing risk. The GAO’s *Standards for Internal Control in the Federal Government* requires management to use quality information to achieve objectives and address risks. Also, GAO states that management should identify, analyze and respond to risks related to achieving its objectives. OMB Circular A-123, *Management’s Responsibility for Enterprise Risk Management and Internal Control*, notes management’s responsibility to continuously monitor, assess and improve internal control effectiveness. Further, OMB states that management should identify and correct control deficiencies.

Planning Difficulties Cited as Factors in Sole Source Bridge Contracts

Planning difficulties were cited as factors in each of the 10 sole source bridge contracts we sampled. Within the documentation for these contracts, the EPA provided written justifications that emphasized the importance of extending these contracts to fill critical needs. Although FAR 7.104(b) cautions against issuing contract requirements on an urgent basis, the EPA did not consider that better planning could have reduced the potential need for last-minute, sole source bridge contracts. Table 6 lists the EPA’s written explanations regarding the necessity of these bridge contracts, which totaled \$2,632,181.

Table 6: Sole source contract explanations

Contract number	Explanation excerpts
EP-D-10-096	"Using another contractor would result in a substantial duplication of effort. In addition to the time/expertise considerations discussed ... a substantial amount of resources would be required for another contractor to acquire a level of knowledge and expertise equivalent to that of" the current contractor.
EP-D-11-027	"The Government is not stating that there are no other contractors who can support this Onsite Technical Support Services requirement ... no other contractor could transition this workload ... and efficiently continue performance without potential reduced services, increased costs, and unnecessary risks to the Government."
EP-D-11-080	"... considering the short period of performance contemplated within this extension that no other contractor could transition this workload ... and efficiently continue performance without potential reduced services, increased costs, and unnecessary risks to the Government."
EP-D-11-081	"... it is not reasonable to believe that a contractor could take over and provide the High Throughput Screening services required ... of this size, scope and complexity at this time. Therefore, a sole source extension to the current contractor is the only responsible way to meet this essential Government requirement."
EP-D-11-082	"The purpose of this document is to justify the need to extend the period of performance an additional six (6) months to prevent a lapse in services that are critical to the continuity of scientific research ... while the new contract is negotiated and awarded."
EP-G15H-00933	"This interim bridge contract cannot be competed or awarded to another contractor because" the current contractor "is most familiar with a large amount of varied complex components." The current contractor "will not burden ... with start-up cost that another vendor would encounter, nor ... incur the initial learning curve."
EP-G15H-00935	"While other contractors, in the long-term, may be able to develop that specialized knowledge for the planned and on-going projects, it has been determined that it is not feasible in the short-term. Additionally, because the tasks under the current task order have begun and are in-progress, the interim bridge contract is a natural and vital product of these existing tasks."
EP-G103-00003	"The services required ... provide a logical continuation of services currently being performed by the incumbent, ... which are necessary to protect property of the U. S. Government and to ensure the occupants of this federally owned facility have a safe and properly maintained environment to work in."
EP-W-08-036	"This contractor is the only responsible contractor that can fulfill this requirement at this time because of the program office's ongoing need for preparedness in the event of an emergency situation."
EP-W-11-003	"... the only contractor that has the requisite expertise and qualifications to perform the work within budget and so that there is no gap in service. Additional costs, which would not be recovered through competition, would be necessary if this support was transitioned to another contractor and would cause significant delays in completing the required tasks identified."

Source: OIG analysis of contract files and the EPA's Acquisition System files.

The justifications generally explain that there is only one source ready to do the work immediately, but they do not explain how the government would be seriously injured if the sole source contract was not approved.¹ Therefore, the explanations do not meet the intent of the FAR, particularly when lack of sufficient planning was noted as a reason why other than full and open competition was needed in all 10 sole source bridge contracts sampled. For example, the documentation for one of the contracts included the following justification:

No other contractor could perform these tasks without a significant delay in service, a steep learning curve and potential duplication of effort and a waste of Government resources.

This explanation does not meet the sole source criteria that there be only one responsible source and that no other supplies or services will satisfy agency requirements. Instead, it focuses on a steep learning curve. It also does not explain how the government would be seriously injured if a sole source contract was not used.

