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BY THE U.S. GENERAL ACCOUNTING OFFICE  
Report To The Honorable Paul Simon  
House Of Representatives

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**Flaws In Contractor Support For  
The Department Of Labor's  
Black Lung Program**

RELEASED

GAO contends that real competition was lacking in the Department of Labor's award of a 1979 contract for Black Lung Program support. GAO also found inadequate contract administration after award and general management problems. While not agreeing with all of GAO's findings, Labor has agreed to take improvement actions.



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UNITED STATES GENERAL ACCOUNTING OFFICE  
WASHINGTON, D.C. 20548

PROCUREMENT, LOGISTICS,  
AND READINESS DIVISION

B-204546

The Honorable Paul Simon  
House of Representatives

Dear Mr. Simon:

On December 5, 1980, you asked us to examine the Department of Labor's contract with Electronic Data Systems Corporation. As agreed with your Office, we limited our review to the Black Lung Program portion of the contract. Some general observations on management of the Black Lung Program are also discussed in the report.

As arranged with your Office, unless you publicly announce its contents earlier, we plan no further distribution of this report until 2 days from the date of the report. At that time we will send copies to interested parties and make copies available to others upon request.

Sincerely yours,

A handwritten signature in cursive script that reads "Donald J. Horan".

Donald J. Horan  
Director



D I G E S T

Congressman Paul Simon asked GAO to examine the Department of Labor's award and administration of a contract to Electronic Data Systems Corporation.

Although official contract files appear to show competition in the Department of Labor's award of a contract to operate a system for paying black lung bills and benefits, GAO uncovered a series of facts and circumstances indicating the competition may have lacked substance. These facts and circumstances are:

- The chairman of the technical evaluation panel had a negative predisposition toward one of the three prospective contractors competing for the award. (See p. 5.)
- Two other prospective contractors actually became one company shortly after contract award. (See p. 6.)
- The original request for proposals was amended during negotiations which resulted in reducing competition by compressing the differences in the proposed prices and giving more importance to technical aspects. (See p. 6.)

INADEQUATE CONTRACT ADMINISTRATION

Within the Department of Labor, there were inadequate contract administration practices and procedures to ensure the Government received what it paid for under the terms and conditions of the contract. In a few instances, Labor permitted practices that left the Government vulnerable to abuse. (See pp. 9 to 14.)

MANAGEMENT PROBLEMS IN THE  
BLACK LUNG PROGRAM

In reviewing contract award and administration aspects of the Black Lung Program, GAO observed a number of management problems, such as

- a lack of coordination (see p. 19),

- backlogs of unpaid bills (see p. 20),
- duplicate payments (see p. 21), and
- unresolved issues prior to awarding a contract for a new automated payment system (see p. 22).

#### RECOMMENDATIONS

GAO recommends that the Secretary of Labor institute controls to ensure that:

- When an offeror increases its cost proposal, the contracting office determines the reasons for the increase and assures commensurate value is obtained. (See p. 8.)
- Any reservations regarding the responsibility or qualifications of prospective contractors between technical and procurement personnel are resolved in accordance with Federal Procurement Regulations. (See p. 8.)
- Contract options, when appropriate, are exercised on time. (See p. 8.)

GAO also recommends that the Secretary:

- Direct the Inspector General to determine if the problems that have occurred on this contract are widespread. If they are, prompt corrective action should be taken to reduce Labor's vulnerability to potential waste and abuse. (See p. 15.)
- Clearly define the authority and responsibility of each of the organizations that affect the Black Lung Program. (See p. 24.)
- Direct the Employment Standards Administration to take certain corrective actions before a contract for a new automated procurement system is awarded. (See p. 24.)

#### AGENCY AND CONTRACTOR COMMENTS AND GAO'S EVALUATION

Labor disagreed with some of GAO's findings and conclusions, but in general, concurred with GAO's recommendations. Labor believes all of its procurement actions conformed to the requirements of Federal Procurement Regulations. It disagreed with GAO's proposal for specific charters for all entities involved with the

Black Lung Program. Labor believes its current mission and function statements adequately define the general authority and responsibility of each entity. (See app. I for Labor's comments and app. II for the contractor's comments.)

GAO did not comment on or criticize all the procurement actions of Labor because it did not review them all. However, GAO believes the questionable procedures Labor followed in awarding this contract cast a reasonable doubt that the resulting award was truly competitive. GAO also believes the statements of program officials regarding their uncertainty as to their responsibilities for the Black Lung Program indicate that Labor needs to communicate clearly defined lines of authority and responsibilities for the program.





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ABBREVIATIONS

EDS	Electronic Data Systems Corporation
GAO	General Accounting Office
PRC	Planning Research Corporation
PRI	Potomac Research, Incorporated

## CHAPTER 1

### INTRODUCTION

In response to a request from Congressman Paul Simon, we examined the Department of Labor's contract J-9-E-9-0046 awarded to Electronic Data Systems Corporation (EDS). The contract is for EDS operation of a manual claims processing system used to pay black lung benefits to eligible claimants and bills for health services provided to recipients or potential recipients. The Congressman asked us to examine the award of the contract, the contractor's performance in processing black lung claims, and Labor's administration of the contract.

During our review of the contract, we observed certain conditions and practices that could adversely affect the management of the Black Lung Program. These observations are set forth in chapter 4 of this report.

### REQUEST FOR PROPOSALS

At the request of the Employment Standards Administration's Division of Management Information and Computer Systems, Labor's central procurement office issued a request for proposals on October 10, 1978, and advertised in the Commerce Business Daily. The procurement office also sent the request for proposals to a number of firms.

The request for proposals required prospective contractors to provide a project manager and data entry personnel and terminal operators to be located in the 16 district offices of the Federal Employees' Compensation Program. It also specified the minimum and maximum number of hours Labor estimated it might use. The only reference to black lung was for personnel to operate a computer facility called the Black Lung Information System. This system, however, is not an integrated part of the manual processing system.

### CONTRACT AWARD

EDS; Potomac Research, Incorporated (PRI); and Planning Research Corporation (PRC) responded to the request for proposals. Each firm submitted cost and technical proposals on November 9, 1978. The cost proposals specified an hour rate for each labor category and included the contractors' labor cost, general and administrative expense, profit, and overhead. The cost proposals also included hourly labor rates for two 1-year options.

Each cost and technical proposal was evaluated by the contracting officer or a technical evaluation panel. To obtain total estimated cost for the 3-year period, the contracting officer multiplied Labor's minimum and maximum hours by the contractors' hourly labor rates. The cost evaluation showed

that PRC had the lowest total estimated cost, PRI the second lowest, and EDS the highest. Further, using a formula specified in the request for proposals, the contracting officer ranked the cost and technical proposals. The result was EDS first, PRC second, and PRI third. On the basis of technical merit, the technical evaluation ranked EDS first, PRC second, and PRI third.

Negotiations were held with all three prospective contractors on December 12, 1978. Labor's negotiating team consisted of the contracting officer and members of the technical evaluation panel. During negotiations, each prospective contractor was given amendment 3 to the request for proposals. That amendment, dated December 12, 1978,

--referred to the Service Contract Act,

--provided equivalent General Service ratings for the labor categories required in the request for proposals (data entry clerks were General Service 4 and terminal operators were General Service 7 through 9), and

--indicated Labor would pay comparable rates and benefits.

The prospective contractors were instructed to submit their best and final offers, based on the negotiations and amendment 3, by December 18, 1978. Upon receipt of these offers, the technical evaluation panel was given an opportunity to revise its rankings. There was no change in the technical ranking or in the overall rating--EDS first, PRC second, and PRI third.

EDS was awarded contract J-9-E-9-0046 on January 4, 1979. The initial contract price, or minimum, was \$700,000 and the maximum, or ceiling price, was \$4.4 million. Thus, the contract provided a range of \$3.7 million. The minimum, maximum, and range applied each year, so over a 3-year period the contract's estimated maximum cost could total \$13.2 million.

The contract is a labor hour, task order type. Under this arrangement, the contracting officer's technical representative, located in the Division of Management Information and Computer Systems, was to issue task orders to EDS. Also, EDS was to provide a task order response containing a statement of work and a cost estimate. The cost estimates consisted of the hourly labor rates previously agreed to and the number of labor hours EDS estimated it would take to perform the requested task. After Labor's representative and EDS signed the task order, it would be sent to the contracting officer for signature, thus ratifying it and making it a formal part of the contract.

During the first year, calendar year 1979, 11 task orders were issued--3 for the Black Lung Program, 3 for the Federal Employees' Compensation Program, 2 for the Office of Federal Contract Compliance, 2 for the Wage and Hour Division, and 1 task order was

canceled. All of the task orders for the Black Lung Program and the Federal Employees' Compensation Program were modified several times. The estimated cost for task order No. 2 for the Federal Employees' Compensation Program was \$700,000. Thus, the minimum contract price was reached with the first major task order. Task order No. 3 for the Black Lung Program was for an estimated cost of \$392,000 and was dated January 16, 1979, only 12 days after contract award. Task order No. 3 began providing data entry clerks and terminal operators to a manual processing system used to pay black lung benefits and bills. The various task orders for these programs were consolidated into one for each program in calendar years 1980 and 1981.

At the time of our review, the contract was in its third year and was extended to June 1982. An estimated \$2.6 million was expended in fiscal year 1981 for EDS's operation of the manual processing system.

