United States General Accounting Office

GAO

Report to the Chairman, Subcommittee on the Constitution, Committee on the Judiciary, House of Representatives

October 2003

U.S. COMMISSION ON CIVIL RIGHTS

More Operational and Financial Oversight Needed

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Accountability * Integrity * Reliability

GAO-04-18

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U.S. COMMISSION ON CIVIL RIGHTS

More Operational and Financial Oversight Needed

GAO Accountability • Integrity • Reliability

Highlights

Highlights of GAO-04-18, a report to the Chairman, Subcommittee on the Constitution, Committee on the Judiciary, House of Representatives

Why GAO Did This Study

Over the past 10 years, GAO, the Congress, the Office of Personnel Management (OPM), and others have raised numerous concerns about the U.S. Commission on Civil Rights. GAO was asked to assess (1) the adequacy of the Commission's project management procedures, (2) whether the Commission's controls over contracting services and managing contracts are sufficient, and (3) the extent of recent oversight of the Commission's financial activities.

What GAO Recommends

GAO recommends, among other things, that the Commission adopt procedures that provide for increased commissioner involvement in projects; establish greater controls over its contracting activities in order to be in compliance with federal regulations; and take steps immediately to meet the financial statement preparation and audit requirements of the Accountability of Tax Dollars Act of 2002 for fiscal year 2004.

In commenting on a draft of this report, four of the commissioners agreed with GAO's conclusions and recommendations. GAO did not receive comments from the remaining four commissioners. In separate comments, the staff director indicated he will consider implementing GAO's recommendations but took exception with many of GAO's findings of management weaknesses at the Commission.

www.gao.gov/cgi-bin/getrpt?GAO-04-18.

To view the full product, including the scope and methodology, click on the link above. For more information, contact Robert E. Robertson at (202) 512-7215 or robertsonr@gao.gov.

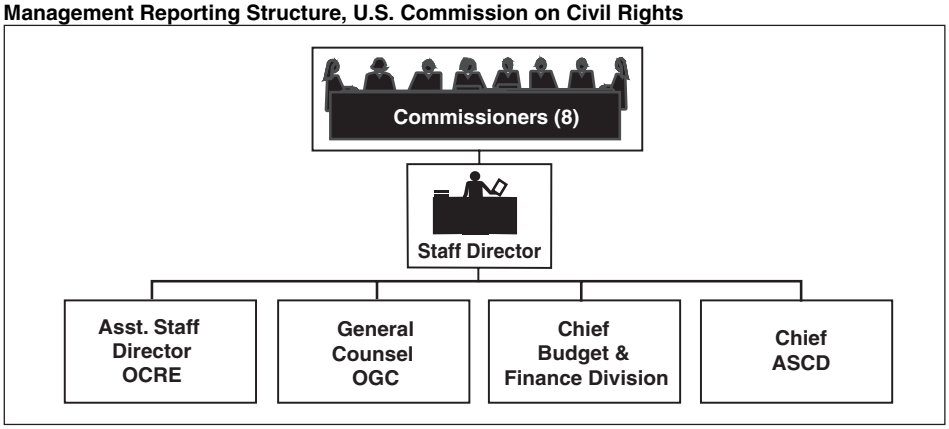
What GAO Found

The Commission has established a set of project management procedures for commissioners and staff to follow when they plan, implement, and report the results of approved Commission projects. However, the procedures lack, among other things, a requirement for systematic commissioner input throughout projects. As a result, commissioners lack the opportunity to review many of the reports and other products drafted by Commission staff before products are released to the public, which serves to significantly reduce the opportunity for commissioners to help shape a report's findings, recommendations, and policy implications of civil rights issues.

The Commission lacks sufficient management control over its contracting procedures. The Commission routinely did not follow proper procedures for its fiscal year 2002 contracting activities. For the Commission's largest dollar contract, key documentation on how the contract was initially awarded was missing from contract files. Moreover, Commission officials did not follow the legal requirements to obtain competition for its subsequent media services contracts. As a result, the Commission did not have all of the information it should have had to determine whether its contracts provided the best value to the government.

Little, if any, external oversight of the Commission's financial activities has taken place in recent years. An independent accounting firm has not audited the Commission's financial statements for the last 12 years. Although the Accountability of Tax Dollars Act of 2002 requires the Commission—along with certain other executive agencies—to have its financial statements independently audited annually, the Commission has been granted a waiver by the Office of Management and Budget (OMB) from compliance with the financial statement preparation and audit requirements of the act for the fiscal years 2002 and 2003 audit cycles, which OMB was authorized to waive during an initial transition period of up to 2 years.

Management Reporting Structure, U.S. Commission on Civil Rights



Source: GAO analysis.

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Abbreviations

ASCD	Administrative Services and Clearinghouse Division
FAR	Federal Acquisition Regulation
FPDC	Federal Procurement Data Center
GSA	General Services Administration
NFC	National Finance Center
OCRE	Office of Civil Rights Evaluation
OGC	Office of General Counsel
OMB	Office of Management and Budget
OSD	Office of the Staff Director
RFQ	Request for Quotation

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Accountability * Integrity * Reliability

United States General Accounting Office
Washington, DC 20548

October 31, 2003

The Honorable Steve Chabot
Chairman
Subcommittee on the Constitution
Committee on the Judiciary
House of Representatives

Dear Mr. Chairman:

The U.S. Commission on Civil Rights was created as an independent, bipartisan, fact-finding agency to protect the civil rights of people in the United States. The Commission is authorized to undertake projects that study the impact of federal civil rights laws and policies and disseminate information on its findings through the issuance of reports to the Congress and the President. In our past work, we recommended to the Commission ways to improve how it managed its projects and issued reports.[1]

You asked us to assess

- the adequacy of the Commission's project management procedures,
- whether the Commission's controls over contracting services and managing contracts are sufficient, and
- the extent of recent oversight of the Commission's financial activities.

To respond to your request, we reviewed Commission records, applicable legislation and regulations, and internal administrative guidance. We interviewed all current commissioners, the staff director, key Commission officials, and several former Commission officials. We also observed several Commission meetings. In addition, we reviewed all projects and all contracts that were active during fiscal year 2002.[2] Our review focused on

[1]See U.S. General Accounting Office, *U.S. Commission on Civil Rights: Agency Lacks Basic Management Controls*, GAO/HEHS-97-125, (Washington, D.C.: July 8, 1997) and *U.S. Commission on Civil Rights: Update on Its Response to GAO Recommendations*, GAO/HEHS-98-86R, (Washington, D.C.: Feb. 3, 1998).

[2]We did not review the Commission's day-to-day administrative contracts, such as those for court reporters, temporary support services, and meeting room rentals.

projects undertaken by Commission offices located at headquarters and excluded those produced in field office locations.[3] Our review also focused on whether the Commission maximized competition and followed established procedures in purchasing services. See appendix I for a more detailed overview of our scope and methodology. We performed our work in accordance with generally accepted government auditing standards between December 2002 and September 2003.

Results in Brief

The Commission has established a set of project management procedures for commissioners and staff to follow when they plan, implement, and report the results of approved Commission projects. However, the procedures lack certain key elements of good project management that are reflected in federal internal control and budget preparation guidance. For example, commissioners have not generally received updates about certain project cost information. Commissioners, in practice, make many planning decisions with little or no discussion of project costs, which can eventually contribute to problems such as delayed products and lower-quality products if too many projects are undertaken. While some steps are being taken to increase the flow of cost information, it remains unclear whether this will meet Commission needs. Additionally, Commission procedures do not provide for systematic commissioner input throughout projects. As a result, commissioners often lack the opportunity to review many of the reports and other products drafted by Commission staff before products are released to the public, which serves to significantly reduce the opportunity for commissioners to help shape a report's findings, recommendations, and policy implications of civil rights issues.

The Commission lacks sufficient management control over its contracting procedures. The Commission routinely did not follow proper procedures for its fiscal year 2002 contracting activities. For the Commission's largest dollar contract—$156,000 for media services—which has been ongoing for over 3 years—key documentation on how the contract was initially awarded was missing from contract files. Moreover, Commission officials did not follow the legal requirements to obtain competition for subsequent media services contracts. As a result, the Commission did not have all of the information it should have had to determine whether its awards

[3]The Commission defines a project as "…a study of civil rights issues that culminates in a report, transcript, summary of proceedings, film, monograph, or other product for public release…."

represented the most advantageous offer available to the government. In addition, the Commission has inadequate controls over the administration of its contracts. For example, information on specific tasks to be performed by vendors is communicated orally, not in writing as required by the Federal Acquisition Regulation (FAR). As a result, it is difficult for the Commission to track vendors' performance against an objective measure and ensure that public funds are used in an effective manner.

Little, if any, external oversight of the Commission's financial activities has taken place in recent years. An independent accounting firm has not audited the Commission's financial statements for the last 12 years. Additionally, the Commission is not required by statute to have an Office of Inspector General, which can typically conduct regularly scheduled or periodic oversight of an agency's financial standing. Although the Accountability of Tax Dollars Act of 2002 requires the Commission, along with other executive agencies not previously required to do so under another statute, to have its financial statements independently audited annually, the Commission has been granted a waiver by the Office of Management and Budget (OMB) from compliance with the financial statement preparation and audit requirements of the act for fiscal years 2002 and 2003. During the initial transition period for this new requirement, the act permits the OMB Director to waive these requirements for up to 2 years.