EPA Does Not Track Bridge Contracts

Although the EPA uses bridge contracts, the agency does not have guidance or policy to define, identify, manage or track the use of bridge contracts. As a result, there is no readily identifiable way to determine how many bridge contracts the EPA has awarded. For example, in response to our audit request for a list of awarded bridge contracts, the EPA had to perform a word search of contract data for “bridge.”

EPA Did Not Emphasize Requirements

The EPA did not sufficiently emphasize the requirement to reduce spending on sole source contracts and allowed sole source bridge contracts to be awarded, even when there was adequate time to plan and conduct a competitive award process. Although planning is supposed to begin years in advance, some contract award activities were delayed. One CO we interviewed indicated that, during the preceding 2 years, the use of sole source contracts increased because there was not enough time for the full competitive process. Another CO found that the contracting office was so far behind schedule that a bridge contract became necessary. In another instance, an OAM manager explained that a bridge contract was necessary due to delays in acquisition planning. Yet another OAM manager explained that delays in obtaining a statement of work from the program office necessitated a bridge contract. These explanations relate to a lack of planning. The FAR states that a lack of advance planning does not justify contracting without full and open competition.

¹ Neither the FAR nor the EPAAG define “serious injury.”

During discussions with OAM, we asked whether the EPA had considered the findings in the GAO report, *Defining and Tracking Bridge Contracts Would Help Agencies Manage Their Use*, which highlights the need for federal agencies to track bridge contracts. OAM explained that they were aware of the GAO report but had not considered tracking or addressing bridge contracts prior to our discussion.

Lack of Competition Creates Risk That Government Will Overpay

Inadequate acquisition planning results in noncompetitive contracts. The use of noncompetitive contracts frequently or for prolonged periods of time creates a risk that the government will overpay for goods and services. Also, EPA policy notes that a lack of acquisition planning may result in a detrimental effect on the agency's ability to receive mission-critical goods and services. We found that the use of sole source contracts totaling millions of dollars could potentially have been avoided if the EPA permitted such contracts only when adequate and timely planning had occurred.

Furthermore, since the EPA does not define, identify or track bridge contracts, there is limited insight into how often the agency uses bridge contracts and whether the agency circumvents the FAR. The EPA's lack of policies on the use of bridge contracts means that the EPA cannot identify and analyze risks, nor can the agency make management decisions regarding bridge contracts.

EPA Is Taking Steps to Address Risk

An OAM manager explained that the EPA's Acquisition System solicitation module would soon be modified to add special coding to track bridge contracts. In its written response to our discussion document, the EPA confirmed that this tracking mechanism will help address issues raised in this audit. In addition, the agency stated that the Office of Federal Procurement Policy may develop a regulatory definition for "bridge contracts." The OIG asserts that, meanwhile, the EPA can develop and use an interim definition. Also, the OAM Office Director identified a training and course development plan that will include training on the need for and use of bridge contracts, as well as provide examples of "good" and "weak" justifications for other than full and open competition.

Recommendations

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

4. Issue guidance or policy to program offices and contracting staff regarding requirements for sole source bridge contracts, including a definition of

“bridge contracts” and “serious injury,” the authorization for use, and the impact on competition and agency goals.

5. Permit sole source bridge contracts only when adequate and timely planning has occurred and serious injury to the EPA’s mission would result from a lapse of service, and require deputy-level approval for sole source bridge contracts over a specific dollar threshold.
6. Develop a tracking mechanism for bridge contracts.

Agency Response and OIG Evaluation

The EPA agreed with Recommendations 4 through 6 and provided planned corrective actions with completion dates. In response to Recommendations 4 through 6, OAM will complete the following actions:

- **Recommendation 4.** Develop and issue guidance to program and contracting staff regarding sole source bridge contract requirements, including the definition of “bridge contracts and ‘serious injury’, the authorization for use, and the impact on competition and agency goals.” The estimated completion date is January 31, 2018.
- **Recommendation 5.** Enhance oversight and enforcement of FAR and EPAAG acquisition planning processes and procedures, and “assure that senior acquisition personnel and leadership ... reach out to their counterparts” to hold acquisition planners accountable for timely performance of required planning. Exercise “greater scrutiny of the acquisition planning process, including contract type discussions, decisions, and the quality and substance of supporting documentation” for sole source bridge contracts “through higher level review and approvals.” Base reviews and approvals on an “informed analysis of the current needs, issues, and vulnerabilities in this area.” The OIG confirmed with the EPA that “OAM will permit sole source bridge contracts only when it is evident that adequate and timely planning has occurred and serious injury to the EPA’s mission would result from a lapse of service; and require deputy-level approval for sole source bridge contracts over a specific dollar threshold.” The estimated completion date is March 31, 2018.
- **Recommendation 6.** Develop a bridge tracking mechanism in the EPA’s Acquisition System no later than September 30, 2017. Implementation of reporting on bridge contracts using this new tracking mechanism will be deferred until the agency’s definitions of “bridge contracts” and “serious injury” are finalized. The estimated completion date is February 28, 2018.