### OBJECTIVE, SCOPE, AND METHODOLOGY

Early in the review, we learned the EDS contract was being used to acquire a variety of services for a number of Employment Standards Administration programs. Consequently, we reached an agreement with the Congressman's Office to limit our review to those EDS contract activities related to the Black Lung Program. Our objectives were to examine the contract's award, the contractor's performance in processing black lung claims, and Labor's administration of the contract.

We could not evaluate EDS's overall performance in processing black lung claims because appropriate measurement standards, such as the average length of time it should take EDS to process a claim, were never established. However, EDS and the Division of Coal Mine Workers' Compensation agreed that the manual processing system being used was not the most efficient and that better systems were available. Our review did not include an evaluation of the costs charged to the Government.

To assess the contract award process, we reviewed documentation which identified the needed services, initiated the request for proposals, and selected EDS as the successful contractor. In addition, we interviewed personnel to obtain explanations and clarifications on the information contained in the documentation.

To review the administration of the EDS contract, we examined the procedures and practices Labor followed to determine if it was carrying out appropriate surveillance of the contractor's activities. Also, we reviewed EDS reports to determine the extent and depth Labor had reviewed them. We also reviewed correspondence between EDS and the Employment Standards Administration to determine the scope and quality of direction provided EDS.

During our review, we received a number of allegations concerning irregularities in the use of the various trust funds, the unauthorized use of personnel, and a variety of other charges. While some of these irregularities may have involved black lung trust funds, the majority were related to the Employment Standards Administration's operations. Accordingly, we referred these matters to the Department of Labor's Office of Inspector General. The Inspector General initiated investigations and a number of other actions were taken in regard to these matters.

The organizations we visited are as follows:

--Headquarters, Department of Labor:

--Central procurement office.

--Employment Standards Administration:

--Division of Management Information and Computer Systems,

--Office of Workers' Compensation Programs,

--Division of Coal Mine Workers' Compensation,

--Division of Longshoremen and Harbor Workers' Compensation,

--Division of Federal Employees' Compensation, and

--Office of Program Development and Accountability.

--EDS Corporation, Annandale, Virginia.

We performed our review in accordance with our current "Standards for Audit of Governmental Organizations, Program Activities, and Functions."

## CHAPTER 2

### QUESTIONABLE PROCEDURES

#### FOLLOWED IN THE AWARD

#### OF THE CONTRACT TO EDS

The Department of Labor conducted the award of contract J-9-E-9-0046 to EDS under conditions that gave the appearance of competition but which may not have achieved substantive competition. In addition, although EDS increased its proposed price by \$360,000, Labor received no assurance that commensurate value would be provided. Finally, Labor's failure to exercise an option to renew the contract in a timely fashion resulted in increased costs of about \$130,000.

#### INEFFECTIVE COMPETITION

##### Unofficial elimination of one contractor

The Federal Procurement Regulations permits the use of experience as a factor in evaluating a contractor's ability to perform. Under appropriate conditions, such as poor performance in the past, a contractor can be found nonresponsible. Labor, therefore, could have pursued this course of action and officially eliminated PRC, the incumbent contractor, from competition. Labor, however, chose not to do so.

Before the procurement office issued the request for proposals, the Division of Management Information and Computer Systems recommended that the proposed procurement be designated a minority small business set aside. This would have permitted a sole-source award. Labor's contracting officer told us that the Division of Management Information and Computer Systems did not want PRC to have an opportunity to win award of the contract because it had performed poorly in the past. Thus, the set aside strategy was devised. Although the set aside strategy was later abandoned, other Labor personnel confirmed that the set aside action was initiated for this reason.

This view was supported in some respects by our testimony before the Subcommittee on Manpower and Housing, House Committee on Government Operations, on April 10, 1979. We testified that Labor had awarded PRC a contract to develop a computer-oriented information system for the Federal Employees' Compensation Program. However, after several years and at a cost of \$1.5 million, PRC had not provided an operational system.

An official of the Management Information Division and the contracting officer told us that they were aware of the reason for initiating the set aside. Nonetheless, they designated the person who initiated the set aside strategy as chairman of the

technical evaluation panel, a position of importance second only to that of the contracting officer. According to the contracting officer, he asked the chairman if fairness and impartiality would be exercised and was told yes. After some further thought, the contracting officer conceded that the judgment used to select the chairman was open to question. The Director of the Division of Management Information and Computer Systems also told us that the designation was questionable.

When we asked the chairman if competition had been influenced, he said "there was no way PRC would win." The reason was that PRC had named the same people to work on contract -0046 that had worked on earlier contracts and the technical evaluation panel did not believe these people would be satisfactory in managerial positions.

#### Two other competitors consolidate

Although EDS stated it initiated action to acquire PRI 2 months after contract award, the contracting officer stated he first heard of the planned acquisition in February 1979, a month after award. A Vice President of EDS, who had taken part in some of the negotiations between EDS and PRI, stated that he could not unequivocally state no negotiations had occurred before or during contract award. EDS contends that the subsequent acquisition of PRI was coincidental and that no impropriety occurred.

In addition to the negative predisposition of the chairman of the technical evaluation panel toward one competitor, the remaining two competitors ultimately became one. In our opinion, these circumstances suggest that true competition may not have been obtained.

#### Amendment to the request for proposals

The original request for proposals advised prospective contractors that the Service Contract Act applied and referred to a number of wage determinations. The act provides that the wages of service employees working under Federal contracts will be based on determinations made by the Secretary of Labor for that locality. During negotiations the contracting officer provided copies of an amendment to the original request for proposals to EDS, PRC, and PRI. The amendment referred to the exact same wage determinations contained in the original proposals. It also provided a table showing for each labor category an equivalent General Service rating. For example, secretarial/clerical personnel were equivalent to GS-4, while terminal operators were equivalent to GS 7 through 9. The amendment stated the ratings would be the wage rate and benefits Labor would be willing to pay. This additional information, which is required by the Service Contract Act, was apparently omitted from the original request for proposals.



The contracting officer told us that he hoped the amendment would indicate to the contractors that Labor wanted a higher level of talent than that indicated in the contractors' original proposals. However, he received no assurance that the amendment had any affect other than to increase EDS's offer by \$360,000.

Although the wage determinations, upon which contractor employees' wages must be based, did not change, all three contractors raised their prices as a result of the amendment. EDS increased its price by \$360,000. Labor's notes on the negotiations with the three prospective contractors did not indicate the reasons for the price increases, or whether that was even discussed with the contractors.

#### FAILURE TO EXERCISE OPTION ON TIME WAS COSTLY

Labor failed to exercise its option to extend the EDS contract for a second year by January 4, 1980, the required date, because of a lack of coordination or apparent confusion among responsible individuals. As a result, program costs increased by about \$130,000.

An example of the lack of coordination is that the technical representative was unaware of the need to exercise the option. EDS's project manager inquired about the status of the option on January 4, 1980. This was the first time the technical representative was aware of the need to exercise the option. As a result of EDS's inquiry, he initiated action to extend the contract. In addition, a lack of coordination between other offices of Labor contributed to this failure. The contracting officer stated he was advised that the Employment Standards Administration could not determine if "it had enough money available to exercise the option."

EDS took the position that the contract had lapsed and wanted to negotiate new labor hour rates. EDS was within its legal rights since the option was not exercised on time. However, Labor believed its intention to exercise the option was obvious and that EDS knew this. The differences were discussed by the former Assistant Secretary of the Employment Standards Administration and a Vice President of EDS. EDS continued to perform at the labor hour rates included in the original contract.

A contract modification was executed on April 24, 1980. The modification established new labor categories at higher rates. For example, most terminal operators became senior terminal operators. The increased cost related to this modification was about \$130,000. The contracting officer stated the modification was the "price" paid to have EDS continue working.

## CONCLUSIONS

Taken collectively--the negative predisposition of the chairman of the technical evaluation panel toward PRC, the consolidation of PRI with EDS, and the amendment to the original proposals--there is some doubt as to whether there was substantive competition or merely the appearance of competition. Also, Labor failed to determine whether the Government received a commensurate value for the increase in the contract's price of \$360,000.

Regardless of the reasons, the failure to exercise the option for another year increased program costs by about \$130,000. Further, it indicates a lack of coordination between the organizations within the Employment Standards Administration and between Labor's central procurement office and the Standards Administration.

## RECOMMENDATIONS

We recommend that the Secretary of Labor institute controls to ensure that:

- When an offeror increases its cost proposal, the contracting officer determines the reasons for the increase and assures commensurate value is obtained.
- Any reservations held by Labor officials regarding the responsiveness or qualifications of prospective contractors be resolved in accordance with Federal Procurement Regulations.
- Contract options, when appropriate, are exercised on time.

### CHAPTER 3

#### ADMINISTRATION OF

#### EDS'S CONTRACT PERFORMANCE

#### WAS VIRTUALLY NON-EXISTENT

Contract administration includes all of the steps, practices, and procedures an agency follows after a contract has been awarded to assure itself that the contractor's performance and the quality of the product or service delivered comply with regulations and contract terms. Contract administration over EDS's operation was weak, and in a few instances, practices were permitted that left the Government vulnerable to abuse.