This report contains recommendations for improving the Commission's project management process and for providing greater transparency and control over its contracting and financial management activities. In commenting on a draft of this report, four of the commissioners agreed with our conclusions and recommendations. We did not receive comments from the remaining four commissioners, who include the chairperson and the vice-chair. In separate comments, the staff director pointed out that the Commission is committed to ensuring that its operations are well maintained and will consider implementing whatever recommendations and suggestions appear in the final report. However, the staff director believed that many of the findings were inaccurate and that aspects of the draft report contained errors, unsubstantiated allegations, and misinterpretations. After carefully reviewing his concerns, we continue to believe that our conclusions and recommendations are well founded. The staff director also provided technical comments and clarifications, which we incorporated in the report as appropriate. Both sets of comments and our detailed responses to the staff director's comments are provided in full in appendixes III and IV.

Background

The Commission on Civil Rights is a fact-finding federal agency required to report on civil rights issues. Established by the Civil Rights Act of 1957, the Commission is currently directed by eight part-time commissioners and employs approximately 70 staff members in fiscal year 2003. The Commission's annual appropriation has averaged approximately $9 million since fiscal year 1995. The eight commissioners have a number of responsibilities, including investigating claims of voting rights violations and studying and disseminating information, often collected during specific projects, on the impact of federal civil rights laws and policies. Commissioners serve 6-year terms, and they are appointed on a staggered basis. Four commissioners are appointed by the President, two by the president pro tempore of the Senate, and two by the speaker of the House of Representatives. No more than four commissioners can be of the same political party.

The Commission accomplishes its mission by (1) investigating charges of citizens being deprived of voting rights because of color, race, religion, sex, age, disability, or national origin; (2) collecting and studying information concerning legal developments on voting rights; (3) appraising federal laws and policies with respect to discrimination or denial of equal protection of the laws; (4) serving as a national clearinghouse for information; and (5) preparing public service announcements and advertising campaigns on civil rights issues. The Commission may hold hearings and, within specific guidelines, issue subpoenas to obtain certain records and have witnesses appear at hearings.

The Commission must submit at least one report annually to the President and the Congress that monitors federal civil rights enforcement in the United States, and such other reports as deemed appropriate by the Commission, the President, or the Congress.[4] For instance in 2002, the Commission issued a report that evaluated the civil rights activities of the Departments of Justice, Labor, and Transportation and another on election reform. The Commission is also authorized to investigate individual allegations of voting rights discrimination. However, because it lacks enforcement powers that would enable it to apply remedies in individual cases, the Commission refers specific complaints it receives to the

[4]These reports are termed "statutory" reports. Statutory reports are produced in accordance with *42 U.S.C. 1975a(c)*.

appropriate federal, state, or local government agency for action.[5] A staff director, who is appointed by the President with the concurrence of a majority of the commissioners, oversees the day-to-day operations of the Commission and manages the staff in its six regional offices and Washington, D.C., headquarters.

The Commission also has 51 State Advisory Committees—1 for each state and the District of Columbia. Each committee is composed of citizens familiar with local and state civil rights issues. The members serve without compensation and assist the Commission with its fact-finding, investigative, and information dissemination functions.

Concerns Raised in the Past

In 1997, we reported that the management of the Commission's operations lacked control and coordination.[6] Among other findings, we found that projects lacked sufficient documentation, project monitoring to detect budget delays or overruns was not systematic, and little coordination took place among offices within the Commission to approve and disseminate reports. Moreover, senior officials were unaware of how Commission funds were used and lacked control over key management functions, making the Commission's resources vulnerable to misuse. We reported that key records had been lost, misplaced, or were nonexistent, leaving insufficient data to accurately portray Commission operations. Centralized agency spending data resulted in Commission officials being unable to provide costs for individual offices or functions. We also found in 1997 that the Commission had never requested any audits of its operations, and information regarding Commission audits in its fiscal year 1996 report on internal controls was misleading.[7] The Commission also had not updated administrative guidance to reflect a major reorganization that occurred in 1986. We recommended that the Commission develop and document its policies and procedures to assign responsibility for management functions

[5]Several agencies have enforcement authority for civil rights issues. For example, the Equal Employment Opportunity Commission is charged with enforcing specific federal employment antidiscrimination statutes, such as Title VII of the Civil Rights Act of 1964, the Americans with Disabilities Act of 1990, and the Age Discrimination in Employment Act of 1967. Also, the Assistant Attorney General for Civil Rights in the Department of Justice is the enforcement authority for civil rights issues for the nation.

[6]See U.S. General Accounting Office, *U.S. Commission on Civil Rights: Agency Lacks Basic Management Controls*, GAO/HEHS-97-125 (Washington, D.C.: July 8, 1997).

[7]Federal agencies are required under the Federal Managers' Financial Integrity Act of 1982 to report on internal controls annually to the President and the Congress.

to the staff director and other Commission officials and provide mechanisms for holding them accountable for proper management of Commission operations.

Federal Regulations Governing Contracting

The FAR, established to codify uniform policies and procedures for acquisition by executive agencies, applies to acquisitions of supplies and services made by federal executive agencies—including the U.S. Commission on Civil Rights—with appropriated funds. The FAR contains procedures for awarding both competitive and sole-source contracts and selecting contracting officers.[8]

Competition Using Simplified Acquisition Procedures

The FAR calls for federal agencies to promote competition to the maximum extent practicable when making purchases using simplified acquisition procedures.[9] In 1994, Congress authorized the use of simplified acquisition procedures for acquisitions not exceeding $100,000.[10] Under those procedures, agency officials may, among other things, select contractors using expedited evaluation and selection procedures and are permitted to keep documentation to a minimum. In 1996, Congress authorized a test program that permits federal agencies to use simplified acquisition procedures for commercial items not exceeding $5 million.[11] The authority to issue solicitations under this test program is set to expire on January 1, 2004.[12]

Awarding a Sole-Source Contract under Simplified Acquisition Procedures

When they award on a sole-source basis,[13] contracting officers are required by regulations to prepare a written justification explaining the absence of competition. The regulations also generally require public notices of proposed sole-source awards. Further, contracting officers must determine that the price of a sole-source award is reasonable. This determination may be based on evidence such as (1) market research,

[8]"Contracting officer" means a person with the authority to enter into, administer, and/or terminate contracts and make related determinations and findings.

[9]FAR part 13.

[10]Federal Acquisition Streamlining Act of 1994, Pub. L. No. 103-355, 108 Stat. 3243.

[11]Clinger-Cohen Act of 1996, Pub. L. No. 104-106, Divs. D, E, 110 Stat. 642.

[12]FAR subpart 13.500(d).

[13]"Sole-source acquisition" means a contract for the purchase of supplies or services that is entered into or proposed to be entered into by an agency after soliciting and negotiating with only one source.

(2) current price lists or catalogs, (3) a comparison with similar items in related industry, or (4) a comparison to an independent government cost estimate.

Using the Federal Supply Schedule

Under the Federal Supply Schedule, the General Services Administration (GSA) awards contracts to several companies supplying comparable products and services. These contracts can then be used by any federal agency to purchase products and services. As a general rule, the Competition in Contracting Act of 1984 requires that orders under the Federal Supply Schedule result in the lowest overall cost alternative to meet the needs of the agency.[14] The FAR and GSA procedures generally require agencies to compare schedule offerings of multiple vendors in arriving at an award decision.

Procedures Have Improved, but Lack Some Key Elements of Good Project Management

The Commission has established a set of project management procedures for commissioners and staff to follow when they plan, implement, and report the results of approved Commission projects. However, the procedures lack certain key elements of good project management that are reflected in federal internal control and budget preparation guidance.[15] For example, commissioners do not generally receive updates about certain project cost information. Commissioners, in practice, make many planning decisions with little or no discussion of project costs, which can eventually contribute to problems such as delayed products and lower-quality products if too many projects are undertaken. Additionally, Commission procedures do not provide for systematic commissioner input throughout projects. In practice, commissioners do not always have the opportunity to review many of the reports and other products drafted by Commission staff before products are released to the public, which serves

[14]If this requirement is met, and the program has been open to all responsible sources, the competition requirements of the Competition in Contracting Act are satisfied. See 10 U.S.C. § 2302(2)(C) and 41 U.S.C. § 259(b)(3).

[15]We used a combination of OMB, private sector, and our guidance as criteria to identify key elements of good project management. These criteria included U.S. General Accounting Office, *Standards for Internal Control in the Federal Government*, GAO/AIMD-00-21.3.1 (Washington, D.C.: Nov. 1999); *Preparation and Submission of Budget Estimates (2002)* (OMB Circular No. A-11, Part 2); *Project Management Scalable Methodology Guide* (© 1997, James R. Chapman); *A Guide to the Project Management Body of Knowledge (PMBOK® Guide*–2000 Edition (The Project Management Institute, September 2003); and *Project Management–Conventional Project Management* (Northern Institute of Technology, Hamburg, March 2002). See appendix I, for additional details about our criteria.

