

March 26, 2008

MEMORANDUM TO: Luis A. Reyes
Executive Director for Operations

FROM: Stephen D. Dingbaum */RA/*
Assistant Inspector General for Audits

SUBJECT: MEMORANDUM REPORT: AUDIT OF NRC'S
CONTRACT FOR ALTERNATIVE DISPUTE
RESOLUTION SERVICES (OIG-08-A-08)

As part of the Office of the Inspector General's (OIG) audit of NRC's enforcement program, auditors identified issues regarding an NRC contract for alternative dispute resolution (ADR) services that warrant your attention. Specifically,

- The current contract needs to be modified or renegotiated
 - the contract's billing requirements are inadequate, and
 - the statement of work is insufficient;
- contract management needs improvement; and
- the appearance of a conflict of interest exists.

As a result, NRC lacks the ability to provide effective contract oversight, which reduces its ability to prevent procurement fraud and abuse.

BACKGROUND

On September 27, 2006, NRC awarded a \$334,400 fixed-price, sole-source contract to Cornell University (Cornell) to provide neutral services supporting the enforcement ADR program¹ for a 2-year period.² ADR is a term that refers to a

¹ See OIG-08-A-03, *Audit of NRC's Alternative Dispute Resolution Program*, for a fuller discussion on the ADR program at NRC.

² The contract has a provision in which it may be extended for three additional years. Including these additional years, the total cost of the contract could be \$893,000.

number of processes, such as mediation and facilitated dialogues, that can be used to assist parties in resolving disputes. ADR is a voluntary process that often involves the use of a skilled third party neutral.³

PURPOSE

The objective of this audit was to determine if NRC's contract for ADR services had the appropriate controls in place.

RESULTS

While the contract with Cornell has been used for more than a year for a number of ADR cases, NRC does not have the ability to provide effective contract oversight. This is caused by deficiencies in the contract such as inadequate billing requirements and an insufficient statement of work. Furthermore, there is minimal contract management over the contract. Thus the agency's ability to prevent procurement fraud and abuse is reduced. In addition, there is the appearance of a conflict of interest due to NRC's project officer's association with a Cornell workshop.

Standards for Contracting

The Federal Acquisition Regulation provides contracting guidance for services or goods needed by the Government. Standard fixed-price contracts do not require detailed invoicing terms; however, under certain other contract types, the contractor may be required to submit invoices once each month (or more) and the invoice should include labor categories and hours billed. The invoice should also include the contractor's travel costs with the required supporting documentation.⁴

The statement of work is an essential piece of the contract. The requirements and definitive standards for measuring the contractor's performance should be explicit in the statement of work. Regardless of the communication between NRC and the contractor as the work progresses, the parties must rely on the language in the statement of work as the final determinant of scope, responsibilities, and obligations. The statement of work should include an itemized list of reports, documentation, and other deliverables, together with a delivery schedule.

³ A "neutral" is an individual who, with respect to an issue in controversy, functions specifically to aid the parties in resolving the controversy.

⁴ Required documentation means that receipts are needed for any charges \$75 or more.

The project officer, an NRC employee designated by the office holding the contract, has certain contract administration functions. The project officer's duties include monitoring the contractor's performance closely to ensure the work is satisfactorily performed in a timely manner. The project officer is the primary point of contact with the contractor on all technical project matters and provides technical direction to the contractor, monitors costs, and inspects and accepts deliverables.

NRC has an acquisition certification program required for individuals who will be involved in any phase of awarding and administering a commercial contract. Project officers must take the basic certification training, which includes the completion of five mandatory training module workshops. In addition, project officers are required to receive refresher training every 3 years to maintain their certification.

Improvements Needed to ADR Contract

NRC's current contract needs to be modified or renegotiated because the billing requirements are inadequate and the statement of work is insufficient. Furthermore, contract management needs improvement. Due to other duties, the project officer told OIG that he does not have sufficient time available to perform rigorous contract management. Despite the need for NRC to improve its control and management over the contract, NRC's project officer said that Cornell is good at furnishing its services, such as providing a roster of mediators and getting the parties to agree on a mediator to oversee the process.

