

EPA Mismanages IT Contracts

Written by Nick Sanders
Tuesday, 23 March 2021 00:00

Recently, the Environmental Protection Agency's Inspector General issued an [audit report](#) that documented and sustained allegations received via a Hotline call. The Hotline call had alleged "contract and bidding irregularities with three major information technology contracts."

We like how the EPA OIG put the salacious findings right on the report cover:

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\$52.5M in contracts awarded without FITARA approval

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\$642K in equipment purchased outside of contract scope

Then, right up front in the report, the EPA OIG provided the elevator-speech summary:

In violation of Federal Acquisition Regulation requirements and contract clauses, the EPA purchased 23 pieces of hardware and software equipment under an expiring information technology contract awarded to CGI Federal. This purchase was outside the scope of the contract and was ultimately never used for that contract. The EPA then improperly solicited bids for one of two subsequent contracts and transferred the equipment to use on the new contract. By approving the purchase, the EPA improperly spent \$641,680 in federal funds.

Also:

We also found that the EPA issued task orders under all three contracts without approval from the chief information officer, which is required under the Federal Information Technology Acquisition Reform Act. This resulted in the EPA spending \$52.5 million in taxpayer funds without proper approvals

Also (but not headline-worthy):

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The Agency also mismanaged these contracts with respect to monitoring property and licenses. For example, the EPA underreported and incorrectly identified purchased equipment in the Agency's property reporting system and did not record \$1.18 million in software licenses in the Agency's asset management system.

Well, there it is. Not a great look for the EPA contracting officer(s), is it?

Looking at the first finding in a bit more detail, we see that "An EPA CO authorized purchasing \$641,680 worth of equipment under contract EP-W-07-024, awarded to CGI Federal, *two days before the contract closed*

." (Emphasis added.) We're guessing that somebody noticed that not all obligated funds had been spent, and decided to get them spent rather than deobligating the funds as they properly should have done. So they had the contractor spend the money on equipment that wasn't needed, and then "EPA transferred the equipment to a new contract, EP-W-18-008."

Importantly,

that second contract had also been awarded to the very same contractor

, CGI Federal. Unfortunately for both the EPA contracting officer and CGI Federal, the Inspector General reported that the second contract "originally did not allow for government-furnished property." (The contract was modified after award to permit GFP.)

In order to make the shady equipment purchase happen—

The OCFO [Office of the Chief Financial Officer] requested an emergency action in the EPA's contract system to purchase and transfer the equipment. We found that the OCFO fully intended to use the equipment purchased under EP-W-07-024 on the new contract. The CO and OCFO management stated that they used an emergency action because the EPA's contract system was unavailable to make modifications to the new contract, so they modified the expiring contract.

The Inspector General succinctly summarized the situation thusly: "The Agency cannot use emergency actions to circumvent contract clauses and the FAR." *Yep.*

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But the IG wasn't done with this shady situation. Another aspect to be considered was the type of appropriation used to purchase the equipment. (This is commonly called "color of money" and, normally, contractors don't care too much about it; but government acquisition and finance folks certainly do.) The IG found that "When purchasing the \$641,680 in equipment for EP-W-07-024, the CO used a different appropriation than the one used for the remainder of the contract." This is called "split-funding" and, while it is an acceptable practice, when split-funding occurs the contracting officer must document a rationale for allocating contract costs to the different colors of money and the contracting officer "must send the split-funding documentation rationale to OCFO management for approval and maintain the documentation in the overall contract file." This is to happen *before* contract or task order award.

Would you be surprised to learn that it didn't happen in this case? Would you be surprised to learn that neither the contracting officer nor OCFO would locate the split-funding rationale when challenged by the IG auditors? Yeah, we weren't surprised either.

Now let's take a closer look at the second finding, where task orders were issued without required approvals by the EPA's Chief Information Officer.

The Inspector General pointed out that "Federal Information Technology Acquisition Reform Act, gives the chief information officer approval authority over IT purchases." The contracting officer did not notify the CIO, as required by FITARA. "In this case, the EPA's CIO was unaware of the CO's purchase of the equipment, so the CIO did not have the opportunity to review inventory for spares, duplicates, and compatible equipment."

Looking at the award of that second contract to CGI Federal, the IG concluded that it was improper, finding that "the EPA provided government-furnished equipment for EP-W-18-008, even though the EPA did not disclose that it would provide equipment in the contract solicitation." Because the EPA provided GFP to the winner (who was, perhaps, also the incumbent), "the EPA's choice to provide equipment for EP-W-18-008 may have led to an unfair competition practice" and may have violated the Federal law that requires agencies to use full and open competition, as well as FAR 45.201(a), which "requires agencies to include anticipated government-furnished property in the solicitation."

Another interesting aspect of this situation, according to the Inspector General, was the lack of property accountability and tracking. We could not summarize this aspect any better than the IG did in its report—

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The OTS staff neglected to follow the EPA Personal Property Manual to monitor, count, or report the purchased equipment, as required by federal requirements and EPA policies. The EPA property management staff—responsible for the care, use, accountability, and security of government-owned property in EPA areas—said that they were not informed of the purchase under EP-W-07-024 because the CO never reported the equipment in the contract file. The EPA did not report the equipment, 23 pieces of hardware and software, as inventory in its 2018 financial reports. The EPA did not report the equipment until a year-and-a-half after it was purchased and after we requested the property records as part of this audit. In addition, the EPA did not maintain a comprehensive list of software inventory and did not track software licenses, as required by regulation. The EPA underreported at least \$1.18 million in software license costs in its financial statements and inventory records. As a result, the Agency temporarily lost track of the equipment paid for by taxpayer dollars.

Oh, but that's not all. According to the Inspector General, the EPA wasn't tracking software licenses either, which is required by Public Law. The IG reported that "Since awarding the contract [to CGI Federal] on December 31, 2017, the EPA issued five modifications that involved software license purchases, renewals, or software maintenance fees totaling \$1,180,574.64. *The EPA has no record of these software licenses as of the end of fiscal year 2019. The OTS did not include this \$1.18 million in software licenses and maintenance fees in the EPA's property system.*" (Notes omitted; emphasis added.)

Essentially, the IG found that the equipment was improperly purchased, it was improperly transferred to a contract that was not intended to receive it. The equipment was not properly approved, nor was it reported or tracked. In addition, other software licenses worth more than one million dollars were not tracked or reported either.

If you are getting the picture of a very lax contracting environment, you are not alone.

For its part, the EPA agreed with the IG's findings. However, it didn't believe the second contract had been improperly awarded. That second contract will not be terminated, because doing so would not be in the best interest of the government as the services are still needed. Further, the \$642K in equipment was transferred from the contractor's possession and into the EPA's possession.

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As for the contracting officer that effectuated this shady set of circumstances? We did not see anything to indicate disciplinary action was taken.