The Division of Coal Mine Workers' Compensation resorted to questionable procedures to reduce backlogs and/or expedite payments because of complaints by members of Congress, coal miners, and physicians and/or health care facilities. Even if the division or the Employment Standards Administration had attempted to monitor the contractor's performance, it would have been severely handicapped because Labor had not established standards or criteria that could be used to measure EDS's performance.

Total reliance was placed on the contractor's integrity without taking appropriate measures to verify that such reliance was well founded or that contractor operations were being conducted efficiently and effectively. A situation such as this leaves the Government vulnerable to waste and abuse. EDS commented that our presentation of weaknesses in internal controls could imply that it had taken advantage of those weaknesses and had abused the system. We are not implying that EDS did or did not abuse the system, we are only making observations of weaknesses noted so that prudent management can take appropriate actions to protect the Government's interests.

The need for adequate internal control measures designed to reduce or eliminate Government vulnerability has been a concern of ours and of the Office of Management and Budget's. It is also the basis for the requirements stated in the Federal Procurement Regulation:

"\* \* \* it is essential that this type of contract [labor hour] be used only where provision is made for adequate controls including appropriate surveillance by Government personnel during performance to give reasonable assurance that inefficient or wasteful methods are not being used.\* \* \*"

The lack of adequate contract administration may exist on other Employment Standards Administration contracts because the technical representative--the official primarily responsible for contract administration--on the EDS contract is also responsible

for administering two other major support contracts. This representative is also a branch chief; thus, the contract administration duties are in addition to the duties of a full-time position. Personnel in the Employment Standards Administration and the Division of Coal Mine Workers' Compensation believe the contract administrator position should be located in the program office, not in the Division of Management Information and Computer Systems. They also pointed out that the Employment Standards Administration does not have a clear understanding of the need for and the importance of contract administration, and this is reflected in a lack of staff and ad hoc appointments.

#### LACK OF PHYSICAL SURVEILLANCE

During calendar years 1979 and 1980, not a single representative from Labor was assigned to monitor EDS's performance.

The Division of Coal Mine Workers' Compensation did assign personnel to work at EDS for 90 days in 1980. However, the personnel were claims examiners who were expediting payments or handling difficult or unusual claims. Yet, it was during these years that EDS expanded its work force, began developing procedures for a manual processing system to pay bills and benefits, and relocated its offices. Therefore, no real change occurred during 1979 and 1980 as far as contractor surveillance was concerned.

The Director and Deputy Director, Division of Coal Mine Workers' Compensation, told us there was a need for onsite representatives to monitor EDS's performance. However, due to a lack of personnel, the representatives could not be assigned.

#### LACK OF DOCUMENT REVIEW

At best, Labor only gave EDS's invoiced costs a cursory review, even though the total amount of invoices for a 26-month period was \$4.1 million. For example, during 1979 a part-time employee, assigned by the representative, looked over the invoices, but this was the extent of any review.

In December 1979 a new representative stated that he relied primarily on the Division of Coal Mine Workers' Compensation to review the invoices. However, officials of this Division stated they never saw an invoice until February 1981. This came about because EDS submitted its invoice for black lung support totaling \$296,000. The technical representative stated he initially did not approve the invoice for payment because the previous invoice totaled \$172,000 and there was no explanation for the increase. The representative, therefore, sent the invoice to the Director of the Division of Coal Mine Workers' Compensation for approval. The Director approved the invoice because he had reached an agreement with EDS that the representative was unaware of. The technical representative subsequently approved

the invoice, however, he did not receive an explanation for the increase.

#### QUESTIONABLE PROCEDURES

The reason for the increase from \$172,000 to \$296,000 in monthly charges was that the Division of Coal Mine Workers' Compensation had entered into an agreement with EDS to reduce a backlog of diagnostic bills and other items, such as 200,000 folders and 20,000 unanswered pieces of mail, that had accumulated at a separate location. According to Division officials, the backlog occurred because they did not have adequate numbers of personnel. They believed the only alternative was to contract with EDS if the bills were to be paid because the Division's two attempts to reduce the backlog had been unsuccessful.

The Division, therefore, asked EDS if it would assist. EDS submitted a work plan calling for the use of 3 or 4 EDS supervisors and 45 temporary employees. The temporary employees were to be interviewed and hired by one of the supervisors within 2 working days and were to be given 15 hours of training as claims examiners. EDS estimated the costs of the operation at \$150,000. Division officials said they had obtained the approval of the Director, Office of Workers' Compensation, and they believed the Director had advised the budget director and contracting officer. These officials, however, were not contracting officers and therefore were not authorized to enter into a contractual agreement with EDS.

EDS subcontracted with a firm that provides temporary employees. The work plan submitted to the Division did not indicate a subcontractor would be used. Although Division officials became aware of the use of a subcontractor and knew EDS was billing labor hours at the rates agreed to in its contract, they made no inquiries as to the amount EDS paid the subcontractor.

Division personnel who had worked on the two previous attempts to eliminate the backlog stated they pulled each folder, determined if the folder contained bills, and if so, prepared the necessary forms for payment. A copy of a chart used during one of the attempts showed the amount of money disbursed each day, with the objective of \$10 million to be paid out over an 8-week period, or \$1.25 million a week. Division officials told us that, under these fast-pay conditions, quality control procedures were nonexistent and many duplicate payments were made.

#### PRACTICES DID NOT PROTECT THE GOVERNMENT'S INTERESTS

Most businesses generally establish internal control procedures over the procurement process to protect their interests and to eliminate complete control over activities or

functions by a single individual or organization, thus, making inappropriate activities more difficult to carry out. These procedures include requiring verification of costs incurred, separating duties with surveillance of a group's or an individual's activities by another group or individual, and using standards to compare actual performance. The Government also recognizes the need for such procedures and provides the following guidance in the Federal Procurement Regulations.

"\* \* \* Particular care should be exercised in the use of this type of contract (labor-hour) since its nature does not encourage effective management control. Thus, it is essential that this type of contract be used only where provision is made for adequate controls, including appropriate surveillance by Government personnel during performance, to give reasonable assurance that inefficient or wasteful methods are not being used.

Because this type of contract does not encourage effective cost control and requires almost constant Government surveillance, it may be used only after a determination that no other type of contract will suitably serve.\* \* \*"

Labor ignored the need for internal control procedures and failed to comply with the regulations. As a result, the Government was vulnerable to waste and abuse, as described below.

#### Use of overtime

Under the terms of the contract, EDS was required to obtain the technical representative's approval for overtime. <sup>1/</sup> However, the technical representative authorized EDS to use overtime up to 10 percent of regular time without obtaining his prior approval. EDS, therefore, could "approve" its own use of overtime, report overtime in monthly invoices, and receive payment without review. The representative stated EDS was given approval authority because it was making so many requests for overtime that individual approvals were time consuming. When we advised the contracting officer of the situation, he said that the representative had no authority to change the terms of the contract and that the waiver of the requirement for prior approval was inappropriate.

Overtime charged to the Black Lung Program totaled more than \$200,000 for calendar years 1979 and 1980. We did not calculate overtime charges for the Federal Employees' Compensation Program, but the situation was the same. The practice of

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<sup>1/</sup>Overtime hours are charged to the contract at considerably higher rates than regular hours.

permitting EDS to approve the use of overtime was stopped on June 19, 1980.

#### District office - Labor

EDS provided about 10 persons to work in each of the 16 Federal Employees' Compensation district offices located across the Nation. For the first 26 months of the contract, these employees submitted timecards, which are the basis for labor charges, without Labor's verification or approval. The only persons authenticating the accuracy of these timecards were EDS supervisors. A recent circular states that Labor's district office supervisors are now required to approve EDS's timecards prior to their submission.

#### Lack of standards

The initial task orders issued under the EDS contract were for the services of data entry clerks and terminal operators to support the Black Lung Program. These task orders, however, quickly evolved into a manual bills/benefits payment system that is the main support of the Black Lung Program.

This evolution and dependence occurred without any standards that could be used to measure EDS's performance. For example, there is no standard as to the average length of time it should take to process a medical treatment bill for payment. EDS and the Division of Coal Mine Workers' Compensation are still working on quality control procedures, even though the contract is in its third year. Further, there is no agreement as to what is an acceptable backlog of unpaid bills, how long it should take to resolve correspondence, or what the costs related thereto should be.

#### Contract cost and profit controlled by EDS

In 1980 and 1981 EDS prepared the task orders (definition of the work to be done) for the Black Lung Program and the Federal Employees' Compensation Program. The technical representative told us EDS was viewed "as another pair of hands" and was permitted, therefore, to define the work it was to do rather than being told what to do.

In addition, Labor did not analyze the estimated costs to do the work; it simply approved them. For example, in calendar year 1979, EDS submitted a cost estimate of \$392,000 for task order 3. The estimate consisted of the hourly labor rates previously agreed to multiplied by the number of labor hours EDS estimated it would require. We could find no documentation in the contract file or in the technical representative's files to indicate that Labor had analyzed the estimated costs or had held discussions to determine the basis of EDS's method of estimating labor hours. To confirm this lack of documentation, we

specifically asked the contracting officer if there was any additional documentation that had not been made available to us. The contracting officer stated all documentation had been made available to us.

The lack of analysis and discussion also occurred on modifications to the task orders. For example, task order 3 was modified and approved in the amount of \$88,693. However, the two figures on the modification were incorrectly added and the correct sum was \$78,693, or \$10,000 less. EDS's project manager, the technical representative, and the contracting officer all signed the modification without noticing the error.

