



U.S. ENVIRONMENTAL PROTECTION AGENCY

OFFICE OF INSPECTOR GENERAL



*U.S. Chemical Safety Board*

# Early Warning Report: Not Following Internal Controls Put Acquisitions at Risk

Report No. 15-P-0007

October 29, 2014



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## Abbreviations

CAA	Clean Air Act
CSB	U.S. Chemical Safety and Hazard Investigation Board
EPA	U.S. Environmental Protection Agency
FAR	Federal Acquisition Regulation
IG	Inspector General
OIG	Office of Inspector General
OMB	Office of Management and Budget

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# At a Glance

## Why We Did This Review

The U.S. Environmental Protection Agency (EPA), Office of Inspector General (OIG), received a hotline complaint about a U.S. Chemical Safety and Hazard Investigation Board (CSB) contract awarded for about \$1 million. In response to the complaint, the OIG initiated an audit to determine whether CSB effectively manages its contracts. The EPA Inspector General is also the Inspector General for CSB. While our audit work continues, this early warning report addresses issues of concern that we believe need immediate attention.

## This report addresses the following CSB goal:

- *Preserve the public trust by maintaining and improving organizational excellence.*

Send all inquiries to our public affairs office at (202) 566-2391 or visit [www.epa.gov/oig](http://www.epa.gov/oig).

The full report is at: [www.epa.gov/oig/reports/2014/20141029-15-P-0007.pdf](http://www.epa.gov/oig/reports/2014/20141029-15-P-0007.pdf)

## Early Warning Report: Not Following Internal Controls Put Acquisitions at Risk

### What We Found

CSB did not implement internal controls designed to ensure that acquisitions (interagency agreements, contracts and purchase orders) over \$50,000 receive Board approval. In addition, CSB did not maintain records in its acquisition files. Our findings indicated the following:

**Over \$1.9 million in CSB acquisitions are at risk because the Board did not approve the acquisitions.**

- CSB had 14 acquisitions over \$50,000 that did not obtain the required Board approval. In addition, we identified one contract that had modifications totaling over \$100,000 that were not Board approved.
- CSB did not record its market research actions for two contracts that totaled over \$380,000.
- CSB did not record its quality assurance surveillance plan actions for seven sampled contracts that totaled over \$1.4 million.

By not following internal controls defined in Board orders, the CSB put funds at risk. In addition, by not recording its compliance with federal acquisition regulations, CSB acquisition files show limited evidence that the agency has awarded contracts that are the best value for the government and that the agency has received goods and services for which it paid.

### Agency Positions

There were dissenting views within CSB. A management official stated, "...B[oard] O[rder] 028 has been removed from the CSB's website, and the agency is currently reviewing the order to determine which provisions remain legally operative. Provisions of the Order requiring Board ["approval"] for the awarding of contracts, functions, other activities required by law, or other valid executive agency requirements, are not in force." A Board member stated "...Board Order 28 can be modified but any modification would be subject to Board approval. Also, "...[u]nilateral invalidation of Board Order 28 not only touches contracting issues but also impacts the core issue of agency governance."

CSB stated it registered all contracts over \$150,000 in the Contractor Performance Assessment Reporting System database and developed forms for documenting market research and quality assurance. In addition, it stressed quality assurance surveillance in its contracting officer representative training held in June 2014.



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

THE INSPECTOR GENERAL

October 29, 2014

The Honorable Rafael Moure-Eraso, Ph.D.  
Chairperson and Chief Executive Officer  
U.S. Chemical Safety and Hazard Investigation Board  
2175 K Street, NW  
Suite 400  
Washington, D.C. 20037-1809

Dear Dr. Moure-Eraso:

The U.S. Environmental Protection Agency, Office of Inspector General, is conducting an audit to determine whether the U.S. Chemical Safety and Hazard Investigation Board (CSB) effectively manages its contracts (Project No. OA-FY13-0300). This early warning report provides information obtained during preliminary research, when we identified internal controls, reviewed acquisition files and interviewed staff. While we continue our ongoing audit of CSB's contract management, we believe the Board should immediately address the internal control issues discussed in this early warning report.

Sincerely,

A handwritten signature in black ink, appearing to read "Arthur A. Elkins Jr.", written in a cursive style.