Current Contract

NRC issued a fixed-price contract to Cornell to provide neutral services supporting the agency's enforcement ADR program. However, NRC is not able to reasonably know the cost or performance details. Use of the ADR program is voluntary, and any participant may end the mediation at any time. As a result, the price per case can range from a little over \$400.00 to almost \$4,000.00⁵ depending on how far the case proceeds through the process, how many days of mediation are required, and the travel costs. NRC estimates that Cornell will provide neutral services for 30 to 80 cases over the contract's 2 year base period.

Contract Billing Requirements Inadequate

Under the current contract, there are limited billing instructions and no requirements for travel reimbursement or for billing frequency. NRC's project officer noted that Cornell personnel are often confused by the contract-- particularly the billing instructions. For example, Cornell called NRC asking for full payment of the contract (approximately \$334K). NRC had to explain that

⁵ Figures based on prices for the period 10/01/06-09/30/08. Prices are scheduled to increase for the period 10/01/08-09/30/11.

Cornell only gets paid for work it actually performs. While NRC reimburses the mediators for their travel expenses, the project officer has not received any receipts for the travel costs nor do the billing instructions require Cornell to provide such documentation. As of December 31, 2007, Cornell had not submitted an invoice to NRC for any services it performed on the contract that was let September 27, 2006. Therefore, NRC had not been billed for services that Cornell performed for the last 15 months.

Statement of Work Insufficient

Problems during contract performance are often traceable to the approach, terminology, and content of the statement of work. The statement of work for the Cornell contract includes eight tasks. However, the contractor is not required to contact NRC or provide any deliverables until task five, which is the *mediation conclusion*. During task five, the contractor is required to provide NRC with a copy of each completed case evaluation. If a case does not reach the mediation phase because a participant pulled out earlier, Cornell is not required to notify NRC. However, according to the project officer and representatives at Cornell, the contractor has been keeping NRC updated on its progress throughout the process even though Cornell is not required to do so by the statement of work.

Contract Management Needs Improvement

In accordance with the current contract, NRC's project officer is required to issue delivery orders⁶ to Cornell *before* work can begin. NRC's project officer provided OIG with copies of the delivery orders for 2007. With only one exception, Cornell began conducting its neutral services prior to the delivery order authorization. NRC issued the delivery orders from 1 day up to 94 days⁷ after Cornell began work. See Figure 1 for more details.

⁶ The Federal Acquisition Regulation defines delivery order as an order for supplies placed against an established contract or with Government sources.

⁷ This represents 94 calendar days. Taking weekends and holidays into account, the delivery order was actually 66 work-days late.

Figure 1: Delivery Orders for Cornell's Neutral Services

Delivery Order #	Delivery Order Date	Work Start Date	Days Work Started Prior to Delivery Order Authorization
07-001A	01/16/07	01/08/07	8
07-002A	01/18/07	01/16/07	2
07-003A	02/12/07	02/06/07	6
07-004A	02/26/07	02/20/07	6
07-005A	03/12/07	03/08/07	4
07-006A	03/23/07	03/13/07	10
07-007A	04/16/07	04/04/07	12
07-008A	05/04/07	05/02/07	2
07-009A	05/04/07	04/19/07	15
07-010A	05/17/07	05/17/07	0
07-011A	08/10/07	05/08/07	94
07-012A	08/10/07	07/18/07	23
07-013A	08/10/07	07/24/07	17
07-014A	08/10/07	07/19/07	22
07-015A	08/10/07	07/18/07	23
07-016A	08/10/07	07/20/07	21
07-017A	08/10/07	07/23/07	18
07-018A	08/10/07	07/25/07	16
07-019A	08/10/07	07/25/07	16
07-021A	08/31/07	08/21/07	10
07-022A	10/11/07	10/10/07	1
Average Number of Days Late:			~16