The planned corrective actions meet the intent of Recommendations 4 through 6, which are resolved with corrective actions pending.

Chapter 4

EPA Needs to Improve Compliance With Acquisition Planning Requirements

Two of the 15 contracts we sampled did not have documentation regarding acquisition planning, as required by EPA policy. As previously noted in this report, the EPAAG states that proper acquisition planning is critical to avoid “poorly defined requirements, lack of competition, and ultimately, a detrimental effect on the agency’s ability to receive mission critical goods and services.” The EPA’s inattention to thorough and timely acquisition planning may have a detrimental effect on the agency’s ability to receive mission-critical goods and services at the best price.

EPA Guidance, Federal Regulation Require Acquisition Planning

Paragraph 7.1.1.2 of the EPAAG requires acquisition planning for all acquisitions. The EPAAG defines “acquisition planning” as the process by which all personnel responsible for an acquisition coordinate to fulfill agency needs in a timely manner and at a reasonable cost. Preceding the publication of the EPAAG in January 2016, the EPA’s February 2009 *Contracts Management Manual* provided the following definition in Section 7.1.2:

Acquisition planning means that the efforts of all personnel responsible for an acquisition are coordinated and integrated through a comprehensive plan for fulfilling agency needs in a timely manner.

In addition, FAR 4.802(a) specifies that a contract file should generally consist of, among other things, documentation of the basis for the acquisition and award, the assignment of contract administration, and any subsequent contracting office actions. The EPAAG also requires that a copy of the final procurement plan and market research be documented in the official contract file.

Acquisition Planning Was Not Always Documented

Although the majority of the 15 contracts we sampled had documented acquisition planning, two contract files (EP-W-08-036 and EP-W-11-003) did not include documentation of those efforts, as required. For those two contracts, the COs were not able to locate the acquisition planning documents.

Although EPA policy provides guidance on acquisition planning and reasonable lead times, OAM management said that staffing and resource issues have had a negative impact. In response to our audit request for documentation, one CO could not locate pre-award acquisition planning documents due to staff changes

and did not know whether these documents were drafted in the first place. The CO for the other contract stated that the contracting office had resource issues, and the written acquisition plan required by the FAR was not in the contract's file. Inattention to thorough and timely documentation of acquisition planning potentially results in a detrimental effect because the suitability and rationale for high-risk contracts are not supported for audits or management review.

EPA Recognizes Risk and Is Taking Steps to Address

In its written response to our discussion document, the EPA noted that increased attention to thorough and timely acquisition planning offers a strong foundation for mission-critical goods and services contracts. Also, to address issues raised in this audit, the OAM Office Director identified a training and course development plan that includes acquisition planning training.

Recommendation

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

7. Issue a memorandum reminding staff of the importance of including acquisition planning documents as part of the official contract records.

Agency Response and OIG Evaluation

The EPA agreed with Recommendation 7 and on September 29, 2017, issued a "Flash Notice" email reminding COs to include all required documentation in the contract files. It also noted the importance of improving the documentation of contract type selections. This corrective action meets the intent of Recommendation 7, which is complete.