Arthur A. Elkins Jr.

cc: Mr. Mark Griffon  
Board Member, U.S. Chemical Safety and Hazard Investigation Board

# Table of Contents

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<b>Purpose</b> .....	1
<b>Background</b> .....	1
<i>Audit Delays</i> .....	1
<i>Federal Requirements</i> .....	1
<i>CSB Requirements</i> .....	2
<b>Scope and Methodology</b> .....	3
<b>Results of Review</b> .....	3
<b>Conclusion</b> .....	4

## Appendices

<b>A CSB Response to OIG Discussion Document and OIG's Evaluation</b> .....	5
<b>B Distribution</b> .....	8

## Purpose

The Office of Inspector General (OIG) received a hotline complaint about a U.S. Chemical Safety and Hazard Investigation Board (CSB) contract awarded for about \$1 million. In response to the complaint, the OIG initiated an audit to determine whether CSB effectively manages its contracts.

## Background

CSB is authorized by the Clean Air Act (CAA) Amendments of 1990 and established under U.S. Code (42 U.S. Code Section 7412(r)(6)); it began operating in 1998 as an independent federal government organization. Board members are presidentially appointed and confirmed by the U.S. Senate. Since fiscal year 2004, the Inspector General (IG) for the U.S. Environmental Protection Agency has also been the IG for CSB. The CAA (42 U.S. Code §7412(r)(6)(N)) provides an exemption for contracting that states: “The Board is authorized to establish such procedural and administrative rules as are necessary to the exercise of its functions and duties. The Board is authorized without regard to section 5 of title 41 [*Advertising*] to enter into contracts, leases, cooperative agreements or other transactions as may be necessary in the conduct of the duties and functions of the Board with any other agency, institution, or person.”

### ***Audit Delays***

We notified CSB about the start of this project in June 2013; it proposed that the review start at the end of the fiscal year due to staff working on several high-priority projects. The IG granted an extension to September 2013; we notified the CSB that the project would resume in December 2013. In November 2013, prior to the start of the project, CSB proposed that the review start the first week of February 2014 due to work on other audits and conflicts with vacations and competing priorities. The IG granted a second extension; no further delays were approved. We resumed this project in February 2014.

### ***Federal Requirements***

Federal requirements and guidance address contracting processes and internal controls.

The Federal Acquisitions Regulation (FAR) Part 10: *Market Research*, states in Section 10.001 – *Policy*, that “(a) Agencies must— ... (2) Conduct market research appropriate to the circumstances—(i) Before developing new requirements documents for an acquisition by that agency; (ii) Before soliciting offers for acquisitions with an estimated value in excess of the simplified acquisition threshold;... (v) Before awarding a task or delivery order under an indefinite-delivery/indefinite-quantity (ID/IQ) contract (*e.g.*, GWACs, MACs) for a noncommercial item in excess of the simplified acquisition threshold (10 United

States Code 2377(c)); and (vi) On an ongoing basis, take advantage (to the maximum extent practicable) of commercially available market research methods....”

The FAR Subpart 46.103: *Contracting Office Responsibilities*, states, “[c]ontracting offices are responsible for — (a) Receiving from the activity responsible for technical requirements any specifications for inspection, testing, and other contract quality requirements essential to ensure the integrity of the supplies or services (the activity responsible for technical requirements is responsible for prescribing contract quality requirements, such as inspection and testing requirements or, for service contracts, a quality assurance surveillance plan)....”

The FAR Subpart 46.104: *Contract Administration Office Responsibilities*, states, “[w]hen a contract is assigned for administration to the contract administration office cognizant of the contractor’s plant, that office, unless specified otherwise, shall—... (c) Maintain, as part of the performance records of the contract, suitable records reflecting—(1) The nature of Government contract quality assurance actions, including, when appropriate, the number of observations made and the number and type of defects....”

The Office of Management and Budget (OMB) Circular A-123, Revised, *Management’s Responsibility for Internal Control*, Section 1 – *Introduction*, states, “[m]anagement is responsible for developing and maintaining effective internal control. Effective internal control provides assurance that significant weaknesses in the design or operation of internal control, that could adversely affect the agency’s ability to meet its objectives, would be prevented or detected in a timely manner.” It also states that, “[i]nternal Control — organization, policies and procedures — are tools to help program and financial managers achieve results and safeguard the integrity of their programs.”