Although Cornell proposed, as key personnel, a senior official at the University to serve as the contract manager with primary responsibility over the work performed, NRC's project officer is aware that an administrative assistant is performing the duties instead. The contract manager's responsibilities include directing and administering the mediation services; directing the program support work; managing the data analysis, evaluation and performance of services; and developing and maintaining a correspondence tracking system and maintaining all program files in accordance with the project requirements. Furthermore, in its proposal, Cornell stated that the contract manager would, in managing this program caseload, adhere to the following procedures:

- Initial contact with potential parties to assist in determining whether they are interested in pursuing ADR.
- Contact parties to confirm interest and document agreement to mediate.
- Contact acceptable session neutral and conduct initial conflict of interest check.

Yet, according to NRC's project officer and representatives at Cornell, an administrative assistant is conducting most of the work in lieu of the contract manager. NRC's project officer expressed concern that the contract manager is not available as much as NRC would like and that Cornell relies on the administrative assistant to carry out the work. However, this delegation of administrative functions is not prohibited by the current contract.

Further, NRC project officers play a critical role in contract management and NRC's acquisition certification program is key to their success. While the project officer for the ADR contract was certified under NRC's program, that certification expired in November 2007.

Reduced Contract Oversight

NRC lacks the ability to provide contract oversight because the agency's contract needs to be modified or renegotiated to correct inadequate billing procedures and the insufficient statement of work. Moreover, the project officer does not have the time to perform rigorous contract management duties, including taking the required acquisition recertification training.

As a result, NRC has a reduced ability to prevent procurement fraud and abuse and may be paying more than needed for the ADR services. For example, although the travel expenses are currently low, NRC has no controls in place to validate these costs should they increase. Furthermore, an administrative assistant at Cornell is performing the work that should be performed by a more senior official per Cornell's proposal. Such an issue can lead to cost mischarging.

RECOMMENDATIONS

The Office of the Inspector General recommends that the Executive Director for Operations:

1. Either modify or renegotiate the current contract to:
 - A. Include explicit billing instructions that establish standards such as monthly billing requirements.
 - B. Strengthen the statement of work to include specific deliverables and milestone dates.
2. Require the project officer to be certified/recertified under NRC's acquisition certification program.

Standards for Avoiding Conflict of Interest

In accordance with Federal Acquisition Regulation, the Government shall conduct all contracting business in a manner above reproach. As such, the general rule is to strictly avoid any conflict of interest or even the appearance of a conflict of interest in Government-contractor relationships. Conflict of interest refers to a situation when someone, such as a public official, has competing professional or personal obligations that would make it difficult to fairly fulfill his or her duties.

Conflict of Interest Perception

NRC's project officer for the ADR contract is listed as a Cornell faculty member for an ADR workshop sponsored by the University. Although the project officer taught a portion of the workshop, Cornell did not provide payment for the services. However, this close association gives the appearance of a conflict of interest in Government-contractor relationships.

As such, the project officer should not be identified or participate as Cornell faculty because of the appearance of favoritism to the contractor.

RECOMMENDATION

The Office of the Inspector General recommends that the Executive Director for Operations:

3. Preclude the project officer for the ADR contract from participating as faculty in any future Cornell workshops.

SUMMARY AND CONCLUSION

NRC needs to strengthen its ability to provide the needed contract oversight to prevent procurement fraud and abuse over its ADR contract. As such, the agency should review and reconsider the current contract with particular attention on the billing requirements and statement of work. NRC also needs to increase its contract management. In addition, NRC should take appropriate steps to ensure that there is not even the appearance of a conflict of interest due to the project officer's association with NRC's contractor for ADR services.

CONSOLIDATED LIST OF RECOMMENDATIONS

1. Either modify or renegotiate the current contract to:
 - A. Include explicit billing instructions that establish standards such as monthly billing requirements.
 - B. Strengthen the statement of work to include specific deliverables and milestone dates.
2. Require the project officer to be certified/recertified under NRC's acquisition certification program.
3. Preclude the project officer for the ADR contract from participating as faculty in any future Cornell workshops.