Another instance of a similar nature occurred when several task orders were modified using the same document. The contracting officer reduced the amount of the modification from \$648,842 to \$602,186. However, during the process of formally amending the contract, the Director, Office of Procurement, approved the modification at the original cost of \$648,842.

The contracting officer told us that, with one or two exceptions, the technical representative was responsible for negotiation, including the estimated cost or ceiling price of each task order. The technical representative told us the Division of Coal Mine Workers' Compensation was responsible. The Director and Deputy Director of the Division said they never negotiated any prices and assumed the contracting officer did. This confusion resulted in no one conducting analyses or negotiations.

### CONCLUSIONS

EDS was permitted to define the work it was to do, make the initial cost estimates of what it would cost to do the work, and submit modifications to these initial estimates to increase costs. Labor simply approved the estimates and did not subject them to analysis or negotiation, although required by Federal Procurement Regulation 1-3.807.2(a) which states "\* \* \* some form of cost or price analyses should be made in connection with every negotiated procurement action \* \* \*."

EDS was controlling costs because it initiated the original cost estimates and modifications. By controlling costs, EDS also increased its profits and recovery of overhead since these charges are included in the hourly labor rates.

The EDS contract simply provided a vehicle for various organizations within the Employment Standards Administration to obtain labor hours at a fixed rate. The organizations, however, did not have any means to analyze EDS's original estimates or EDS's modifications to task orders. Therefore, they had to rely on the contractor. As a result, the Government was vulnerable to waste and abuse.



This vulnerability is increased when overall contract administration is weak. Contract administration on this contract involved the ad hoc appointment of a technical representative who was already employed in a full-time position. Nonetheless, little additional staff was provided. Thus, review efforts, if any, were "desk audits" performed at headquarters. In such situations, total reliance is placed on whatever the contractor reports. The Employment Standards Administration practiced similar procedures on a previous contract with disastrous results. (See p. 5.) During congressional testimony given in the aftermath, Labor officials stated they would take whatever actions were necessary to ensure a similar situation would not occur. Such actions have not yet been taken.

#### RECOMMENDATION

We recommend that the Secretary of Labor direct the Inspector General to determine if the problems that have occurred on this contract are widespread. If they are, prompt corrective action should be taken to reduce Labor's vulnerability to potential waste and abuse. One course of action that should be considered is the establishment of an organization devoted to contract administration on other than an ad hoc basis.

CHAPTER 4

OBSERVATIONS ON SOME MANAGEMENT PROBLEMS

IN THE BLACK LUNG PROGRAM

We also observed conditions and practices that adversely affect the overall management of the Black Lung Program.

BACKGROUND

The Federal Coal Mine Health and Safety Act became law on December 30, 1969, and was amended in 1972 and 1977. The act provides for

- monthly cash payments to eligible coal miners afflicted with pneumoconiosis, commonly called black lung;
- reimbursement of medical expenses related to the treatment of black lung; and
- reimbursement of expenses for diagnostic tests to determine miner eligibility.

Labor has been responsible for the Black Lung Program since July 1973. The number of claims submitted to Labor from 1973 through December 31, 1979, and actions taken are shown in the following table.

<u>Action</u>	<u>No. of claims</u>
Approved	155,460
Denied	<u>50,501</u>
Total acted on	205,961
Undetermined (note a)	<u>138,026</u>
Total submitted	<u>343,987</u>

a/Undetermined claims are those where no action was taken, either approval or denial.

The total number of active claims as of December 31, 1979, was 50,710. The largest groups of beneficiaries were miners (30,740) and miners' widows (19,366). Total benefits paid over the last three calendar years, medical services and monthly compensation, are shown on the next page.

	<u>1979</u>	<u>1980</u>	<u>1981</u> <u>(note a)</u>	<u>Total</u>
	----- (000) -----			
Medical services	\$ 13,875	\$ 26,493	\$ 31,288	\$ 71,656
Percent of total	1.9	3.75	4.6	3.3
Monthly compensation	715,082	680,044	645,221	2,071,509
Percent of total	<u>98.1</u>	<u>96.25</u>	<u>95.4</u>	<u>96.7</u>
<b>Total</b>	<b><u>\$728,957</u></b>	<b><u>\$706,537</u></b>	<b><u>\$676,509</u></b>	<b><u>\$2,143,165</u></b>

a/Total benefits paid through 8-31-81 were medical services \$20,858,835 and monthly compensation \$451,006,474. If these payments continue at this rate, total payments will be about \$676.5 million.

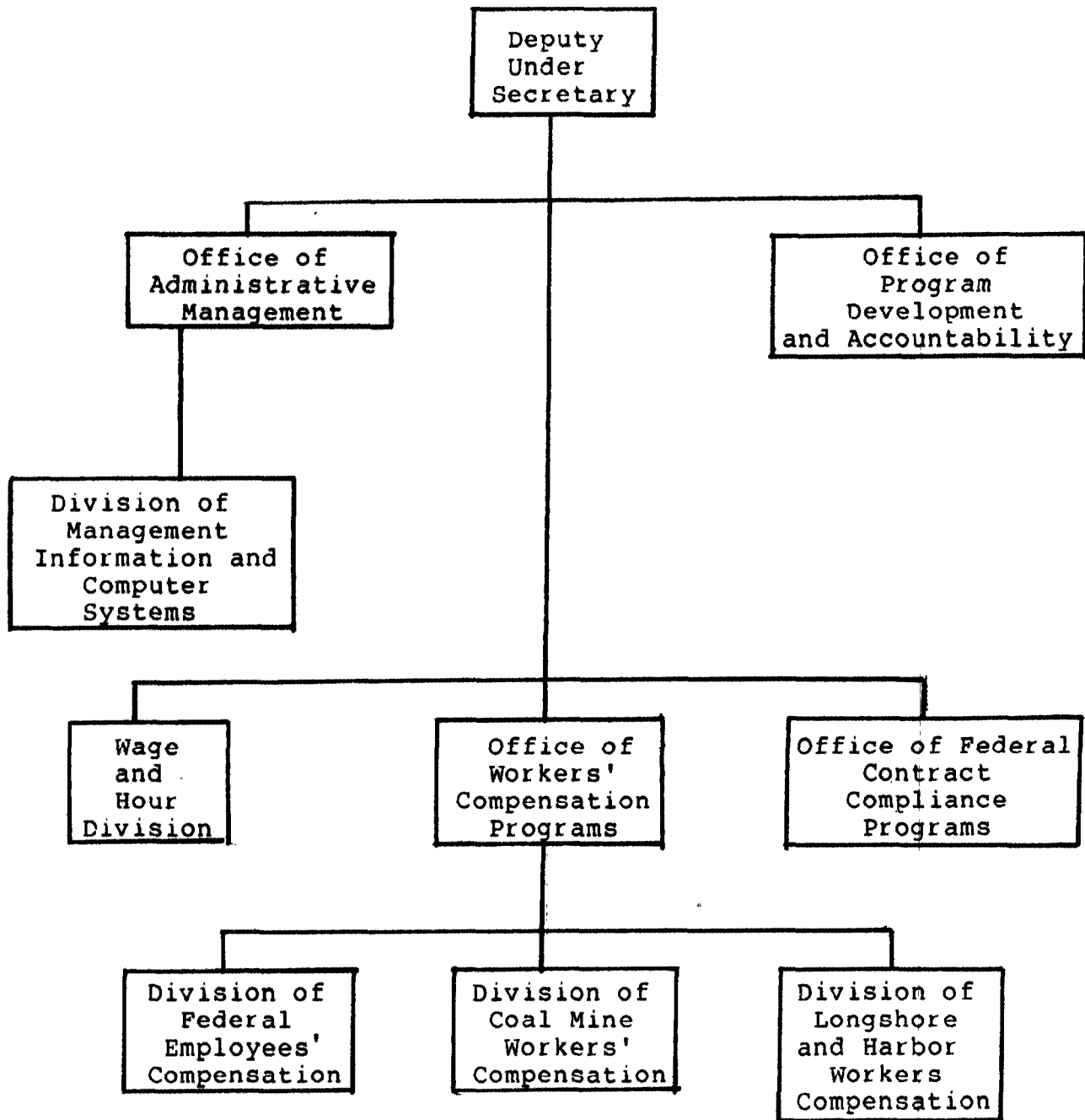
Within the Department of Labor, management responsibility for the Black Lung Program is located in the Employment Standards Administration. There are several offices or divisions within the Employment Standards Administration that are responsible for one or more functions of the Black Lung Program. These responsibilities are divided as follows:

- The Office of Program Development and Accountability prepares the overall budget for the program and submits the request to the Congress. It informs the offices and divisions of appropriations approved by the Congress, approves their funding requests, and accounts for the funds spent by the offices and divisions.
- The Division of Management Information and Computer Systems develops the program's budget for automated data processing needs and submits the budget to the above office. Also, this Division administers all contracts for automated data processing services.
- The Division of Coal Mine Workers' Compensation performs the day-to-day processing of claims for medical services and monthly compensation. It is part of the Office of Workers' Compensation Programs.