### **CSB Requirements**

CSB has internal procedures that govern the approvals of acquisitions as well as contracting processes. In response to our request for board orders governing CSB’s acquisition process, CSB provided the following orders. However, these orders were either not available to the public or removed from CSB’s website. Board Order 027, *Roles, Responsibilities, and Standards of Conduct in Procurement Activities*, Section 6.a: *Responsibilities - Board*) states that:

... [t]he Board’s role in the procurement activities of the CSB consists of approving the allocation of funds for those contracts, interagency transfers, or other expenditures which exceed \$50,000. The Board may exercise this approval authority in three ways:

- 1) By approving the allocation of funds for an identified contract requirement, interagency transfer requirement, or other expenditure in advance as part of the CSB annual operating budget; or
- 2) By approving the allocation of funds for an identified contract requirement, interagency transfer requirement, or other expenditure as part of a supplement or amendment to the CSB annual operating budget; or
- 3) By approving the allocation of funds for a contract, interagency transfer, or other expenditure on an individual basis by a vote in accordance with Order 001.

Board Order 028, *Executive and Administration Functions of the Board*, Section 6.b.1: *Specific Authority - Use and Expenditure of Funds*, states the Chairperson has the “[a]uthority to control the use and expenditure of funds, including the power to authorize and execute contracts and interagency transfers in an amount not to exceed \$50,000.”

## Scope and Methodology

At the start of our preliminary research, we obtained a list of CSB acquisitions awarded as of September 30, 2013. We performed a site visit to CSB’s headquarters in Washington, D.C., the week of March 31 through April 4, 2014. During our site visit, we obtained 150 acquisition files as of March 31, 2014. We reviewed a sample of seven contracts, held interviews, and held discussions with CSB staff that included contracting officers and their representatives. We reviewed FAR and OMB guidance for federal requirements. In addition, we reviewed CSB’s internal board orders to identify internal controls over CSB’s acquisition processes. We conducted this audit from February 2014 to August 2014 in accordance with generally accepted government auditing standards issued by the Comptroller General of the United States. Those standards require that we plan and perform the audit to obtain sufficient, appropriate evidence to provide a reasonable basis for our findings and conclusions based on our objective.

## Results of Review

In our preliminary research, we identified 14 CSB acquisitions (interagency agreements, contracts and purchase orders) over \$50,000 that did not show the required Board approval. These awards totaled over \$1.9 million. In addition, we identified one contract that had two modifications totaling over \$100,000 that were not approved by the Board. We also found that, as part of our sample, CSB did not record its market research actions for two contracts (14 percent) that totaled over \$380,000 and quality assurance surveillance actions for seven contracts in our sample that totaled over \$1.4 million.



A management official stated "...Board approval was unnecessary for the [14] contracts identified..." and "...none of the contracts with option years obligated more than \$50,000 per year." In addition, management stated, "... [a]ll the contracts are within the Chairperson's administrative authority to approve." However, a Board member stated that "...[i]f there is a question about the roles of the Board and the Chairman as described in Board Order 28 then in accordance with the Department of Justice, Office of Legal Counsel opinion (Moss Opinion, June 26, 2000), the [']Board's decision controls[']."

The Moss Opinion<sup>1</sup> referenced above by the Board member also states on page three: "To the extent the Board establishes such rules, the chairperson, as the Board's administrative and executive officer, must put them into effect." CSB stated it performed market research actions for the two contracts in our sample. However, the research information was not isolated and identified as such, nor documented in detail within the contracting office files. In addition, CSB stated it performed quality assurance surveillance actions, but did not document the actions in the files. We address a number of these statements in Appendix A.

We believe that not following internal controls as defined in CSB Board orders put funds at risk for misuse. Over \$1.9 million in CSB acquisitions are at risk because the Board did not approve the acquisitions. Without recording its market research actions, CSB acquisition files show limited evidence that agency contracts are the best value for the government. By not recording its quality assurance surveillance actions, CSB acquisition files show limited evidence that the agency received the goods and services for which it paid over \$1.4 million.

## **Conclusion**

We believe that CSB should follow its internal controls, which were designed to ensure that acquisitions over \$50,000 receive Board approval. In addition, CSB actions for market research and quality assurance are required to be maintained in its files to show that the agency has awarded contracts and monitored contractors in accordance with federal acquisition regulations.

A full OIG report containing recommendations will be issued at the completion of our audit.

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<sup>1</sup> Moss Opinion is attached to our website at <http://www.epa.gov/oig>.