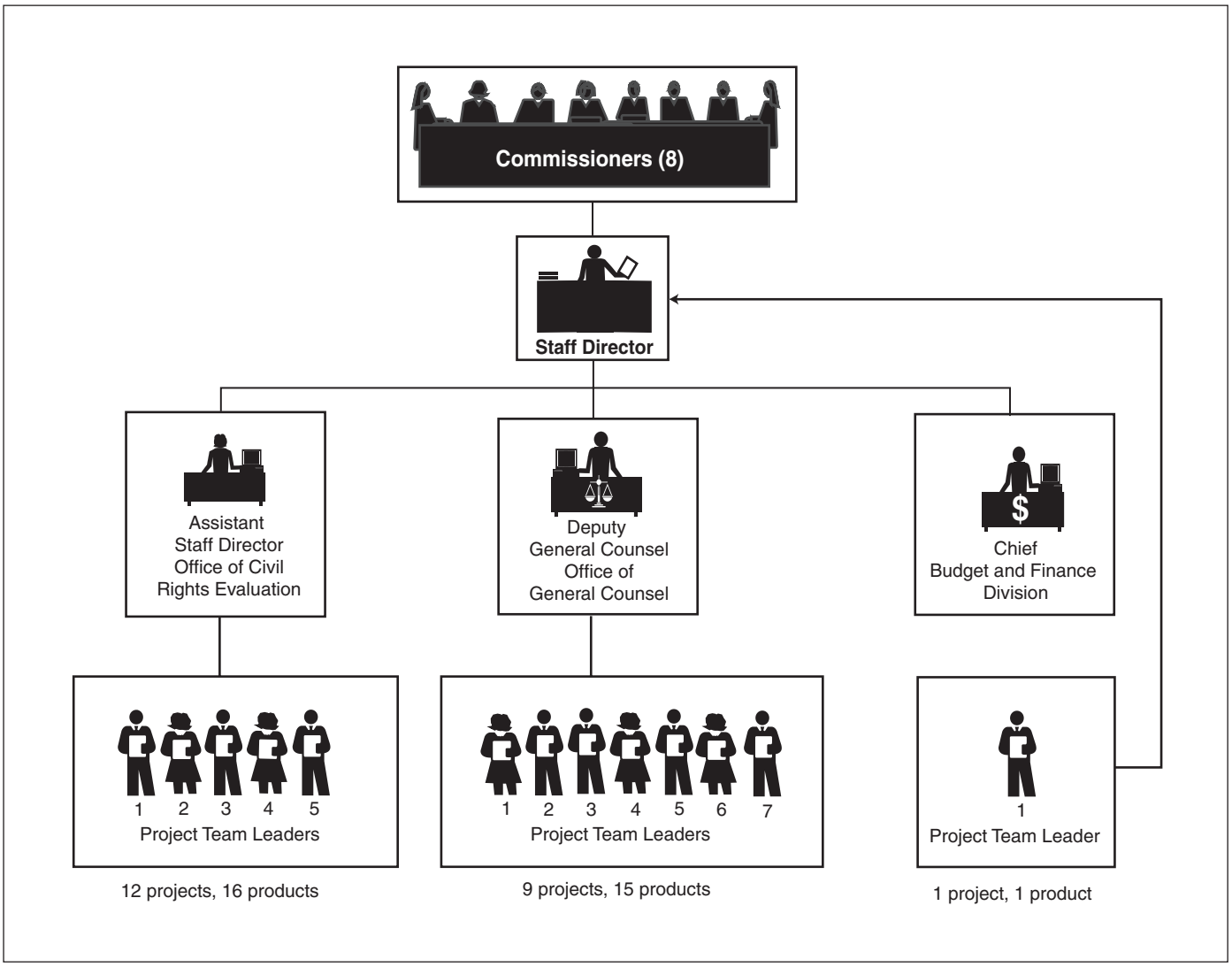
to significantly reduce the opportunity for commissioners to help shape a report's findings, recommendations, and policy implications of civil rights issues.

Commission Has Updated Its Management Policies and Procedures to Better Manage Projects

The Commission has made a number of improvements in project management since our 1997 review. For example, the Commission has revised and established policies that clarify the roles of the staff director and senior Commission staff such as the assistant staff director of the Office of Civil Rights Evaluation (OCRE) and the general counsel in the Office of the General Counsel (OGC), both of whom report directly to the staff director. These three key Commission officials are responsible for carrying out the policies established by the eight commissioners and for directly overseeing and managing virtually all headquarters projects that result in Commission products.[16] See figure 1 for an abbreviated organization chart that shows the reporting relationship between commissioners, the staff director, and senior Commission staff.

[16]At the time of our current review, the general counsel position was vacant and the deputy general counsel was overseeing and managing OGC projects and products and reporting to the staff director.

Figure 1: U.S. Commission on Civil Rights, Project Management Reporting Structure, Fiscal Year 2002



Source: GAO analysis.

In addition to clarified roles of the staff director and senior Commission staff, the chief of the Budget and Finance Division now regularly provides the staff director with spending data by office and function. This detailed information enables the staff director to track the status of the Commission's expenditures by organizational component at headquarters and field offices.

Senior Commission staff and the project team leaders we interviewed were also using various project management procedures to meet target deadlines. For example, the assistant staff director, OCRE, and the deputy general counsel, OGC, were using a combination of techniques to ensure that project deadlines were met. These techniques included weekly meetings with staff, weekly or monthly reports from staff, and computer-generated schedules to monitor large, complex projects and smaller projects. Moreover, all project team leaders were routinely monitoring their assigned projects to ensure that projects stayed on schedule. Our review determined that the Commission's project management procedures allow commissioners, the staff director, senior Commission staff, and project team leaders to manage long-range projects that take a year or longer to complete as well as time-critical projects that take several months or weeks to complete.[17] The Commission chairperson, who was also chairperson in 1997, is of the opinion that Commission projects and products in fiscal year 2002 and later were generally timelier than those products discussed in our 1997 report and testimony.[18]

Table 1 summarizes the number of Commission products issued during fiscal year 2002 by Commission office and by type of product.[19] Appendix I provides details about project names and product titles produced during fiscal year 2002 by those offices that generate headquarters Commission products that result from commissioner-approved projects: the Office of Civil Rights Evaluation, the Office of General Counsel, and the Office of the Staff Director (OSD). In addition, some fiscal year 2002 projects will generate products in future years. Appendix II lists the number of

[17]Commissioners and Commission staff use the term "emerging issues" to describe projects that are generally not identified during the Commission's annual project planning cycle but which the commissioners decide are high-priority projects as they emerge throughout the year. Emerging issues projects generally take less calendar time to complete than do larger, more complex projects included in the annual planning meeting, during which commissioners decide which projects to undertake.

[18]In this review, we did not analyze the timeliness of Commission products for comparison with the results of our 1997 review. As agreed with our requester, our current review focused on the most recent fiscal year. Also, we examined during the current review a more expansive number and variety of products than what we reported on in 1997, which made comparisons between this review and our 1997 report methodologically inappropriate.

[19]Of the 43 total products that resulted from these projects as of July 2003, 32 were issued during fiscal year 2002 and were included in the scope of our review. We excluded from our scope 3 products issued during fiscal year 2001 and 8 products issued or expected to be issued during fiscal years 2003 or 2004.

products, by type of product, issued or expected to be issued after fiscal year 2002 from projects that were ongoing during fiscal year 2002.

Table 1: Number of Products Issued by OCRE, OGC, and OSD during Fiscal Year 2002, by Type of Product

Type of product	OCRE	OGC	OSD	Total
Background paper		1		**1**
Briefing*	3	4		**7**
Briefing paper	3	4		**7**
Clearinghouse publication*	1			**1**
Correspondence	2			**2**
Executive summary		4		**4**
Hearing, consultation, and conference*		2		**2**
Miscellaneous*	1		1	**2**
OCRE memorandum	1			**1**
OSD memorandum	1			**1**
Staff report*	1			**1**
State advisory committee report*	1			**1**
Statutory and interim reports*	2			**2**
Total	**16**	**15**	**1**	**32**

Source: U.S. Commission on Civil Rights.

Note: Product types marked with an asterisk appear in the Commission's Catalog of Publications, September 2003. We ascertained other product types based on the document title or from information supplied by Commission officials.

Procedures Do Not Ensure the Inclusion of Cost Information

Commission procedures do not provide for commissioners and senior Commission staff to systematically receive project cost information—primarily staff time charges—to help commissioners and senior staff plan and monitor projects. Commissioners continue to approve the majority of projects and products each year without having any specific information on how much the project will cost, or how much similar projects have cost in past years. Both federal government guidance and private sector project management specialists emphasize the importance of top-level reviews of actual performance. Feedback about actual project performance, including costs, is basic information essential for sound planning and allocation of scarce staff and other dollar resources. Without specific estimates of how much staff time will be spent and how much the project and its products will cost, Commission planning will continue to be conducted without key information. Commissioner approval of projects without key cost information may contribute to problems such as delayed

products and lower-quality products if too many projects are undertaken for staff to carry out without additional resources.