Thus, the Division of Management Information and Computer Systems initiated the action leading to the award of the contract to EDS. Also, it established the budget to support the services to be obtained and administered the contract. The Office for Program Development and Accountability approved the necessary funding requisitions to pay EDS and kept the records showing funds expended against budget authority. The Division of Coal Mine Workers' Compensation used the contract to obtain the services of EDS to operate a manual payment system for claims for medical services and monthly compensation benefits.

The chart on the following page shows the organization of the Employment Standards Administration at the time of our review.

EMPLOYMENT STANDARDS ADMINISTRATION\*



\*Does not represent all Employment Standards Administration organizations.

## PROGRAM MANAGEMENT

Black Lung Program management was dispersed among the different organizations of the Employment Standards Administration, with little coordination between them. The Division of Coal Mine Workers' Compensation did not prepare or control its own budget and had never seen an approved budget until March 1981. The former Deputy Director of this Division stated the situation was the same in calendar year 1979 and is the same in the program of which he is currently Director. The Office of Workers' Compensation Programs, the management level immediately above the Division, confirmed that it did not provide approved budgets to the Division of Coal Mine Workers' Compensation Programs.

The Division, therefore, spent whatever was necessary to carry out the program and assumed funding was available. This assumption was incorrect, leading to a pooling of funds administered by the Employment Standards Administration. For example, the Division of Management Information and Computer Systems requested a budget of \$224,000 to fund the black lung portion of the EDS contract in fiscal year 1981. A more appropriate request would have been \$2.4 million. To cover the difference, the Office of Program Development and Accountability used funds from the Federal Employees' Compensation Program. In addition, the Employment Standards Administration requested and received a supplemental appropriation. We advised the Inspector General of this situation and provided documentation obtained during our review. We were told the situation was investigated and a number of organizational and personnel changes were made.

As mentioned previously, the Division of Management Information and Computer Systems prepared the Division of Coal Mine Workers' Compensation's budget for automatic data processing. The Division's overall budget was prepared by the Office of Program Development and Accountability. However, we could find no evidence of coordination between these organizations. Thus, the individuals responsible for running the Black Lung Program did not know what automatic data processing resources had been provided for them to accomplish their assigned duties.

Administration of the EDS contract, the major tool for processing and paying black lung benefits, was the responsibility of the Division of Management Information and Computer Systems, not the Division of Coal Mine Workers' Compensation. As a result, Coal Mine Workers' officials did not see the EDS monthly invoices for work done under the Black Lung Program. The technical representative located in the Division of Management Information and Computer Systems did not know of the oral and written communications between EDS and the Division of Coal Mine Workers' Compensation.

The Director of Management Information and Computer Systems told us the program offices should be the organizations responsible for defining automatic data processing needs,

performing day-to-day operations and maintenance, and administering contracts for such services. In his view, the Division of Management Information and Computer Systems does not have adequate personnel to perform these functions and, since the program offices are responsible for overall program performance, it is in their own interests to ensure effective use of automatic data processing.

#### CURRENT EDS CONTRACT

The current system operated by EDS and used by the Division of Coal Mine Workers' Compensation is a manual (labor intensive) process that both agree is costly, inefficient, and error prone. The process involves keeping three folders on each beneficiary in different locations and moving them numerous times. According to Labor personnel, these moves, in conjunction with the limitation of the manual system, resulted in lost folders, duplicate folders, incomplete folders, misrouted and misfiled bills, and out-of-date correspondence.

Difficulties were also experienced in:

- The acquisition and organization of facilities and personnel by EDS during calendar year 1979 and the first part of 1980.
- The edit of payment tapes prepared by EDS and sent to the U.S. Treasury for use in the preparation of checks.
- The transfer of responsibility for diagnostic bills to the Black Lung Program's district offices.
- The use of two computer systems that perform a variety of tasks in conjunction with the manual processing system.

The lack of coordination combined with all the difficulties of a manual system, as described above, acted together to create backlogs of unpaid bills. The backlogs persisted through calendar year 1980. For example, EDS reported:

- (March 1980)       "\* \* \* fairly high backlog of diagnostic bills have developed \* \* \*."
- (August 1980)     "\* \* \* Old bills are being prioritized to receive rapid review and payment. Based on our projection this project should be current in two months.\* \* \*"
- (September 1980)  "\* \* \* In the area of lump sum benefits payments to miners a special task force of EDS personnel was assembled to reduce a

large backlog of payment documents. Within 7 days of notification, payments totaling \$25 million were made to claimants.\* \* \*

(November 1980)

"\* \* \* a conversion and system problem brought the bill payment cycle to a stop when edits were not done for 3 weeks.\* \* \*

"\* \* \* additionally there were 188 batches keyed before November 1, 1980 still not edited. These will probably have to be re-keyed.\* \* \*

(December 1980)

"\* \* \* There are currently 1,000 errors awaiting research.\* \* \*

"\* \* \* Our backlog of file creates grew to over 5,700.\* \* \*

"\* \* \* 32 959's [documents] totaling \$500,000 are being held for program fix.\* \* \*

These backlogs resulted in (1) numerous complaints and appeals from beneficiaries experiencing hardships, (2) threats from medical providers of leaving the Black Lung Program, and (3) inquiries from members of Congress and the Executive Branch as to why the backlogs could not be reduced or eliminated.

In response, officials of the Division of Coal Mine Workers' Compensation were continuously shifting their own personnel and directing EDS to get the bills paid even if routine safeguards would have to be waived. Thus, a program attitude of "pay the bills" developed. When backlogs occurred, a "sweep" would be instituted where a general search of all folders would be made for unpaid bills and then all such bills would be paid as quickly as possible. At least three separate sweeps were conducted with normal criteria eliminated. For example, a sweep would be instituted with the understanding that quality assurance procedures would not be applied and that the requirement for a certificate of medical necessity would be waived. In some cases, criteria were established to accelerate even these efforts. One sweep was conducted where bills up to 10 percent over a State's fee schedules would be paid to routine providers. Bills 50 percent higher than the schedule submitted by one-time providers were also paid.

#### Duplicate payments

We also observed a volume of voluntary returns of duplicate or erroneous payments. Voluntary returns occur when claimants and/or providers receive duplicate checks and return them on

their own initiative. EDS and the Division of Coal Mine Workers' Compensation do not have any estimate as to the amount of total overpayments, and the EDS project manager did not believe a reasonably accurate estimate could be made. As the following table shows, voluntary returns are growing, indicating a worsening of the situation.

<u>Calendar year</u>	<u>Total benefit payments</u>	<u>Payments voluntarily returned</u>	<u>Percent</u>
------(millions)-----			
1979	\$ 728.9	\$14.2	1.95
1980	706.5	18.9	2.68
1981	<u>a/676.5</u>	<u>b/32.0</u>	4.73
Total	<u>\$2,111.9</u>	<u>\$65.1</u>	3.08

a/Total benefit payments through 8-31-81 were \$451.0 million or \$56.375 million a month. If the monthly average continues, total payments will be about \$676.5 million.

b/Voluntary returns from January through April 1981 were about \$10.7 million. If the voluntary returns continue at the current rate, it is estimated that \$32 million will be returned in calendar year 1981.

PROCUREMENT OF A NEW  
AUTOMATED PAYMENT SYSTEM

Labor requested a delegation of procurement authority from the General Services Administration so that it could procure an automated payment system. General Services returned the request for clarification on a number of aspects. Labor received a delegation of authority on June 18, 1981. An informational request for proposals was issued, requesting industry's views on the proposed procurement.

The Director of the Division of Coal Mine Workers' Compensation told us that the data base currently used in the Black Lung Program should be "purified" before it is used to develop an automated system. "Purifying" the data base is a process of verifying the accuracy, reliability, and completeness of the information before applying automated data processing methods. However, there is some question whether this will be done, and if so, when.

We have reservations, therefore, on whether the proposed procurement will accomplish what is needed. The Office of Inspector General advised us that it shared our reservations about the award because of the lack of specific requirements the contractor would have to meet.



## CONCLUSIONS

The Black Lung Program has had problems with backlogs of unpaid bills. Intended beneficiaries, medical providers, and members of Congress, therefore, have been dissatisfied. At the same time, significant duplicate payments have occurred. Thus, while some beneficiaries have not been getting paid, others have been getting paid twice.

In our opinion, the reasons for this unsatisfactory performance are the lack of coordination between organizations within the Employment Standards Administration and the use of a manual processing system that Labor and EDS agree is inadequate. We believe the following questions should be resolved before another contract award is made.

--Is the current data base adequate to provide a good foundation for the new system?

--Are there existing standards that can be used to establish how long it should take to process a claim? And how much it should cost?

--What provisions are there to protect the Government's interests, eliminate duplicate payments, or audit claims submitted?

Further, while acquisition of a new system may be a step in the right direction, it should be accompanied by a realignment of the responsibilities and authority of the organizations within the Employment Standards Administration. If the program office concept is to be used for operation of the various programs, then program offices must be given the authority as well as the responsibility. Staff organizations, such as the Division of Management Information and Computer Systems, would provide assistance in the form of expert advice as to technical feasibility. The program offices would be responsible for identifying their automatic data processing needs, estimating the cost of such needs, and administering the contracts awarded to satisfy the needs.

During our review, we provided information used at hearings held before the Subcommittee on Labor, Health and Human Services, and Education, House Committee on Appropriations, on March 20, 1981. The Subcommittee directed the Employment Standards Administration to take whatever steps were necessary to obtain adequate financial accountability. In our opinion, this would be an opportune time to consider changes in the organizational structure.