SCOPE AND METHODOLOGY

To accomplish the audit's objective, the OIG audit team reviewed the Federal Acquisition Regulation, NRC's ADR policy, Management Directive 11.1, the ADR services contract, and other ADR-related documents. The audit team interviewed officials at Cornell University and NRC personnel in the Office of Enforcement and the Office of Administration.

OIG conducted this audit between July 2007 and October 2007 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 objectives. We believe that the evidence obtained provides a reasonable basis for our finding and conclusion based on our audit objective. The work was conducted by Sherri Miotla, Team Leader; Catherine Colleli, Audit Manager; Terri Cooper, Audit Manager; and James McGaughey, Senior Analyst.

AGENCY COMMENTS

At an exit conference on January 25, 2008, NRC provided informal, written comments on the draft audit report. On January 30, 2008, and February 15, 2008, OIG audit staff met with agency officials and further discussed the report. OIG incorporated the suggestions as appropriate and NRC provided additional informal, written comments. On March 4, 2008, OIG issued a formal draft report and on March 17, 2008, NRC provided formal written comments. OIG incorporated those comments, as appropriate, into the final report. See Appendix A for the agency's comments in full and Appendix B for OIG's detailed responses to the agency's comments.

Please provide information on actions taken or planned on the recommendation within 30 days of the date of this memorandum. Actions taken or planned are subject to OIG follow-up, as stated in the attached instructions.

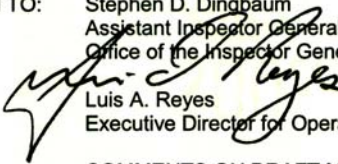
AGENCY FORMAL COMMENTS



**UNITED STATES
NUCLEAR REGULATORY COMMISSION**
WASHINGTON, D.C. 20555-0001

March 17, 2008

MEMORANDUM TO: Stephen D. Dingbaum
Assistant Inspector General for Audits
Office of the Inspector General

FROM: 
Luis A. Reyes
Executive Director for Operations

SUBJECT: COMMENTS ON DRAFT MEMORANDUM REPORT: AUDIT OF
NRC'S CONTRACT FOR ALTERNATIVE DISPUTE RESOLUTION
SERVICES

This responds to the March 4, 2008, Office of the Inspector General's (OIG) draft memorandum report, "Audit of NRC's Contract for Alternative Dispute Resolution Services." The staff agrees in principle with the findings and conclusions in the subject draft audit report. However, we offer the following general comments on the audit report and have enclosed recommended editorial changes which we believe make a necessary distinction between early and post-investigation Alternative Dispute Resolution (ADR) requirements.

The draft report states that, "the NRC lacks or does not have the ability to provide effective contract oversight." The NRC does not lack the ability to provide effective contract oversight. The NRC complies with Federally mandated training certification requirements for its acquisition professionals and project managers. At issue in this case is the perceived lack of an adequate framework within the requirements of this specific contract to provide effective oversight, e.g., lack of more specific billing and reporting requirements.

The draft report also states that, in effect, the NRC does not have any control over contract costs for this project. The subject contract type is Firm Fixed Price. This contract type precludes the need for the NRC to monitor individual cost elements and actual costs incurred, with the exception of travel costs which are approved by the NRC in accordance with the Federal Travel Regulations. The schedule in the contract dictates pre-established prices for various mediation services, regardless of individual cost elements, and represents the pricing arrangement that affords the least degree of risk to the NRC.

If you have any questions, please contact Russell Arrighi, Senior Enforcement Specialist, Office of Enforcement, at (301) 415-0205.