The Commission has taken action to limit the number of major projects that it will approve during the Commission's annual long-range planning meeting at which commissioners decide which projects to undertake. However, commissioners continue to approve new projects throughout the year without any detailed feedback from the staff director about the amount of time that staff is already committed to spend to complete previously approved projects. Unless they periodically receive a comprehensive picture of how much current projects have cost to date and how much staff time has already been committed, commissioners will continue to make decisions about how many and which future projects to undertake, or which current projects and costs to adjust, without basic information necessary for sound project planning.[20]

Without downplaying the value of cost information in project management, commissioners have been divided over how much project cost information they need. During our review, several commissioners expressed concern, both to us and publicly at monthly Commission meetings, that commissioners were not receiving sufficient information about project costs. However, several other commissioners said that they received a sufficient amount of information about the status of projects. In March 2003, the commissioners did not pass a motion—the vote was tied 4-4—for the staff director to provide them with, among other things, quarterly information about project costs that commissioners were not receiving at that time. However, the commissioners reached a compromise and passed a subsequent motion in April 2003 to receive that quarterly cost information. Specifically, the motion requires commissioners to receive information quarterly on cost by project and by office. A category of information that was in the original motion that was not included in the motion that passed includes projects' travel costs.

[20]Our 1997 review also found that commissioners at that time did not receive information on the costs of projects or the personnel working on projects. After a vote to approve a project, commissioners were not aware of (1) those projects the staff director decides to start; (2) when projects are actually started; (3) cost adjustments for projects; (4) time frame changes; and (5) personnel changes, all of which can affect the timeliness and quality of projects. See U.S. General Accounting Office, *U.S. Commission on Civil Rights: Agency Lacks Basic Management Controls*, GAO/HEHS-97-125 (Washington, D.C.: July 8, 1997), pp. 17-19.

Good project management principles dictate that cost information be integrated in a timely manner into project management. As applied to the Commission, cost information may be most useful if it is provided on a monthly basis. During its monthly meetings, the commission discusses whether or not to undertake emerging civil rights issues. These decisions will be better informed if, for example, data on costs that are already being experienced—or expected on other projects—be included in the monthly discussions.

As of September 2003, commissioners had not begun to receive the agreed upon information. Once the commissioners begin to receive the cost information, it will be important to assess the extent that the information is meeting their collective needs and responsibilities.

Procedures Do Not Ensure Commissioner Input Once Projects Have Been Approved

Although the Commission has guidance on project management procedures, we found that commissioners have limited involvement in the management of commission projects once they have been approved. This condition serves to significantly reduce the commissioners' ability to lend their expertise to the development of Commission products that address civil rights issues.

On a positive note, the Commission has a set of written instructions that outline the procedures that should be followed to manage its projects.[21] The instructions describe the general steps that should be taken in the planning, implementation, and product preparation stages of projects undertaken by the commission. For example, the instructions address steps for planning projects at the front-end as well as legal review prior to the publication of reports.

Nevertheless, the general nature of the written project management guidance limits the involvement of commissioners in project management. Specifically, the guidance does not specify the role that commissioners play in the implementation and report preparation phases, nor does it discuss the timing that commissioners should be involved throughout the process. It is especially important to have clear guidance on commissioner involvement because commissioners serve on a part-time basis and are not headquartered in a central building. Clear guidance on the nature and

[21]Administrative Manual, Administrative Instruction 1-6, National Office Program Development and Implementation, January 24, 2003.

timing of commissioner involvement can help commissioners prepare themselves to make substantive contributions to implement a project and sharpen its conclusions and policy recommendations. In addition, clear guidance can help commissioners balance their commission duties with other professional duties and travel commitments.

While the guidance addresses the role of commissioners in the last stage of the product preparation phase—final revision and approval prior to official release—this guidance only covers 2 of the 15 types of products produced by the Commission: statutory reports and clearinghouse reports.[22] In fiscal year 2002, 3 of the Commission's 32 products were either a statutory or a clearinghouse report. Put another way, the guidance does not dictate that commissioners give final review and approval for 29 of the 32 products worked on in fiscal year 2002.[23] The 13 product types not covered by the guidance include, for example, briefings, briefing papers, executive summaries, staff reports, and State Advisory Committee reports.[24] However, these reports address civil rights issues and as such, they could benefit from review by commissioners, as appropriate, as they are being developed.

Further evidence pointing to a lack of commissioner involvement in project management is the very general nature of the monthly staff reports—the main management tool currently used to keep commissioners informed about the progress of projects. The monthly staff report is prepared by the staff director and sent to commissioners in preparation for the monthly Commission meetings. The report highlights the status of selected on-going projects (the report may contain a summary of any of the 15 product types). The staff director has the discretion to select the

[22]Clearinghouse reports are general purpose, informational reports that do not include formal findings, conclusions and recommendations.

[23]Two of the 29 products were internal memoranda from senior Commission staff to the staff director and were not intended for distribution to the public. Consequently, those memoranda do not meet the Commission's definition of a product intended for public release and would not routinely be expected to be subject to commissioner review.

[24]The full list of 13 product types not covered by the written guidance include background papers; briefings; briefing papers; briefing summaries; correspondence; executive summaries; hearing, consultation, and conference transcripts (The Commission defines these as "accurate transcripts of testimony at hearings" which the Commission periodically holds at headquarters and other locations throughout the United States); internal Commission staff memorandums; miscellaneous publications; project summaries; staff analyses; staff reports; and State Advisory Committee reports.

projects to include in the monthly report. We reviewed the 11 monthly reports that the staff director sent to the commissioners during fiscal year 2002 in preparation for the monthly Commission meetings and found that information in those reports about the two-volume statutory report (and other projects and reports) to be issued during the year was limited to general descriptions of project status. For example, regarding the Commission's statutory report, commissioners were informed via the staff director's monthly reports that "progress on the project has slowed" or "staff is working on an initial draft of the report" or "staff has nearly completed a draft of the report." These updates did not contain information about the project's costs or staff day usage to date, nor potential findings or conclusions. Likewise, during the 4-month period that the one clearinghouse project and report were being developed, only one monthly report even mentioned that project, and none of the four monthly staff reports made reference to the anticipated product or the anticipated date of report issuance.

During our review, several commissioners told us that they are often unaware of the status and the content of many of the written products that result from approved projects until they are published or released by the Commission to the public. Moreover, some commissioners expressed dissatisfaction with the level of detail on project status contained in the monthly report.

Some commissioners are increasingly concerned about their lack of opportunity to review reports and other products drafted by Commission staff before they are released to the public. These commissioners believe that a lack of periodic commissioner input and review undermines the opportunity for commissioners to help shape a report's findings, recommendations, and policy implications of civil rights issues. In June and July 2003, several commissioners expressed their displeasure publicly about this lack of involvement by voting against, or abstaining from, acceptance of Commission draft products, in part because the commissioners had not had the opportunity to provide input to those projects or products. Other commissioners voted to accept the draft reports without commenting on their opportunity, or lack thereof, to provide input.

Controls Over Commission's Contracting Procedures Are Insufficient

The Commission on Civil Rights lacks sufficient management controls over its contracting procedures. In fiscal year 2002, the Commission did not follow proper procedures in awarding most of its 11 contracts. For example, the Commission's largest dollar contract—currently $156,000—is for media services and has been ongoing for over 3 years with the same vendor. According to Commission officials, key documentation on how the contract was initially awarded was missing from contract files. Moreover, Commission officials did not follow the legal requirements to obtain competition for subsequent media services contracts. As a result, the Commission did not have all of the information it should have had to determine if the contract pricing was fair and reasonable. The Commission also has inadequate controls over the administration of its contracts. For example, information on specific tasks to be performed by vendors is communicated orally, not in a performance based statement of work as required by regulation. As a result, it is difficult for the Commission to track vendors' performance against an objective measure and ensure that public funds are used in an effective manner.

Proper Procedures for Awarding Contracts Were Not Followed

The Commission did not follow federal contracting regulations for any contracts initiated in fiscal year 2002 that were over $2,500.[25] All but 4 of its 11 contracts were at or over this amount. When a government agency purchases services, the contracting officer must follow certain procedures, though these procedures vary slightly depending on the contracting method. Using simplified acquisition procedures, the contracting officer may select contractors using expedited evaluation and selection procedures and is permitted to keep documentation to a minimum. The agency still must, for contracts over $2,500, seek competition to the maximum practical extent. If circumstances prevent competition, agencies may award "sole-source" contracts, but are required to justify them in writing.

A government agency may also issue orders against contracts that GSA awards to multiple companies supplying comparable products and services under its Federal Supply Schedule. The FAR and GSA procedures require agencies to consider comparable products and services of multiple

[25]According to the FAR, $2,500 is considered the "micro-purchase threshold" with certain few exceptions. Micro-purchases may be awarded without soliciting competitive quotations if the contracting officer or individual appointed in accordance with FAR 1.603-3(b) considers the price to be reasonable.

vendors prior to issuing an order over $2,500.[26] For service orders, the agency must send a request for quotes (RFQ) to at least three Federal Supply Schedule contractors based on an initial evaluation of catalogs and price lists. The agency must evaluate the quotes based on factors identified in the RFQ. GSA's ordering procedures also state that the office ordering the services is responsible for considering the level of effort and mix of labor proposed to perform specific tasks and for making a determination that the total price is fair and reasonable.