## RECOMMENDATIONS

To provide for a quick resolution of any disputes and to ensure effective coordination, we recommend that the Secretary of Labor clearly define the authority and responsibility of each of the organizations within the Employment Standards Administration that affect the Black Lung Program. We also recommend that the Secretary, before a contract for a new automated payment system is awarded

- develop a clear, concise description of what the contractor will be required to do,
- purify the Black Lung Program's data base so the information provided the contractor is accurate, complete, and current, and
- establish standards so the contracting parties have a clear understanding of what levels constitute acceptable performance.

## CHAPTER 5

### AGENCY AND CONTRACTOR COMMENTS

#### AND OUR EVALUATION

On November 13, 1981, we asked Labor and EDS to comment on a draft of this report. EDS provided comments orally and confirmed those comments in its November 30, 1981, letter. (See app. II.) Labor requested, and we granted, a 2-week extension beyond the normal 30 days, to December 28, 1981. On December 31, 1981, Labor provided its comments. (See app. I.)

#### DEPARTMENT OF LABOR'S COMMENTS AND OUR EVALUATION

In general, Labor concurred, in all or in part, with our recommendations. However, Labor, in reference to our recommendation dealing with contractor responsiveness and qualifications said (see p. 29) that this and all other procurement actions conformed with applicable Federal Procurement Regulations at the most favorable cost to the Government. We cannot comment on whether all procurement actions were conducted properly because we did not review all procurements. However, in our opinion, chapter 2 shows that the benefits of competition may not have been attained because there were strongly held views against PRC being awarded the contract. Therefore, we do not agree with Labor's viewpoint as it relates to this contract.

In reference to our recommendations on determining if problems on this contract are widespread and establishing an organization devoted to contract administration, Labor agreed. Labor indicated it was addressing the need to strengthen the role of the technical representative by establishing a more definitive charter.

Labor concurred, in part, with our recommendation dealing with clearly defining the responsibilities of each group within the Employment Standards Administration that affect the Black Lung Program. It disagreed that specific charters are needed for each group because it believes current mission and function statements define the general authority and responsibility of each entity. We believe we show in chapter 4, that, despite the existence of mission and function statements, divisions within the Employment Standards Administration were not coordinating their actions on the Black Lung Program. Also, some officials were unclear as to their responsibilities for the program. We continue to believe Labor needs clearly defined lines of authority and responsibility for the organizations within the Employment Standards Administration.

## Other comments

Labor took exception to the following findings and conclusions we developed on the competition, award, and administration of this contract.

- The unofficial elimination of one contractor brought about ineffective competition on this contract. (See p. 5.)
- An amendment to the request for proposals reduced possible price competition between the three offerors. (See p. 6.)
- Labor's failure to exercise an option clause to extend the contract period increased the contract's costs by \$130,000. (See p. 7.)
- Labor failed to protect the Government from possible fraud and abuse by not monitoring the contractor's performance or reviewing invoices submitted by the contractor. (See pp. 9 through 14.)

Labor contends that contractual documents and other factual evidence do not indicate any impropriety in the competition, award, and administration of this contract. It objects to our use of statements by Labor officials, who were responsible for and directly involved in the Black Lung Program, to support our findings and conclusions. Labor also believes that documents in the contract file should take precedence over statements by Labor officials that conflict with the file.

The use of interviews to obtain evidence is a generally accepted audit technique, and it avoids complete reliance by an auditor on agency-prepared documents. Our findings and conclusions in this report are evidenced by data obtained from documents and by information obtained by interviews which were corroborated by other knowledgeable and responsible Labor officials.

During the course of our review, and at the close-out meetings with Labor divisions and groups, all of our data was shown to and discussed with Labor officials. At no time did Labor produce any evidence which would justify changing our findings and conclusions. We did, however, agree with Labor that some of the conclusions in our draft report, such as "Labor chose to eliminate PRC unofficially" were too strongly worded, and we changed them accordingly.

## CONTRACTOR'S COMMENTS AND OUR EVALUATION

On November 13, 1981, we met with EDS representatives to discuss their comments on our draft report. The representatives were concerned that our report contained allegations and irregularities involving EDS. We discussed and agreed upon

several changes to remove the implications. A copy of EDS's formal response to our draft report is included as appendix II.

THE UNDER SECRETARY OF LABOR  
WASHINGTON  
DEC 31 1967



Mr. Gregory J. Ahart  
Director  
Human Resources Division  
General Accounting Office  
Washington, D.C. 20548

Dear Mr. Ahart:

This serves to transmit the Department's comments to the draft GAO report entitled, "Serious Weaknesses in Management of the Contract Supporting the Department of Labor's Black Lung Program."

Sincerely,

*Malcolm R. Lovell, Jr.*  
Malcolm R. Lovell, Jr.

Enclosure

GAO note: Page numbers in this appendix refer to pages in the draft report.

U.S. Department of Labor's Response  
to the GAO Draft Report Entitled  
"Serious Weaknesses in Management  
of the Contract Supporting the Department  
of Labor's Black Lung Program

RECOMMENDATION:

"We recommend that the Secretary of Labor institute controls to ensure that: The procurement office does not amend requests for proposal that result in higher proposed prices unless adequate assurance is obtained that commensurate value is received."

"Any reservation regarding the responsibility or qualifications of prospective contractors be resolved in accordance with Federal Procurement Regulations."

RESPONSE:

The Department concurs since we submit that the subject procurement, and all other procurement actions, are conducted in full conformity with applicable Federal Procurement Regulations and at most favorable, possible cost.

RECOMMENDATION:

"The Secretary of Labor direct the Inspector General to determine if the problems that have occurred on this contract are widespread. If the problems are widespread, prompt corrective action should be taken to reduce the Department's vulnerability to potential waste and abuse. One course of action that should be considered is the establishment of an organization devoted to contract administration on other than an ad hoc basis."

RESPONSE:

The Department concurs in that the Office of the Inspector General is currently reviewing OWCP's financial management and procurement policies and practices (among others) as part of its overall effort to detect and prevent waste and fraud. In addition, ESA has established its own Internal Control Unit to coordinate ESA efforts to improve management and to identify and remedy any practices which may contribute vulnerability to waste, fraud, or abuse. Furthermore, ESA is addressing the need to strengthen the role of the COTR by establishing a more definitive charter.

RECOMMENDATION:

"We recommend that the Secretary of Labor provide written charters defining the authority and responsibility of each of the organizations within the Employment Standards Administration that impact on the Black Lung Program. The charters should provide for a quick resolution of any disputes so effective coordination is assured. We also recommend that a contract for a new automated payment system not be awarded until the following actions are taken:

- Development of a clear, concise description of what the contractor will be required to do.
- "Purification" of the Black Lung data base so the information provided the contractor is accurate, complete and current.
- Establishment of standards so the contracting parties have a clear understanding of what levels constitute acceptable performance.

RESPONSE:

The Department concurs, in part. The Department recognizes the need to improve the coordination among ESA entities, especially with respect to the management of finances, COTR guidelines, and ADP services. The Department disagrees, however, that specific charters are needed for all entities which interface with the Black Lung program. Current mission and function statements already serve the purpose of defining the general authority and responsibility for each entity.

Nonetheless, ESA is making serious efforts to improve the operational interface of these organizations and the oversight of contractors. A reorganization of the Black Lung Program was recently completed which will improve contract administration functions. ESA is undertaking an administrative reorganization which, while not initiated for this purpose, will serve to further improve these operations. ESA is in the process of clarifying organizational responsibilities for ADP development and operations. Finally, ESA is further defining detailed COTR responsibilities and procedures to improve performance of this function.



As regards GAO's recommendations concerning ESA's request for proposal LA-81-34, ESA and the Department agree that this RFP should not be awarded unless the conditions cited above are met. However, the Department and ESA consider this RFP as the most stringent request issued in terms of provisions to protect the government's interests and to specify, monitor, and evaluate contractor performance. In short, the Department asserts that all of the suggested criteria for award of the pending RFP are fully satisfied therein. The Department invites the GAO to review the subject RFP to verify this position, if they have not already done so.

OTHER COMMENTS:

In a December 22, 1981, conference with the GAO auditors concerning these findings, ESA management made clear its conviction that a careful review (and recitation) of the factual record would indicate that Departmental, Agency, and Program actions were in overall conformity with relevant regulations and procedures and were proper. The documentary and other factual evidence do not indicate any impropriety in the competition, award, and administration of this contract. The Department suggests that findings and conclusions drawn on the basis of evaluation of specific documents and facts would support this conviction. Such additional information, corrections, and updated facts which should be included in the report are provided below.

In several instances, conclusions are drawn based entirely on what the GAO auditors were told by one or more interviewees. In some cases, these conclusions were reached despite factual evidence to the contrary (as indicated below). The Department would be pleased to receive specific information supportive of these conclusions so that systemic problems can be identified and appropriate corrective action taken at the earliest possible date.