## ***CSB Response to OIG Discussion Document and OIG's Evaluation***

The OIG met with CSB, on August 14, 2014, to discuss the issues identified in this report and to verify the factual accuracy of the findings. We also met with a Board member and incorporated excerpts from the Board member's response in our report. CSB decided to provide a written response after our meeting. CSB summarized its response to the OIG early warning report in seven areas of concern. CSB believes that our report is factually incorrect and legally flawed, and its issuance is unwarranted. We reviewed each CSB area of concern, included their response summary, and noted our evaluation. CSB's complete response is posted to our website at <http://www.epa.gov/oig>. The seven areas of concern and our comments on those concerns follow.

1. The IG report does not establish that even one dollar of federal funds was misspent, or that any monies were applied to other than lawful, required and routine ("housekeeping") expenditures of the CSB.

**OIG Evaluation:** Disagree. While the report may not have identified misspent funds, it determined that the internal controls designed to safeguard against misspent funds were not implemented. Therefore, the risk for misspent funds was an urgent need that warranted CSB's immediate action. The purpose of the early warning report was to convey significant time-critical issues to CSB management before the team completes work and develops a report to fully address the audit objectives. We consider CSB not following its internal control, requiring Board approval for acquisition over \$50,000, to be a significant time-critical concern. We revised the wording in this report to address the appearance of misspending funds.

2. Not one of the administrative or "housekeeping" contracts identified by the IG required Board approval, either as a matter of law, regulation, or prudent spending. (In some cases cited by the IG, e.g., approval of the CSB headquarters lease, the IG is factually mistaken -- the Board did participate in this decision regarding the lease). The entire IG report and its recommendations are based on a flawed board order that was found to have been improperly issued, and which has no effect on the appropriateness of required expenditures.

**OIG Evaluation:** Disagree. The OIG provided CSB with a list of 17 contracts we identified as needing Board approval. We reviewed CSB's support for the lease contract and amounts that were approved by the Board. We also reviewed CSB's detailed comments on simplified acquisitions as noted in the FAR. In turn, we adjusted identified contracts with limited evidence of market research from three to two. This early warning report does not have recommendations based on Board Orders 027 and 028. Also, from our review, the board orders do not address a distinction between administrative or

housekeeping contracts. If there is a flaw in the board orders, CSB should address the flaw and follow its internal controls.

3. All the contracts cited by the IG were for goods or services approved by the Board in its annual budget submission to OMB and Congress.

**OIG Evaluation:** Disagree. Board Order 027 identifies three ways in which the Board can approve contracts. A budget justification, which is submitted to OMB and Congress, is not identified as a process for board approval of the acquisitions.

4. The IG report, rather than criticize the CSB, should recognize the significant savings that the agency has achieved by bringing the contract function in house, which has also resulted in far better contract service.

**OIG Evaluation:** Disagree. The purpose of the early warning report was to convey significant, time-critical issues to CSB management before the team completes its work and develops a report to fully address the objectives. The OIG is reviewing whether CSB achieved significant savings in bringing the contract function in house and plans to address in the later report.

5. The IG's other findings concerning the adequacy of market research conducted for small or GSA schedule procurements, and/or the quality assurance documentation, are paperwork issues that do not go to the quality of the goods or services received or the prices paid under these contracts.

**OIG Evaluation:** Disagree. The OIG adjusted the wording in this early warning report to acknowledge that CSB's contract files had limited evidence to support that it conducted market research and quality assurance surveillance actions. CSB's having limited or no documentation led the OIG to believe that the required FAR procedures either were not followed or supported. We continue to request such documentation.

6. The CSB is using contract and order approval processes for "housekeeping" obligations which are based upon statute and regulation, and are fully consistent with the procedures used by our peer agencies -- the National Transportation Safety Board and the Defense Nuclear Facilities Safety Board.

**OIG Evaluation:** Disagree. The purpose of the early warning report was to convey significant, time-critical issues to CSB management before the team completes work and develop a report to fully address the objectives. We consider CSB not following its internal control requiring Board approval for acquisition over \$50,000 to be significant.

7. Nothing contained in the IG's findings even remotely rises to the level of an "Early Warning Report." There is absolutely no evidence that any money has been improperly obligated or expended.

**OIG Evaluation:** Disagree. The purpose of the early warning report was to convey significant, time-critical issues to CSB management before the team completes work and develop a report to fully address the objectives. We consider CSB not following its internal control requiring Board approval for acquisition over \$50,000 to be significant and warrants an early warning report.

## ***Distribution***

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