In fiscal year 2002, seven of the commission's contracts were for amounts over $2,500, and the Commission did not follow proper procedures for any of them. For example, in fiscal year 2002, the Commission ordered its media services from a contractor listed on the Federal Supply Schedule. Instead of requesting quotes from other Schedule vendors, as required by GSA's special ordering procedures, the Commission merely selected the same contractor to which it had made improper awards in previous years using simplified acquisition procedures.

A factor that likely caused the Commission to not follow proper contracting procedures is that the Commission does not have personnel who are sufficiently qualified to conduct several of the required actions. The Commission has only two officials authorized to enter into contracts: the Acting Chief of the Administrative Services and Clearinghouse Division and the staff director.[27] However, both officials are operating with limited awareness of proper federal contracting procedures.

By not following proper procedures, the Commission did not obtain the benefits of competition and did not meet federal standards of conducting business fairly and openly. For example, by not competing its media services contract, and by using an incremental approach to obtaining media services, the Commission did not make clear the fact that it would have a recurring need for media services. Initially, in April 2000, the media

[26]In July 2000, GSA revised the ordering procedures for services. These "special ordering" procedures now apply to an order for services that requires a statement of work.

[27]The FAR provides that unless specifically prohibited by another provision of law, authority and responsibility to contract for authorized supplies and services are vested in the agency head. The agency head may establish contracting activities and delegate broad authority to manage the agency's contracting functions to heads of such contracting activities. At the Commission, the staff director, solely by virtue of his position as the administrative head of the agency, is a designated contracting official who may also award contracts and act as a contracting officer.

services contract was offered with a 90-day/$25,000 maximum. A series of 90-day, 60-day, and even 30-day contracts followed, none of which were competed. The Commission's relationship with this media services vendor has evolved into what is now an annual award with a maximum value of $156,000.[28] The staff director could not document for us whether the agency competed its media services contract initially in 2000,[29] and told us that it did not compete subsequent awards, including the last 2 years using the Schedule. In effect, the Commission denied itself the opportunity to choose from a potential pool of bidders because other vendors were likely unaware of the contract, the contract's potential value or both.

Contract Administration Lacks Sufficient Internal Control

The Commission lacks sufficient internal control over the administration of its contracts. Examples of internal control activities[30] include maintaining clear and prompt documentation on all transactions and other significant events; evaluating contractor performance; and segregating key duties and responsibilities among different people to reduce the risk of error or fraud. However, these elements of good organizational management are not evident in the Commission's administration of its contract activities. For example, the Commission has not met federal requirements to establish and maintain proper contract files and to report contract actions to the Federal Procurement Data Center (FPDC), just a few of the numerous contract administration functions listed in the FAR. As a result, the Commission is not promoting the transparency necessary

[28]In an attempt to downplay the increasing dollar value of the Commission's media services contract, the staff director stated in his comments on a draft of this report that the fiscal year 2003 total vendor fees related to its media services contract were less than $90,000. We were not provided documentation to support of this dollar figure. For fiscal year 2002, however, according to documentation from the Commission, total vendor fees related to its media services contract were approximately $131,225 under a contract maximum of $140,000.

[29]No officials are currently employed at the Commission who originally awarded the initial contract for media services. Current Commission officials could not provide us with documentation to ensure that procedures had been properly followed in awarding that contract. Subsequent contracts for continued media services were awarded to the incumbent contractor.

[30]Internal control activities are the policies, procedures, techniques, and mechanisms that enforce management's directives, such as the process of adhering to requirements for budget development and execution. They help ensure that actions are taken to address risks and are considered to be essential elements of good organizational management. See U.S. General Accounting Office, *Standards for Internal Control in the Federal Government*, GAO/AIMD-00-21.3.1 (Washington, D.C.: Nov. 1999).

to keep the Congress and others informed about the Commission's contracting activities.

Record-keeping and Reporting Standards Not Met

According to federal regulations, an agency must establish and maintain for a period of 5 years a computer file containing unclassified records of all procurements exceeding $25,000.[31] Agencies must be able to access certain information from the computer file for each contract, such as the reason why a non-competitive procurement procedure was used, or the number of offers received in response to a solicitation. Agencies must transmit this information to the FPDC, the government's central repository of statistical information on federal contracting that contains detailed information on contract actions over $25,000 and summary data on procurements of less than $25,000.[32]

The Commission has not followed federal regulations or established internal control standards with regard to reporting transactions. According to the Acting Chief of the Administrative Services and Clearinghouse Division, and to officials at the FPDC, the Commission has not met federal reporting requirements to the FPDC for at least the last 3 fiscal years. The Acting Chief said that a lack of resources is the reason for its noncompliance with this federal requirement. Moreover, the FPDC was unaware that the Commission, which historically had not entered into contracts over $25,000, now had contracts above that amount. FPDC officials told us that when they contacted the Commission, officials there told the FPDC that they were not able to submit the data because, for example, of problems with its firewalls. In addition, Commission officials

[31]FAR part 4.601.

[32]Executive departments and agencies are required to collect and report procurement data quarterly to the FPDC. The FPDC provides data for Congress, the executive branch, the private sector, and the public. The data are used to measure and assess the impact of federal procurement on the nation's economy, the extent to which small business firms and small disadvantaged business firms are sharing in federal procurement, the impact of full and open competition in the acquisition process, and other procurement policy purposes.

did not accept FPDC's offer to come to FPDC's offices and key in the data.[33]

Little If Any Performance Monitoring Being Done

According to federal regulations, agency requirements for service contracts should be defined in a clear, concise performance-based statement of work that enables the agency to ensure a contractor's work against measurable performance standards.[34] Despite these regulations and principles of good management, the Commission has not established a system to monitor contractors' performance, even for its contract that exceeds $100,000. The Commission has no records that document its decision-making on this contract. Lack of this basic, well-established management control makes the Commission vulnerable to resource losses due to waste or abuse.

Commissioner Participation in Contract Management Is Minimal

An integral component of good organizational management is a strong communication network between key decision-makers. To that end, it is vital that information on key transactions be communicated among the staff director, the commissioners and other key decision-makers. In addition, internal control standards dictate that key duties and responsibilities be divided or segregated among different people to reduce the risk of error or fraud. This includes the separation of the responsibilities for authorizing, processing, recording, and reviewing transactions, and handling any related assets. No one individual should control all key aspects of a transaction or event.

Due to the nature of the Commission's operating environment, the staff director does not provide information on procurements to the commissioners. According to the chairperson of the Commission, contracting is one of the duties that the Commission has delegated to the staff director. In fact, at public Commission meetings, when

[33]At the end of our review, the Commission provided us several documents that were purportedly submitted to the FPDC. However, the records were not consistent with FPDC documents. Specifically, the Commission sent us several completed summary contract action reports (standard forms 281, used to report data to the FPDC), showing contract data for selected quarters of fiscal years 2000-2003. According to the FPDC's Federal Procurement Reports for fiscal years 2000-2002, the Commission did not report any data in fiscal years 2000 and 2002 and only submitted first quarter data for fiscal year 2001. Moreover, the Commission's standard forms 281 covering the first three quarters of fiscal year 2003 are all dated August 11, 2003. According to FPDC, new data from the Commission regarding fiscal years 2002 and 2003 contracting activity were received on September 26, 2003.

[34]FAR part 37.602.

commissioners raised questions concerning contracting activities and sought information on contract cost and vendor performance, the chairperson asserted that contracting is not an area with which commissioners should be concerned. Moreover, a recent motion for commissioners to, among other things, be provided with cost and status information on contracts and other items failed to pass. Commissioners reached a compromise and passed a subsequent motion; however, it did not include the provision to receive information on contracts. Although the commissioners are charged with setting the policy direction of the agency, the Chairperson told us that the decision to contract out for a service is not a policy decision. She told us that the decision for the Commission to receive a certain service is a policy decision, but whether or not to perform that function in-house or contract out for it, is not. Since the contracting function is delegated to the staff director, it is her position that the commissioners need not know any details, unless there is an allegation of fraud, waste, or abuse on the staff director's part. For the Commission's largest contract, however, only the staff director has knowledge of what is being done, why it is being done and how it is being done. The Acting Chief of the Administrative Services and Clearinghouse Division is not involved because of the dollar limit on her contracting authority. Without greater transparency, the current operating environment has no mechanism to elevate concerns about contractual impropriety to the Commission.