Unofficial Elimination of One Contractor (p. 11)

GAO concluded that one of the offerors, Planning Research Corporation (PRC) was "unofficially" eliminated from competition. In full conformity with applicable Federal

Procurement Regulations, the PRC proposal was evaluated and judged technically acceptable by the technical evaluation panel and was judged by the Contracting Officer to be in the competitive price range for negotiations. Negotiations were held with PRC; a "best and final" offer was submitted by PRC; and, after careful evaluation of all such offers, another offeror was selected based on higher total award points. PRC was not eliminated from the competition either officially or unofficially but rather was given every opportunity to compete and lost to another offeror.

GAO stated that the Department developed a "strategy" of a set-aside option to eliminate PRC (p. 12). The fact is that the Department has a policy that contracts containing clerical support such as data entry be considered for small business and 8(a) certified set-aside. The Department determined, however, with the concurrence of the Small Business Administration, that these support services would have to be subject to full competition because the services had been previously procured competitively.

Additionally, GAO concluded that PRC was eliminated from competition because an effort to "revise upward the score awarded PRC...was stopped" (p. 14). Departmental records of the Panel's ratings provide evidence that this conclusion is in error. Panel members did, in fact, upgrade ratings as the result of reviewing best and final offers.

The Department did not take any actions or make any plans to eliminate PRC from competition or to influence the Panel's deliberations. The record evidences that the Department followed prescribed Federal Procurement Regulations and that the Panel acted properly and in good faith. There was no prejudice against PRC as an offeror. PRC, in fact, was awarded, on September 29, 1978, Contract J-9-E-8-0217 to provide ESA with ADP system support which had been a part of the initial contract support being replaced in the subject competition.

The Department knew that two bidders, Electronic Data Systems (EDS) and Potomac Research Incorporated (PRI), would consolidate after Award and that this Action Served to Reduce Competition (p. 14)

GAO is of the opinion that the consolidation of these two bidders raises doubt as to the effectiveness of competition. The Department did not know of this consolidation (or any such plans) until after the award. GAO has not presented any evidence to the contrary.

Amendment to the Request for Proposal (p. 15)

The Contracting Officer issued an amendment to the Request for Proposal to incorporate current Wage Determinations and to comply with paragraph (5) Section (2)(a) of the Service Contract Act (as addressed in FPR 1-12.901 entitled Statutory Requirements), which requires a statement in Government service contracts of the rates that would be paid by the contracting agency in the event of its direct employment of those classes of service employees to be employed on the contract work. According to FPR 1-12.904- 1(e), service employees from predecessor contracts are required to receive no less than their wages and fringe benefits in a successor contract.

GAO noted that the amendment reduced competition by compressing the differences in the proposed prices of the three prospective contractors and increasing the importance of the technical evaluation. The Service Contract Act (Paragraph (5) Section (2)(a)) requires that certain minimum wages be paid and, therefore, has the effect of reducing the range of price competition.

GAO states that "...the original request for proposal indicated the winning contractor would be expected to use employees already working under existing contract which is...inconsistent with the amendment to encourage higher levels of talent" (p. 16). The record will evidence that the original RFP did not contain such a condition or term. The RFP says that the "contractor may bid to retain

some or all of the existing staff, the contractor should specify the key staff to be retained and indicate how key staff would be identified at contract award time" (p. 4 of 4 Section D - emphasis added). This is not indicative of any desire or expectation by ESA that offerors must so bid, but does not preclude a current contractor from offering on the RFP.

Failure to Exercise Contract Option was Costly (p. 17)  
and Contract Modification (p. 18)

GAO stated that "failure to execute option on time was costly" (p. 17) and concluded that "this failure caused program costs to increase by about \$130,000."

The Department acknowledges that the contract option was formally exercised late, on January 18, 1980. GAO has verified that "EDS continued to perform at the labor hour rates included in the contract" (p. 18) after that date and thereby supports the Department's position that no increased costs were incurred as a result of a delay in exercising the contract option.

Unrelated to this event, on April 28, 1980, the Department requested an amendment to the contract to add two professional categories, namely, Deputy Project Manager and Senior (supervisory) Terminal Operator. While these two categories and their subsequent staffing did represent a \$130,000 cost, the contract modification that resulted did not increase the overall cost of the contract or Maximum Order Limitation (MOL). The Department's failure to formally exercise the contract option in a timely manner was totally unrelated to a later contract modification which established new labor categories but which did not affect the overall contract costs.

Lack of Physical Surveillance (p. 22)

ESA records showing that ESA personnel have been assigned to the Navy Yard and Annandale sites to physically monitor and supervise EDS contract performance should be added to the report.

Lack of Document Review (p. 23)

The GAO report should reflect document review actions that were taken especially since these findings appear to relate to Federal Employees' Compensation Program aspects of the contract's administration rather than to the Black Lung Program components. In the first 2 months of the contract, a detailed billing form was developed by the COTR to simplify the monitoring of the EDS invoices. The basic form, which is still in use and provides detailed information on the number of hours worked by labor category (regular or overtime) by district office, was incorporated in the March, 1979 EDS invoice. All invoices subsequent to that time were monitored for adherence to approved staffing levels and conformance to stated overtime usage. The file copies of invoices indicate this to be true on a month-by-month basis. Corrections or questions about the invoices are also contained in the files.

Monthly verification reports from district offices received by the COTR were sporadic initially. During calendar year 1980, however, a procedure was developed and incorporated in official program procedures for verifying the hours worked by EDS against the invoice. This procedure has been in place since early 1981. Oversight and monitoring of EDS invoices against actual work recorded has improved since contract inception.

Questionable Procedures (p. 25)

The report should reflect additional facts regarding the bill payment inventory reduction efforts performed in December, 1980 - January, 1981.

During September, 1980, the Black Lung Program lost 70 of 75 employees working on the processing of diagnostic medical bills. This 93% reduction of available staff quickly led to the development of substantial inventories of unprocessed diagnostic bills which simply could not be tolerated. A plan was developed to deal with this growing inventory using government staff who were specifically trained for this task. Copies of the training materials and procedural guidelines provided to these employees are available for GAO review.

Starting in October, 1980, these staff initiated a two month effort which resulted in the processing of the entire inventory of some 200,000 cases with diagnostic medical bills. This, and previous such efforts, are regarded as highly successful by ESA management, despite GAO's contentions.

However, as this effort proceeded, it was determined that a second level of bill processing would be required to handle the influx of new bills and inquiries on these cases during the inventory reduction effort and to handle error resolution on authorized bills which were not actually paid because of manual processing (e.g., coding) errors. It was this process that EDS was tasked to assist available government staff in completing.

The report should reflect that EDS's work in support of this process was within the contracted scope and, therefore, not a new contractual agreement. EDS was contractually allowed to use a sub-contractor to meet what amounted to be a temporary increase in volume of work. This work was governed by Black Lung quality control procedures outlined for the extended task order and was supervised by ESA personnel assigned to the Navy Yard site during these EDS activities.

While the Department acknowledges that these parallel efforts were specifically designed to reduce substantial bill inventories, we assert that normal procedures and policies governing bill processing were in place and enforced. Available statistics on the number of bills rejected or modified during these efforts serve to evidence this fact. While the normal functioning of a quality control and sampling unit was suspended so that these personnel could assist directly in the inventory reduction process, it is incorrect to suggest that all "quality control procedures were nonexistent" during the effort.

The incidence of duplicative payments during the reduction of the backlog is attributed to human error inherent to the manual process, workload pressures, and a lack of automated internal controls.

Government Interests not Protected (p. 27)

As has been noted, ESA did provide on-site supervision of contractor performance using procedures for internal controls. The Department's experience with unexpected fluctuations with claims volume supported the need for a labor-hour type of contract. The need for this type of contract is evidenced by the fact that from June, 1979 to December, 1980, three separate six-month extensions for filing medical benefit claims resulted in receipt of 75,000 unexpected claims.

Control Over EDS Overtime (p. 28)

EDS did not "approve" its own overtime. ESA delegated, to its personnel supervising EDS performance, the authority to review and verify requests for overtime up to 10 percent of regular time. The COTR continued to monitor invoices in excess of 10 percent. While the Contracting Officer's technical representative delegated this authority, it did not mean that there was no ESA control over the use of overtime by EDS.

Verification of EDS Timecards (p. 29)

The Department believes it is inappropriate to have ESA personnel sign contractor timecards because of implications of "employer-employee" relationships. During the entire period of the contract, the COTR did monitor monthly labor utilization reports and referenced these to invoice charges. In addition, ESA on-site supervisors physically observed and monitored time and attendance of EDS personnel. Since January, 1981, ESA on-site supervisory personnel have been required to verify and certify monthly EDS time utilization summary reports in recognition of the need to document the verification of ESA's monitoring of contractor time and attendance.

Standards to Measure EDS Performance (p. 30)

GAO should state that ESA used a study of Black Lung performed by the MITRE Corporation, "Functional Performance Specifications for Black Lung Payment Processing" (7-28-80), as criteria or standards for workload volume and processing performance. These criteria were in fact used to develop task orders, which contained work scopes and costs. While ESA is continuing to develop quality control procedures, it is incorrect to state that the EDS contract was administered without any kind of standards.

EDS Costs and Profits

GAO's conclusion that EDS costs and profits were not analyzed by ESA is based on the observation that documentation of analyses per task order were not found by the auditors. GAO failed to explain that labor hours and rates as well as the work scope were already identified in the contract and that task orders were based on the MITRE study criteria which addressed the factors of work volume and processing performance. The examples GAO gave of task order No. 3 and the reinstatement of \$46,656 in another task order were in fact caused by clerical error. These are, however, not indicative of a widespread lack of oversight and review of EDS's submitted costs. Invoice records will show that costs submitted by EDS were reviewed and on occasion corrected by ESA.