Enclosure:
Recommended Editorial Changes to
Draft Memorandum Report

**Recommended Editorial Changes to Draft Memorandum Report,
"Audit of NRC's Contract for Alternative Dispute Resolution Services"**

Page 4, Current Contract, line 24:

As a result, the price per case can range from a little over \$400.00 to almost \$4,000.00 depending on how far the case proceeds through the process, how many days of mediation are required, the travel costs, and whether the NRC is a party to the ADR session (post-investigation ADR).

Page 5, Statement of Work Insufficient, line 21:

However, the contractor is not required to contact NRC or provide any deliverables until task five for early-ADR, which is the *mediation conclusion*.

Page 5, Statement of Work Insufficient, line 22:

For post-investigation ADR, the NRC is required to be contacted at tasks 1, 2, and 3 since they are a party to the mediation session. During task five, the contractor is required to provide NRC with a copy of each completed case evaluation.

Enclosure

DETAILED OIG RESPONSES TO AGENCY COMMENTS

At an exit conference on January 25, 2008, NRC provided informal, written comments on the draft audit report. On January 30, 2008, and February 15, 2008, OIG audit staff met with agency officials and further discussed the report. OIG incorporated the suggestions as appropriate and NRC provided additional informal, written comments. On March 4, 2008, OIG issued a formal draft report and on March 17, 2008, NRC provided formal written comments (see Appendix A). OIG's responses to NRC's formal written comments are provided after each NRC comment.

Note: The page numbers used in NRC's comments (see Appendix A) do not correspond with the page numbers in this report because of line spacing difference between the draft report (at 1.5 spaces) and the final report (at single space).

NRC General Comment 1

The draft report state that, "the NRC lacks or does not have the ability to provide effective contract oversight." The NRC does not lack the ability to provide effective contract oversight. The NRC complies with Federally mandated training certification requirements for its acquisition professionals and project managers. At issue in this case is the perceived lack of an adequate framework within the requirements of this specific contract to provide effective oversight, e.g., lack of more specific billing and reporting requirements.

OIG Response:

As stated in the report, NRC's inability to provide effective contract oversight is because the agency is not able to reasonably know the contract's cost or performance details. More specifically, the current contract contains limited billing instructions and no requirements for travel reimbursement or for billing frequency. Moreover, the statement of work lacks the detailed requirements and definitive standards NRC needs to measure the contractor's performance. As a result, NRC currently lacks the ability to provide effective oversight for the contract for alternative dispute resolution services.

NRC General Comment 2

The draft report also states that, in effect, the NRC does not have any control over contract costs for this project. The subject contract type is Firm Fixed price. This contract type precludes the need for the NRC to monitor individual cost elements and actual costs incurred, with the exception of travel costs which are

approved by the NRC in accordance with the Federal travel regulations. The schedule in the contract dictates pre-established prices for various mediation services, regardless of individual cost elements, and represents the pricing arrangement that affords the least of degree of risk to the NRC.

OIG Response:

The report provides evidence that NRC lacks the necessary controls for effective cost oversight. For example, NRC is unable to validate contractor travel expenses.

NRC Recommended Editorial Change Comment 1

As a result, the price per case can range from a little over \$400.00 to almost \$4,000.00 depending on how far the case proceeds through the process, how many days of mediation are required, the travel costs, and whether the NRC is a party to the ADR session (post-investigation ADR).

OIG Response:

OIG acknowledges that *early ADR* versus *post-investigation ADR* can also affect the cost of the case. However, the report remains unchanged.

NRC Recommended Editorial Change Comment 2

However, the contractor is not required to contact NRC or provide any deliverables until task five for early-ADR, which is the *mediation conclusion*.

OIG Response:

The statement of work does not specify *early ADR* or *post-investigation ADR*. Therefore, the report remains unchanged.

NRC Recommended Editorial Change Comment 3

For post-investigation ADR, the NRC is required to be contacted at tasks 1, 2, and 3 since they are a party to the mediation session. During task five, the contractor is required to provide NRC with a copy of each completed case evaluation.

OIG Response:

The statement of work does not specify that the contractor should contact NRC at tasks 1, 2, or 3. Therefore, the report remains unchanged.