No Independent Financial Audits Have Been Conducted in Recent Years

The Commission's fiscal activities have not been independently audited in at least 12 years. As noted in our 1997 report, the Commission is not required by statute to have an Inspector General, which could independently and objectively perform financial audits within the agency. In addition, for the fiscal year 2002 audit cycle, the Commission received a waiver from the federal requirement that its financial statements be independently audited.[35] The Commission submitted a request to have the requirement waived for both the fiscal year 2003 and 2004 audit cycles, citing a stable budget and high costs incurred through the agency's

[35]Prior to November 2002, federal law did not require the Commission on Civil Rights to prepare annual financial statements or have them independently audited. The Accountability of Tax Dollars Act of 2002 (Pub. L. No. 107-289, 116 Stat. 2049) requires the Commission and other executive agencies, not previously required to do so by another statute, to begin submitting annual audited financial statements to Congress and OMB.

conversion to a new accounting system. OMB granted the waiver for fiscal year 2003, but denied the request for the fiscal year 2004 cycle.[36]

In addition to this lack of independent financial oversight, the Commission's current financial situation is not transparent within the agency. The majority of the agency's budget-related information is centralized, with only the staff director and the chief of the Budget and Finance Division having a detailed knowledge of the Commission's financial status. However, both the body of the commissioners, which heads the organization, and senior Commission officials, who are responsible for planning and carrying out Commission projects, only know what is reported to them by the staff director. On the basis of our interviews with commissioners and other Commission officials, we found that information on costs is limited. As a result of the centralized nature of the Commission's financial operations, financial oversight is structured in a way that precludes appropriate checks and balances.

Moreover, the Commission has in place a policy that discourages individual commissioners and their special assistants from making inquiries of any nature to Commission staff and to direct all inquiries to staff through the staff director.[37] The policy dictates that commissioners not make direct contact with staff but work through the staff director to exchange information with staff and vice-versa. According to Commission documentation, this policy is meant to ensure that requests are carried out and to avoid confusion and difficult or embarrassing situations between staff and commissioners. One memo we saw even stated that violations of this policy could result in appropriate disciplinary action. Another stated that circumventing the staff director can only create confusion and disorder within the agency. According to some commissioners we spoke with, as well as senior Commission managers, this policy stifles communication and productivity within the agency and creates an

[36]OMB waived the fiscal year 2002 requirement for all covered agencies that had not prepared audited financial statements in the past, including the Commission, pursuant to a provision allowing the OMB Director to grant such a waiver for the first 2 fiscal years after the law's enactment. Additionally, the law permits the OMB Director to exempt a covered agency from the requirement in any given fiscal year, if its budget in the fiscal year does not exceed $25 million and if the Director determines that an audited financial statement is not warranted due to an absence of risks associated with the agency's operations, demonstrated performance, or other relevant factors.

[37]This policy likewise discourages Commission staff from contacting commissioners or each commissioner's special assistant, instead directing all inquiries through the staff director.

environment of uneasiness.[38] In addition, while some commissioners believe it is their fiscal duty to oversee the financial activities of the Commission and want complete financial information, others do not and cite their part-time status as the reason why they do not seek more information on financial activities. The commissioners who have the latter view believe that the fiscal responsibility of the agency lies with the staff director.

In the absence of independent financial oversight, what is known about the Commission's financial status suggests an austere financial picture. The staff director has characterized the Commission's financial condition in public meetings as "challenging." In fact, although the Commission's budget has remained at essentially the same level for about the last 10 years, it has incurred several new costs associated with operations. For example, the Commission recently converted its accounting and payment processing system from the National Finance Center (NFC) to the Department of Treasury's Bureau of the Public Debt at a cost to the Commission of almost $300,000.[39] In addition, Commission officials cited an increase of more than $130,000 in rent for the Commission's headquarters and field offices over the past year. Moreover, the Commission's financial condition has affected its operations. For example, the Commission ordered a moratorium, citing funding limitations, on all previously authorized and new travel by the agency's regional staff or State Advisory Committee members between late March 2003 and the end of July 2003. In addition, the Commission's financial status has left it unable to reduce its high staff vacancy rate, which now stands at 20 percent.[40]

[38]Other commissioners we spoke with, however, believed the policy was implemented to allow staff to better manage its work requirements.

[39]This figure includes a one-time fee of approximately $93,000. Annual costs are nearly $200,000 compared with $54,000 under NFC. Officials at the Commission told us that the Commission had to convert its accounting and payment processing system as they could no longer use NFC, due to a decision by NFC to no longer offer accounting and payment processing services to non-USDA agencies.

[40]The Commission had no unfilled permanent positions at the end of fiscal year 1997 and had two vacancies at the end of fiscal 1998. The Commission had 10 unfilled positions at the end of fiscal year 1999, 9 at the end of fiscal year 2000, and 18 at the end of fiscal years 2001 and 2002. Although the Commission reports 3 vacancies in its Public Affairs Unit, Commission officials have outsourced the agency's public affairs function.

Conclusions

While the Commission has taken steps in recent years to improve its operations, it nevertheless continues to operate in a manner not fully consistent with sound management principles. These principles dictate that key decision makers receive timely information on project cost and have a vehicle throughout the project process to communicate their ideas and expertise. We recognize that commissioners should soon be receiving more information on project costs than had been previously received. While it remains to be decided whether the amount and timing of this information will meet the Commission's needs, the challenge now facing commissioners is to partner toward the strategic use of cost information. In addition, the current level of commissioner involvement in the reporting phase of Commission products does not ensure that products are reflecting the full and wide-ranging expertise of the commissioners and as such, the potential impact of Commission products can be limited. This outcome can undermine the important mission of the Commission—to help inform and guide the nation on civil rights issues

The Commission's procurement of services is not being conducted in accordance with established internal control standards or federal regulations. We have long held that an agency's internal control activities are an integral part of its planning, implementing, reviewing, and accountability for stewardship of government resources and achieving effective results. Without the proper internal controls, there is little public assurance that funds are being spent in a proper and effective manner. As a result of the Commission's weak contract management operations, the Commission does not have all of the information it should have to determine that the contracts it is entering into are reasonable and offer the best value to the government.

Although the dollar amount involved in its contracting activities represents a small percentage of its overall appropriation, such expenditures are growing. But regardless of the amount spent on contracting, there is a need for the Commission to take steps now to ensure that current and future contract actions are performed in compliance with established regulations. If the Commission does not adhere to these regulations, then transparency cannot be established and no assurance can be given to the public that the Commission's activities are leading to the proper and efficient use of public funds.

The Commission has not had an independent audit of its financial statements in recent years. The requirement for the Commission to prepare and submit an audited financial statement, included in the Accountability of Tax Dollars Act of 2002, is an important step to

strengthening its financial and performance reporting. However, these benefits have yet to be realized. Given the Commission's limited financial management controls and current budget situation, the lack of external oversightparticularly in terms of financial audits—may make the Commission vulnerable to resource losses due to waste, mismanagement or abuse. Although funding an independent audit could represent a significant new cost to the Commission, these audits are essential to the sound stewardship of federal funds. Our longstanding position has been that the preparation and audit of financial statements increase accountability and transparency and are important tools in the development of reliable, timely, and useful financial information for day-to-day management and oversight. Preparing audited financial statements also leads to improvements in internal control and financial management systems.

Recommendations

To further the Commission's efforts to better plan and monitor project activities, we recommend that the Commission

- monitor the adequacy and timeliness of project cost information that the staff director will soon be providing to commissioners and make the necessary adjustments, which could include providing information on a monthly rather than quarterly basis, as necessary; and

- adopt procedures that provide for increased commissioner involvement in project implementation and report preparation. These procedures could include giving commissioners a periodic status report and interim review of the entire range of Commission draft products so that, where appropriate, commissioners may help fashion, refine, and provide input to products prior to their release to the public.

To ensure proper contracting activities at the Commission, we recommend that the Commission

- establish greater controls over its contracting activities in order to be in compliance with the Federal Acquisition Regulation. These controls could include putting in place properly qualified personnel to oversee contracting activities, properly collecting and analyzing information about capabilities within the market to satisfy the Commission's needs, and properly administering activities undertaken by a contractor during the time from contract award to contract closeout.

While the Commission has received waivers from preparing and submitting audited financial statements for fiscal years 2002 and 2003, we recommend that the Commission

- take steps immediately in order to meet the financial statement preparation and audit requirements of the Accountability of Tax Dollars Act of 2002 for fiscal year 2004. These steps toward audited fiscal year 2004 financial statements could include, for example, (1) identifying the skills and resources that the Commission needs to prepare its financial statements in accordance with generally accepted accounting principles and comparing these needs to the skills and resources that the Commission presently has available; (2) preparing such financial statements, or at least the balance sheet with related note disclosures, for fiscal year 2003; and (3) ensuring that evidence is available to support the information in those financial statements.

Agency Comments and Our Evaluation

The U.S. Commission on Civil Rights provided us with two sets of comments on a draft of this report. We received comments from four commissioners and from the Commission's Office of the Staff Director. Commissioners Kirsanow, Redenbaugh, Thernstrom, and Braceras concurred with our conclusions and recommendations on the management practices at the Commission. Their comments are reproduced in their entirety in appendix III. We did not receive comments from the remaining four commissioners, who include both the chairperson and the vice-chair of the Commission.