Status of Recommendations and Potential Monetary Benefits

RECOMMENDATIONS

Rec. No.	Page No.	Subject	Status ¹	Action Official	Planned Completion Date	Potential Monetary Benefits (in \$000s)
1	10	Update policy and procedures to require the use of low-risk contracts, and only permit high-risk contracts when low-risk contracts are not possible.	R	Assistant Administrator for Administration and Resources Management	3/31/18	
2	10	Implement controls to tighten scrutiny of the contract type selection, and require higher level approvals for all high-risk contracts.	R	Assistant Administrator for Administration and Resources Management	3/31/18	
3	10	Issue an agencywide memorandum to advocate and support Office of Administration and Resources Management initiatives to achieve greater use of contracts that minimize risk and maximize value to the government, including reducing the use of high-risk contracts.	R	Deputy Administrator	12/31/17	
4	16	Issue guidance or policy to program offices and contracting staff regarding requirements for sole source bridge contracts, including a definition of "bridge contracts" and "serious injury," the authorization for use, and the impact on competition and agency goals.	R	Assistant Administrator for Administration and Resources Management	1/31/18	
5	17	Permit sole source bridge contracts only when adequate and timely planning has occurred and serious injury to the EPA's mission would result from a lapse of service, and require deputy-level approval for sole source bridge contracts over a specific dollar threshold.	R	Assistant Administrator for Administration and Resources Management	3/31/18	
6	17	Develop a tracking mechanism for bridge contracts.	R	Assistant Administrator for Administration and Resources Management	2/28/18	
7	19	Issue a memorandum reminding staff of the importance of including acquisition planning documents as part of the official contract records.	C	Assistant Administrator for Administration and Resources Management	9/29/17	

¹ C = Corrective action completed.

R = Recommendation resolved with corrective action pending.

U = Recommendation unresolved with resolution efforts in progress.

Office of the Administrator Response to Draft Report



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

September 21, 2017

OFFICE OF
THE ADMINISTRATOR

MEMORANDUM

SUBJECT: Response to Office of Inspector General Draft Report No. OA-FY16-0224
“Improved Acquisition Planning Will Help EPA Reduce Millions of Dollars in
High-Risk Contracts,” dated August 9, 2017

FROM: Michael P. Flynn, Acting Deputy Administrator
Office of the Administrator //s//

TO: Arthur A. Elkins, Jr.
Office of Inspector General

Thank you for the opportunity to respond to the issues and recommendations in the subject audit report. The agency concurs with Recommendation 3, that the Deputy Administrator issue an agency-wide memo regarding initiatives undertaken by the Office of Administration and Resources Management in response to this report. OARM is issuing a separate response to the other six recommendations in the report.

If you have any questions for the Office of Administrator regarding this response, please contact Ellen Treimel at (202) 564-0557 or Silvina Fonseca at (202) 564-1955.

Attachments

cc: Ryan Jackson
Henry Darwin
Michael Petscavage
Madeline Mullen
LaTanya Scott
Myka Sparrow
Silvina Fonseca
Ellen Treimel
Donna Vizian
Reginald Allen

Agency Response to High Level Recommendations

No.	Recommendations	Assigned to:	Corrective Actions	Estimated Completion
3	Issue an agency-wide memo to advocate and support OARM initiatives to achieve greater use of contracts that minimize risk and maximize value to the government, including reducing the use of high-risk contracts.	OA	The Acting Deputy Administrator will issue an agency-wide memo informing staff of the initiatives being undertaken by OARM and emphasizing the importance of participation and compliance.	Q1 FY 2018

OARM Response to Draft Report

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



SEP 21 2017

OFFICE OF
ADMINISTRATION
AND RESOURCES
MANAGEMENT

MEMORANDUM

SUBJECT: Response to the Office of Inspector General's Draft Report "Improved Acquisition Planning Will Help EPA Reduce Millions of Dollars in High-Risk Contracts" (Project No. OA-FY16-0224)

FROM: Donna J. Vizian, Acting Assistant Administrator//s//

TO: Michael Petscavage, Director
Office of Audit, Contract and Assistance Agreement Audits
Office of Inspector General

Thank you for the opportunity to respond to the subject audit report, "*Improving Acquisition Planning Will Help EPA Reduce Millions of Dollars in High-Risk Contracts*", dated August 9, 2017. The Office of Administration and Resources Management is providing a response to recommendations 1-7 with the exception of #3, which will be addressed by the Office of the Administrator. The agency concurs with the recommendations of this report and has included a summary response with the corrective actions and estimated completion dates.

Should you have any questions for the Office of Administration and Resources Management regarding this response, please contact Celia M. Vaughn, Chief of Staff, Office of Acquisition Management at (202) 564-1047 or vaughn.celia@epa.gov.

