
Third Key Issue: Is the Extent of Superfund's Dependence on Contracting Appropriate?

Do the functions of the Superfund program fit traditional criteria for appropriate contracting out? Is the large scale dependence on contractors an appropriate way to manage a long-term, probably 50-year, cleanup program which will span a number of career lifetimes? Or, could the government workforce itself conduct more Superfund work? The latter is an important policy option today.

Superfund Activities and Contracting

Superfund program activities can be broken down into six categories: policy development, regulation development and enforcement, program oversight and management, information collection, site analysis, and the physical work of cleanup. All are contracted out in varying degrees, even oversight and management which EPA claims is the most appropriate role for the agency. Contracting of project management is due to increase under the ARCS system and oversight of PRP (potentially responsible party) takeovers is routinely contracted out (as was suggested by Congress in Section 104(a)(1) of CERCLA).

Federal rules for contracting are issued by Office of Management and Budget (OMB). OMB has exempted, as inappropriate for contracting out, activities that are "inherently governmental" because they are:

... intimately related to the public interest . . . These functions include those activities which require either the exercise of discretion in applying Government authority or the use of value judgment in making decisions for the Government.²³

And GAO has said:

... a key consideration in evaluating any function [for contracting] is whether its performance by an outside contractor interferes with an agency's control of policy, decision-making, or managerial function which are basic to its mission.²⁴

Using the GAO's criteria, each Superfund activity can be evaluated separately. Testing and information collection at sites and actual physical cleanup work appear to be most appropriate activities for contracting out.

The areas of policy, regulation, management, and oversight have the attributes GAO cited and seem the least appropriate activities for contracting out. EPA officials maintain that contractors do not make policy, but if contractors provide virtually all the information and analyses, have staff

Office of Management and Budget, Circular A-76 (revised), op. cit. Circular A-76 covers commercial/industrial services; Circular A-120 covers consulting services.

²⁴ U.S. Congress, Senate Committee on Veterans' Affairs, Oversight on Issues Related to OMB Circular A-76 Hearings, 97th Congress, 1st Session, Nov. 5, 1981, p. 118.

more experienced than EPA, and write key initial drafts, there is certainly a lot of opportunity for contractors to shape policies. Indeed, OTA has examined a number of contractor studies which later became the basis for program policies, including work done to revise the IFS process and the pre-remedial process.^E

Site analysis, as well as physical site cleanup, is technical in nature. But site analysis leads to critical policy decisions, such as whether a site does in fact require cleaning up or whether the Federal system will pay for the cleanup. Thus, using GAO criteria, not all steps in the initial site analysis phase may be appropriate for contracting out. Records of Decision (RODS) are probably an example of an inappropriate step. The ROD incorporates not only technical analysis but embodies policy decisions and has a legal bearing on EPA's ability to recover costs under the enforcement provisions of CERCLA.

Overall, few nonfield, report producing Superfund activities appear **eminently** appropriate for contracting out. The most appropriate Superfund activities to contract out--the physical examination, testing, and remediation of sites--are the most expensive, but so far most of the work has **not** been actual remediation. (This will change as the program matures.) As of June 1988, 103 sites were at the remedial action stage whereas 641 were still undergoing RIFs. Under current policy, with only 13 percent of the budget in fiscal year 1989 to be spent internally, *all* of that critical analysis on over 600 sites will be done by contractors.

Needed: Independent Contractor Work and Independent Government Capability

When communities, PRPs, OTA, and other groups have raised questions about contractor work at specific sites, EPA has often paid more money either to the original contractor to reexamine the work or to another contractor to repeat the work. Although there are some very experienced and expert staff in EPA, for the most part there is very little internal government capability, both expertise and time, to independently check contested contractor work.

Another issue is that the same contractors who do the policy and program support work also do the field engineering work. Does this practice encourage fresh thinking and critical analysis of past work to develop more effective policies? The good side of this practice is that the contractors bring to the policy and program support area real world experience. But the other side is that EPA is not getting independent evaluations of the work of the contractors who are implementing the program. Often EPA hires a contractor that is implementing a technical task for the program to discuss how to improve that task and to suggest policy changes. One of EPA's major contractors in the policy and management area, who has played a key role in the development of Superfund, has now branched out; most of its major recent growth has been from winning engineering and project management ARCS contracts to implement the programs it helped create. Did it have a special competitive advantage?²⁶

²⁵ See OTA's testimony, hearing before Subcommittee on Superfund and Environmental Oversight, Senate Committee on Environment and Public Works, Dec. 10, 1987. Two contractor reports were discussed: "RI/FS Improvement Analysis," by CDM, July 1987, and "Workload and Resource Requirements for Preliminary Assessments, Site Inspections, and Hazard Ranking System Evaluations Under SARA," by Ecology and Environment, October 1987. OTA said, "[EPA] could use management consultants or other experts who are not now implementing its programs and who, therefore, may be able to offer more objective ways to improve efficiency."