Background Statistics on Black Lung Claims (p. 37)

GAO presents statistics on Black Lung claims without explaining that several granted extensions of time for filing medical benefits claims resulted in increased volumes of claims.

Program Management (p. 41)

GAO should describe the role of the Black Lung program in its budget preparation as follows: While the program is not responsible for preparing the budget, the program does have input into the process. The program did, in fact, participate in the budget preparation for the ADP services under review.



Black Lung Supplemental (p. 42)

GAO's explanation of ESA's fiscal year 1981 budget request is incomplete. ESA's budget request included a supplemental request for Black Lung in the amount of \$2.5 million. This amount was not, however, requested in the ADP budget prepared in response to OMB Circular A-11 but rather in the overall Black Lung budget request.

ESA has undertaken personnel and administrative changes as a result of management needs and not as a result of any OIG investigation.

GAO incorrectly perceived the EDS contract as a "major tool" for paying Black Lung benefits. EDS's responsibility was to process medical bills. Additionally, it is incorrect for the GAO to state that the COTR was unaware of the communication between EDS and the Black Lung program. While the COTR did not monitor daily communication, he was briefed on a monthly basis by the program. Inasmuch as it is the program's role to interface with the contractor concerning day-to-day operations, the COTR did not need to oversee this interface on a daily basis.

Current EDS Contract (p. 44)

GAO's statement concerning the observation by the Black Lung program and EDS that the current EDS processing system is "costly, inefficient, and error prone" (p. 44) should not be interpreted as an acceptance of this situation. The Black Lung program has worked diligently to improve the efficiency and effectiveness of this operation and has moved to replace this system with a much more efficient and less costly automated system.

Editing Required in the Draft Report

GAO should correct the following textual errors:

1. References to contract number J-9-E-0046 on pages 1 and 4 should read J-9-E-9-0046.

2. References to the Division of Management Information and Computer Services on pages 2, 5, 9, 12, 43, and 51 should read Division of Management Information and Computer Systems.
3. Reference to Division of Wage and Hours on page 5 should read Division of Wage and Hour.
4. The correct estimated EDS operating expenditure for fiscal year 1981 is \$2,467,455 not \$2.6 million, as reported on page 6.

**EDS**

Electronic Data Systems Corporation  
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Bethesda, MD 20034  
(301) 897-5900

November 30, 1981

Mr. John A. Rinko, Group Director  
U. S. General Accounting Office  
Room 5832 PLRD/GP  
441 G Street, N.W.  
Washington, D.C. 20548

Dear Mr. Rinko:

On November 13, 1981, representatives from Electronic Data Systems Federal Corporation met with you, Mr. Tom Dorney and Mr. Kurt Daubenspeck of your staff regarding our response to the Draft copy of Proposed Report (CODE 9500650). Contained herein are items which we discussed and mutually agreed upon at that meeting. These responses constitute our formal response to the Draft of A Proposed Report, "Serious Weaknesses in Management of the Contract Supporting the Department of Labor's Black Lung Program" (CODE 9500650).

- A. Reference Page 9: The line, "EDS Corporation, Annandale, Virginia," is followed, directly, by a paragraph which discusses allegations and irregularities, as separate section. We request the addition of a subject caption to separate these two subjects. As printed, it appears as if this information was obtained solely at EDS Corporation, Annandale, Virginia. In fact, that line refers to organizations visited during review.
- B. Reference Pages 14 and 15: GAO describes the procurement process in the section headed Two Other Competitors Consolidate. During our meeting, EDS related that during its early involvement in the government arena it considered acquisition of a company with government-based operations as a basis for obtaining a client base and government citations. Toward this objective, hundreds of viable prospects were considered.

EDS' response to this paragraph, therefore, is that the subsequent acquisition of PRI is coincidental, and that no impropriety occurred. Additionally, the first paragraph on Page 15, as written, implies that EDS and PRI "became one" to weaken the effectiveness of the competition. EDS feels that this paragraph should be reworded to erase this improper implication.

- C. Reference Page 16: GAO should acknowledge that all contractors, including EDS, raised their price in best and final. Additionally, EDS sites wording in the original RFP stating, "...contractor may bid to retain some or all..." or present personnel (page 4 of 4 of initial RFP).

GAO note: Page numbers in this appendix refer to pages in the draft report.

This wording substantiates contractor ability to staff higher levels of talent.

- D. Reference Chapter 3: Numerous references are made in this chapter to Department of Labor practices which "left the government vulnerable to abuse." A reader concluding this chapter is left with the impression that the contractor, by implication, has taken advantage of this vulnerability. EDS requests, based upon our meeting, that GAO state, as appropriate, that they did not find any evidence of abuse by the contractor during their review of the contract.
- E. Reference Page 48: The causal relationship between the cited "pay the bills" attitude and voluntary refunds is an invalid one. The cited refund amounts include benefit payments for monthly disability and are, therefore, unrelated to bill payment. Additionally, voluntary refunds result from many reasons, not just duplicate payments. EDS recommends that GAO review this area before presenting such a causal relationship.

Should you have questions concerning these responses, kindly direct them to myself or Robert Dudek at 642-5106.

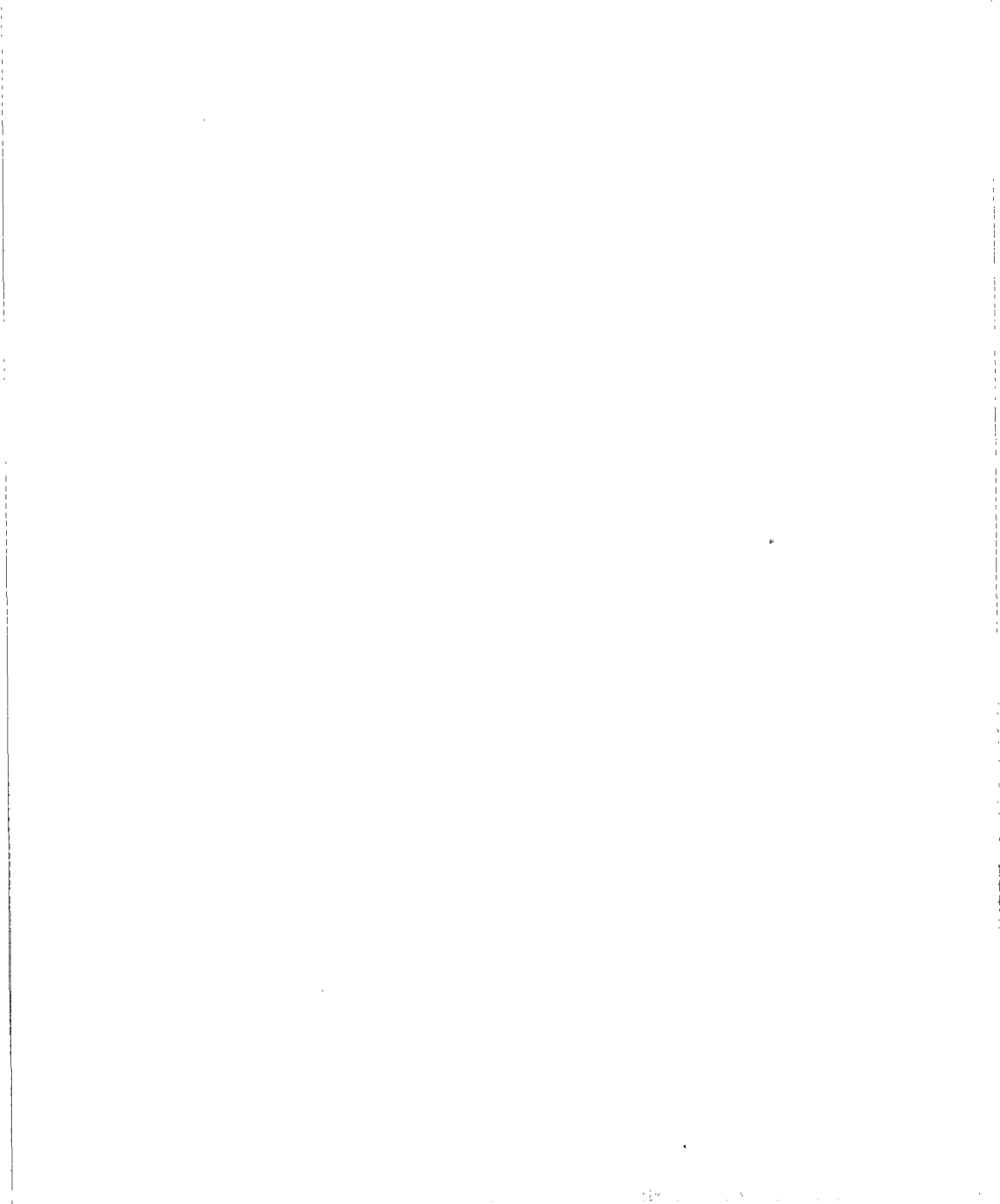
Sincerely,

  
Gerry R. Burgess  
Vice President  
Program Management Operation

GB/ck

cc: R. Dudek

(950650)



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