In comments from the Office of the Staff Director, the staff director pointed out that the Commission is committed to ensuring that its operations are well maintained and will consider implementing whatever recommendations and suggestions that appear in the final report. However, the staff director believed that many of the findings were inaccurate and that aspects of the draft report contained errors, unsubstantiated allegations, and misinterpretations. For example, the staff director disagreed with our finding that the Commission lacks sufficient management controls over its contracting procedures and concluded the Commission's overall fundamental contract practices are sound. Similarly, he disagreed with our findings concerning weaknesses in project and financial oversight. After carefully reviewing his concerns, we continue to believe that our conclusions and recommendations are well founded. The staff director's detailed comments and our responses to them are contained in appendix IV. Finally, the staff director also provided a

number of technical comments and clarifications, which we incorporated, as appropriate.

As arranged with your office, unless you announce its contents earlier, we plan no further distribution of this report until 30 days after its issue date. At that time, we will provide copies of this report to interested congressional committees. We are also sending copies to the commissioners and the staff director, U.S. Commission on Civil Rights. We will also make copies available to others upon request. In addition, the report will be available at no charge on GAO's Web site at http://www.gao.gov.

Please contact me on (202) 512-7215 or Brett Fallavollita on (202) 512-8507 if you or your staff have any questions about this report. Other contact and staff acknowledgments are listed in appendix V.

Sincerely yours,

Robert E. Robertson,
Director, Education, Workforce, and
Income Security Issues

Appendix I: Scope and Methodology

During our review of the U.S. Commission on Civil Rights' activities, we focused on the management of individual projects, as we had done during our 1997 review and examined them in the context of broader management issues at the Commission. For example, to analyze the Commission's expenditures on projects since 1997 in the context of both the project spending discussed in our 1997 report as well as in comparison with the Commission's most recent budget request, we reviewed the Commission's annual Request for Appropriation for fiscal years 1999 through 2004, which provided data on how the Commission actually spent its appropriations for fiscal years 1997 through 2002. We noted that the Commission's fiscal year 2004 Request for Appropriation requests a significant increase in funding, from $9 million in fiscal year 2002 to $15 million in fiscal year 2004. Consequently, we not only focused on how well the Commission currently manages its projects, but also considered the implications of potentially significant increases in project and product spending and the human resources need to properly manage such increases.

We used a combination of Office of Management and Budget (OMB), private sector, and our own guidance as criteria to identify key elements of good project management. These criteria included U.S. General Accounting Office, *Standards for Internal Control in the Federal Government*, GAO/AIMD-00-21.3.1 (Washington, D.C.: Nov. 1999); *Preparation and Submission of Budget Estimates (2002)* (OMB Circular No. A-11, Part 2); *Project Management Scalable Methodology Guide* (© 1997, James R. Chapman); *A Guide to the Project Management Body of Knowledge* (PMBOK® *Guide*)—2000 Edition (The Project Management Institute, Sept. 2003); and *Project Management—Conventional Project Management* (Northern Institute of Technology, Hamburg, Mar. 2002). Our standards for internal control list top-level review of actual performance (e.g., commissioner review of actual project cost) as a key control activity. OMB Circular No. A-11 emphasizes the importance of managing financial assets.

To supplement the general guidance on good project management principles described in OMB's and our guidance to agencies, we identified several private sector principles, practices, and techniques for good project management at the individual project level. For example, the *Project Management Scalable Methodology Guide* (© 1997, James R. Chapman) and the Project Management Institute's *A Guide to the Project Management Body of Knowledge* (PMBOK® *Guide*)—2000 Edition identify project management principles for small, straightforward projects as well as a best practices approach for large, complex projects. According

to these principles, regardless of project size or degree of risk, sound project cost management calls for comparisons between project plans and actual project performance—even for projects with minor levels of investment and low risk.

We reviewed the most recent complete fiscal year's project activities at the time of our review (fiscal year 2002) and identified 22 projects and 43 products (briefings, executive summaries, internal memorandums, reports, etc.) that resulted from those projects. Of the 43 total products that resulted from these projects as of July 2003, we included in our review the 32 issued during fiscal year 2002. We excluded 3 products issued during fiscal year 2001 and 8 products issued or expected to be issued during fiscal years 2003 or 2004.

Table 2 provides details about project names and product titles produced during fiscal year 2002 by those offices that generate headquarters Commission products that result from commissioner-approved projects: the Office of Civil Rights Evaluation (OCRE), the Office of General Counsel (OGC), and the Office of the Staff Director (OSD). The OSD product resulted from a project initiated by the staff director rather than from the commissioners. Table 2 also includes a State Advisory Committee report from Alaska because OCRE staff assisted in preparing the report. The table excludes an Arizona State Advisory Committee briefing and State Advisory Committee reports from Iowa and Pennsylvania in 2002 because OCRE staff were not involved in preparing the briefing or those reports. Some fiscal year 2002 projects will generate products in future years. (See app. II.)

Table 2: OGC, OCRE, and OSD Projects and Products, Fiscal Year 2002

GAO-assigned project number	Project title	Products and GAO-assigned product numbers (43 total products, 32 products in FY 2002) (Bold = FY 2002 = within GAO Scope)	Project cost
OGC[a]			
1	Crossing Borders	1. Briefing December 8, 2000	$50,290
		2. Executive Summary December 8, 2000: "Crossing Borders: An Examination of Civil Rights Issues Raised by Current Immigration Laws, Policies, and Practices"	
2	Boundaries of Justice	3. **Briefing** October 12, 2001	
		4. **Executive Summary** October 12, 2001: "Briefing on Boundaries of Justice: Immigration Policies Post-September 11th"	
		5. **Briefing** June 21, 2002	
		6. **Executive Summary** June 21, 2002: "Briefing on Haitian Asylum Seekers and U.S. Immigration Policy" (Miami, Florida)	
1 + 2	Crossing Borders/Boundaries of Justice	7. Project Summary January 2003: "Crossing Borders: The Administration of Justice and Civil Rights Protections in the Immigration and Asylum Context"	
3	Florida Election Reform	8. **Briefing** June 2002	$109,329
		9. **Briefing Paper** June 13, 2002: "Voting Rights in Florida 2002: The Impact of the Commission's Report and the Florida Election Reform Act of 2001"	
		10. **Executive Summary** August 2002: "Voting Rights in Florida 2002"	
4	Environmental Justice	11. **Hearing** January 2002	$234,926
		12. **Briefing Paper** January 4, 2002: "Environmental Justice Hearing"	
		13. **Hearing** February 2002	
		14. **Briefing Paper** February 8, 2002: "Environmental Justice Hearing"	
5	Education Accountability	15. Briefing Paper January 30, 2003: "Briefing Paper for Education Accountability, February 6, 2003"	$162,570
		16. Briefing February 6, 2003	
		17. Executive Summary June 2003: "Education Accountability and High-Stakes Testing in North Carolina"	
6	Native American Project Health Care[b]		[b]

GAO-assigned project number	Project title	Products and GAO-assigned product numbers (43 total products, 32 products in FY 2002) (Bold = FY 2002 = within GAO Scope)	Project cost
7	Racial Privacy Act[c]	18. **Briefing** May 17, 2002	[c]
		19. **Briefing Paper** May 2002: "Enforcement Without Evidence? Consequences of Government Race Data Collection Bans on Civil Rights"	
		20. **Executive Summary** July 2002: "Briefing on the Consequences of Government Race Data Collection Bans on Civil Rights"	
8	USA Patriot Act/Homeland Security (Revisiting Anti-Terrorism Act)	21. **Background Paper** July 2002: "Protecting Civil Liberties in the New Homeland Security Department"	$17,864
9	Supreme Court Review	22. Staff Analysis October 2002: "Supreme Court Civil Rights and Related Cases: The 2001 – 2002 Term"	$6,700
OCRE			
10	Ten-Year Check-Up Volume 1	23. **Statutory Report** September 2002: "Ten-Year Check-Up: Have Federal Agencies Responded to Civil Rights Recommendations? Volume I: A Blueprint for Civil Rights Enforcement"	$310,542
11	Ten-Year Check-Up Volume 2	24. **Statutory Report** September 2002: "Ten-Year Check-Up: Have Federal Agencies Responded to Civil Rights Recommendations? Volume II: An Evaluation of the Departments of Justice, Labor, and Transportation"	
12	Beyond Percentage Plans	25. Staff Report November 2002: "Beyond Percentage Plans: The Challenge of Equal Opportunity in Higher Education"	$121, 895
13	Voting Rights Procedures Nationwide	26. Briefing March 9, 2001: "Voting Rights Overview"	$9,337
		27. **Staff Report** November 2001: "Election Reform: An Analysis of Proposals and the Commission's Recommendations for Improving America's Election System"	
14	Post Terrorism Initiatives	28. **OSD Memorandum** December 6, 2001: "Recent Civil Rights Developments Relating to Anti-Terrorism Efforts"	$15,532
15	Post Terrorism Initiatives Update	29. **OCRE Memorandum** July 11, 2002: "Update on December 2001 Memorandum on Post-9/11 Civil Rights Issues"	
16	Bioterrorism	30. **Briefing** March 8, 2002	
		31. **Briefing Paper** March 8, 2002: "Bioterrorism and Health Care Disparities"	
17	The Individuals with Disabilities Education Act Reauthorization	32. **Briefing** April 12, 2002	$33,294
		33. **Briefing Paper** April 12, 2002: "Making A Good IDEA Better: The Reauthorization of the Individuals with Disabilities Education Act"	