Attachment

cc: John Showman
Kimberly Patrick
Pam Legare
Celia Vaughn
John Oliver
Madeline Mullen
LaTanya Scott
Myka Sparrow
Marian Cooper
Lauren Lemley
Matthew Bell

AGENCY'S RESPONSE TO REPORT RECOMMENDATIONS:

No.	Recommendations	Assigned to:	Corrective Actions	Estimated Completion
1	Update policy and procedures to require the use of low-risk contracts and only permit high-risk contracts when low-risk contracts are not possible.	OARM	<p>OARM/OAM will review existing agency acquisition planning policy and procedures to ensure that emphasis is given to contract type selection and that the use and discussion of firm-fixed-price contracts is given serious consideration during the acquisition planning phase, in compliance with Federal Acquisition Regulation requirements in FAR 7.102 and FAR 16.1.</p> <p>OARM/OAM will involve agency stakeholders in communication and collaboration on this matter at the earliest possible time through the Acquisition Management Council, Policy Acquisition Council and Client Engagement Meetings to assure clarity of any updates to policy and procedures, and that their implementation in the acquisition planning process is supportive of program goals and objectives.</p>	March 31, 2018
2	Implement controls to tighten scrutiny of the contract type selection and require higher level approvals for all high-risk contracts. reports include all required information.	OARM	OARM/OAM will enhance oversight and enforcement of existing FAR & EPA Acquisition Guide specified acquisition planning process & procedures (and any updates thereto) that require documentation of the rationale for contract type	March 31, 2018

No.	Recommendations	Assigned to:	Corrective Actions	Estimated Completion
			<p>selection for other than firm-fixed-price (including determination & findings preparation and approval for time & materials or labor hours type contracts).</p> <p>OARM/OAM will exercise greater scrutiny of contract type discussions, decisions, and the quality and substance of supporting documentation through higher level review and approvals, based on its conduct of an informed analysis of the current needs, issues, and vulnerabilities in this area.</p>	
4	Issue guidance or policy to program offices and contracting staff regarding requirements for sole source bridge contracts, including a definition of bridge contracts and "serious injury", the authorization for use, and the impact on competition and agency goals.	OARM	OARM/OAM agrees with this recommendation and will develop and issue guidance to program offices and contracting staff regarding requirements for sole source bridge contracts, including the agency's definition of bridge contracts and "serious injury", the authorization for use, and the impact on competition and agency goals.	January 31, 2018
5	Permit sole source bridge contracts only when adequate and timely planning has occurred and serious injury to the EPA's mission would result from a lapse of service, and require deputy-level approval for sole source bridge contracts	OARM	OARM/OAM will enhance oversight and enforcement of existing FAR & EPA Acquisition Guide specified acquisition planning process and procedures (and any updates thereto) and assure that senior acquisition personnel and leadership within OARM/OAM reach out to their counterparts within the agency's	March 31, 2018

No.	Recommendations	Assigned to:	Corrective Actions	Estimated Completion
	over a specific dollar threshold.		<p>acquisition and program community, to hold accountable acquisition planners in timely performing the required acquisition planning.</p> <p>OARM/OAM will exercise greater scrutiny of the acquisition planning process in general, including contract type discussions, decisions, and the quality and substance of supporting documentation when requesting sole source bridge contract procurement, through higher level review and approvals, based on its conduct of an informed analysis of the current needs, issues, and vulnerabilities in this area.</p>	
6	Develop a tracking mechanism for bridge contracts.	OARM	OARM/OAM is currently working on the implementation of a tracking mechanism in EAS and expect this capability to be in place no later than September 30, 2017. However, implementation of reporting in EAS will be deferred pending the finalizing of the agency's definition of bridge contracts and "serious injury" which we expect to complete in January 2018.	February 28, 2018
7	Issue a memo reminding staff of the importance of including acquisition planning documents as part of the official contract records.	OARM	OARM/OAM will issue a Flash Notice via agency email to remind staff of the importance of including acquisition planning documents as part of the official contract records.	September 30, 2017

Distribution

The Administrator
Deputy Administrator
Chief of Staff
Chief of Staff for Operations
Deputy Chief of Staff for Operations
Assistant Administrator for Administration and Resources Management
Agency Follow-Up Official (the CFO)
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Director, Office of Resources, Operations and Management, Office of Administration and Resources Management
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