²⁶ The contractor states its position in one of its advertisements: "By building our engineering work on a solid foundation of regulatory know-how, ICF is qualified like no other firm to provide you with the most comprehensive hazardous and mixed waste management services in the nation. Unlike other firms, we understand not only the technical engineering and remediation aspects of hazardous waste management, but also the framework of regulatory requirements, enforcement, and public involvement in which our clients must operate."

It is not enough that government workers retain final decisionmaking authority unless those government workers have the time, experience, and technical expertise to understand and evaluate what contractors are telling them, as well as create the key basic ideas in the first place. That is, **there is a difference between contractors complementing or supplementing government staff and contractors replacing government staff.** In box B are brief examples, from several contract statements of work, to illustrate current Superfund program support and policy-related work performed by contractors. These seem the kind of activities that people expect government workers to do; some redundancy is also illustrated.

Superfund: Five Years? Twenty Years? Or, More?

Today, few people consider the Superfund program to be one with an early sunset. Simple mathematics confirms that, using the most conservative number of sites to be cleaned up of 2,000 and an optimistic pace of 30 cleanups per year, the Superfund program will be around for the next 60 years (until 2050). Moreover, the cleanup programs outside of Superfund (e.g., EPA's RCRA corrective action program and those in the Department of Defense and Department of Energy) are growing rapidly and they compete for the same workforce.

Given the prospect of a long-term program, the policy question becomes: What kind of infrastructure should EPA be developing to insure institutional movement up a learning curve to bring the program into cost-effective and efficient operation? It is one thing for contractors to gather data on site contamination and implement government cleanup decisions. However, in a number of site case studies, OTA has seen evidence that contractors sometimes explicitly or in a de facto sense decide what sites pose significant enough threats to warrant cleanup, what the cleanup goals should be, what the community should be told, what the most feasible remedies are, whether the field work is of sufficiently high quality, and when the cleanup has met its goals. For these critical activities, a lot of judgment is necessary because technical data cannot simply be plugged into equations to get the right answer.

Over the long term, OTA believes that the Nation would be better served by an experienced, competent *technical* government staff to design, closely supervise, and evaluate the field technical services provided by contractors. This is the critical need, more so than a cadre of government contract managers. But, contract managers is what EPA is focusing attention on.

BOX B.--Examples of Tasks in Current Policy Support Contracts

Booz Allen and Hamilton, "support for Superfund Implementation and Evaluation" (contract 68-01-7376, \$21.7 million):

- . Perform quarterly monitoring and evaluation of system operations and procedures
- conduct reviews of and develop recommendations on the regional management of the ERCS and TAT contracts
- evaluate environmental results achieved by the removal program
- conduct workforce and training need surveys and assessments
- collect and analyze information, develop reports and briefings on a variety of new emerging waste management technologies and innovations; recommendations shall be required on how to best make such information readily available to program personnel as they plan and implement cleanup objectives
- develop new policies and procedures to provide sound financial management and oversight toward the success of the Superfund program
- define requirements for planning and tracking of program strategic objectives, milestones and accomplishments
- define information needs, identify data sources and develop guidelines for source data collection
- develop issue papers, management briefings, user briefings and Headquarters-regional communications
- determine if [office] technology transfer activities are effective as developed by the program and whether, given the level of resources devoted to this effort, such a program can fulfill the need

CH2M Hill, "Technical Support for Superfund Policy Formulation" (contract 68-01-7481, \$12.7 million):

- . provide technical support and recommendations to EPA on management of Superfund construction

- perform investigation of and make recommendations for assisting minority, small business, other contractors, and subcontractors in the Superfund program

ICF, "Policy/Analytic Support for Superfund Implementation" (contract 6841 -7389, \$11.3 million):

- analyze statutory provisions to determine the need for new regulations, changes to existing regulations (i.e., NCP), new policy, and new guidance
- [for NCP] prepare regulatory impact analyses and regulatory flexibility analyses
- analyze SITE program issues and results and make policy recommendations
- develop methods for technology transfer

ICF, "Analytical, Technical and Management Services for OSWER" (contract 68-01-7481, \$7 million):

- collect and analyze data and information, develop reports and brief the technology transfer committee on a variety of new emerging technologies and innovations; recommendations shall be required on how to best make such information readily available to program personnel, including the Regions and States
- develop improved techniques for measuring performance
- analyze design, develop and implement selected training in critical content areas
- estimate the economic, social, and environmental costs and benefits of actual or proposed environmental regulations or policies on industry and government
- locate qualified experts
- assist in evaluating the economic and technical feasibility of various alternative technologies