GAO-assigned project number	Project title	Products and GAO-assigned product numbers (43 total products, 32 products in FY 2002) (Bold = FY 2002 = within GAO Scope)	Project cost
		34. **Correspondence** May 17, 2002	
		35. Correspondence January 8, 2003	
18	Welfare Reauthorization	36. **Briefing** July19, 2002	
		37. **Briefing Paper** July 2002: "Comparison and Analysis of the 1996 Welfare Reform Bill and 2002 Proposals"	
		38. **Miscellaneous** (A Statement of the U.S. Commission on Civil Rights) August 2002: " A New Paradigm for Welfare Reform: The Need for Civil Rights Enforcement"	
		39. **Correspondence** August 2002	
19	Alaska State Advisory Committee Report[d]	40. **State Advisory Committee Report** April 2002: "Racism's Frontier: The Untold Story of Discrimination and Division in Alaska"	[d]
20	Funding Civil Rights Enforcement (2002)[e]	41. **Clearinghouse Publication** April 2002: "Funding Federal Civil Rights Enforcement: 2000–2003"	[e]
21	Federal Funding of Native American Programs	42. Report July 2003: "A Quiet Crisis: Federal Funding and Unmet Needs in Indian Country"	[f]
OSD			
22	Anniversary Update on Commission Activities Related to September 11[g]	43. **Miscellaneous** September 2002: "Anniversary Update on Commission Activities Related to September 11"	[g]
Total	**22**	**43 (32 in FY 2002)**	**$1,072,279**[h]

Source: Commission staff.

[a]This list of OGC products does not reflect that OGC also produces internal briefing books for the commissioners in connection with hearings and briefings. OGC briefing books include a briefing or background paper; briefing or hearing agenda; witness lists with biographical information; copies of reports or studies conducted by each witness that are relevant to the issues presented; an explanation of the purpose and scope of the witness panels; relevant federal and state statutes; and other information deemed necessary for understanding the subject matter being presented during the hearing or briefing. Briefing books are prepared for commissioner use only, may contain privileged material, and are not made available to the public.

[b]The Commission originally approved a project titled Native American Access to Justice for fiscal year 2001. The project was postponed until fiscal year 2002 due to emerging issues and other project work. During fiscal year 2002, the project was again postponed due to the Environmental Justice and the Education Accountability projects being given higher priority and for additional commissioner guidance to staff about the nature and scope of further Native American project work. The Commission terminated the access to justice project in November 2002, and in January 2003 changed the focus of the Native American project from administration of justice to health care. According to the staff director, there were no costs associated with either the access to justice project or the health care project during fiscal year 2002.

[c]According to the staff director, the work performed for the Racial Privacy Act briefing and summary was charged under a general legal code and, therefore, there were no specific cost data for this activity. The OGC deputy general counsel told us that the practice of using a general legal code sometimes occurs when staff perform general or miscellaneous legal work of short duration that needs to be completed within brief time frames. The deputy explained that legal work associated with most projects approved by the Commission is charged to the specific individual code established for each project assigned to the General Counsel' s office.

[d]According to the staff director, the costs associated with OCRE's work on the Alaska State Advisory Committee Report were not tracked by office but were captured to include all State Advisory Committee expenses associated with this project. However, the staff director did not provide us with a total cost figure for this project or with the proportion of total costs that were spent by headquarters staff and by the region. If the Commission's project cost accounting system is to be considered accurate and complete, it should be able to account for the total costs associated with this type of field-headquarters collaborative effort product.

[e]According to the staff director, in fiscal year 2002 the Funding Civil Rights Enforcement project was tracked by OCRE as a monitoring activity, and a separate code for that project has been established since that time.

[f]The Commission approved an OCRE Native American project in December 2001. OCRE began work on this project in September 2002.

[g]The project team leader told us that his time associated with the OSD's work on the anniversary update project was not charged to a separate code established for that report, but rather was charged to a general code that includes many similar types of relatively short-term efforts. This project was initiated by the staff director rather than by the commissioners.

[h]Excludes costs for those projects and products described in notes b through g.

Appendix II: Products Issued or Expected to Be Issued after Fiscal Year 2002

This appendix lists the number of products, by type of product, issued or expected to be issued after fiscal year 2002 from projects that were ongoing during fiscal year 2002. (See app. I.)

Table 3: Number of Products Issued or Expected to Be Issued after Fiscal Year 2002 by OCRE and OGC from Projects That Were Ongoing during Fiscal Year 2002, by Type of Product

Type of product	OCRE	OGC	Total
Briefing[a]		1	**1**
Correspondence[b]	1 (January 2003)		**1**
Executive summary[a]		1	**1**
Hearing[c]		1 (FY 2004)	**1**
Project summary		1 (January 2003)[d]	**1**
Report		1 (FY 2004)[a]	
	1 (July 2003)[e]	1 (FY 2004)[c]	**3**
Staff analysis		1 (October 2002)[f]	**1**
Staff report	1 (November 2002)[g]		**1**
Total	**3**	**7**	**10**

Source: Commission staff.

[a]Education Accountability project briefing February 2003, executive summary May 2003, and report due fiscal year 2004.

[b]The Individuals with Disabilities Education Act Reauthorization.

[c]Native American Project Health Care hearing (or briefing) and report projected for fiscal year 2004.

[d]Crossing Borders: The Administration of Justice and Civil Rights Protections in the Immigration and Asylum Context.

[e]A Quiet Crisis: Federal Funding and Unmet Needs in Indian Country.

[f]Supreme Court Civil Rights and Related Cases: The 2001 – 2002 Term.

[g]Beyond Percentage Plans: The Challenge of Equal Opportunity in Higher Education.

Appendix III: Comments from Four Commissioners

October 14, 2003

Mr. Robert E. Robertson
Director
EWIS-Room 5928
General Accounting Office
Washington, D.C. 20548

Re. GAO-04-18, *U.S. Commission on Civil Rights: More Operational Financial Oversight Needed (Report to the Chairman, Subcommittee on the Constitution, Committee on the Judiciary, House of Representatives)*

Dear Mr. Robertson,

We write to inform you that we, the undersigned Commissioners, concur with the conclusions and recommendations contained in the GAO report on the management practices of the U.S. Commission on Civil Rights. We respectfully submit these comments for inclusion in the final published version of the report so that we might inform you and the public at large of some of our own concerns regarding Commission management practices, and so that we might clarify the important implications of this report.

As you are aware, this report underscores many of our longstanding concerns regarding the Commission's integrity and ability to function effectively. In particular, the report raises two global questions about the administration of this agency: (1) Who is in charge? (2) Who has the authority to speak for the Commission? In both cases, one thing is clear: It is not the Commissioners.

(1) Who is in charge?

As this most recent GAO investigation clearly indicates, very few of the reports published by the Commission in 2002 were, in fact, approved by the Commissioners. Instead, the staff director chose not to bring reports to a vote of the Commission and simply disseminated "staff reports" and other documents claiming that Commission approval was not required. As this report also makes clear, Commissioners often do not have the opportunity to review official Commission documents before they are released to the public.

To summarize, Commissioners have little input into most Commission projects and activities and are expected to defer unquestioningly to the staff director's recommendations. On more than one occasion, Commission Chairman Mary Frances Berry has stated that Commissioners should not ask questions and should simply let the staff "do their jobs." This notion, that the Commission exists merely to rubberstamp the decisions of the staff constitutes an abdication of the agenda-setting function of the Commission and demonstrates how Commissioners are treated as peripheral to the work of the Commission.

The failure to allow any significant Commissioner input into reports and other Commission projects is not simply a management problem. It is also a problem of quality control and casts serious doubt on the Commission's ability to execute its core function to issue findings and make recommendations to the President and Congress. [1]

(2) Who Speaks for the Commission?

The Chairman routinely issues press releases, public statements, and letters to high-ranking elected officials on behalf of the entire body without authorization from the Commission and without first notifying the Commissioners or circulating a draft document to Commissioners.

We have protested these practices many times but have found that the staff is unresponsive and is either unable or unwilling to change. In part, this is because the Commission operates along an inefficient, vertical administrative structure that isolates the staff from the Commission. The only link between these two groups is the staff director who claims, as GAO points out, to serve the Commission as a body, not the Commissioners as individuals. In reality, however, this structure concentrates all power in the hands of the staff director and the Commission's senior staff, enabling those officers to circumvent the Commissioners, who should be the Commission's primary source of political legitimacy and accountability.

Additionally, there are no internal or external mechanisms to provide disinterested and objective audits of the Commission's operational and financial processes. For example, the Commission's statute does not provide for an Inspector General who could assess internal issues independently from the Commissioners or the staff director. Its Administrative Instructions are applied randomly principally because the staff director does not feel bound by them. Even though the statute provides for a general counsel who would be the legal advisor to the Commission and the Commissioners, that position is vacant. The person currently serving as deputy general counsel concurs with the Chairman's understanding that she too serves the Commission as a body through the staff director.

[1] Although GAO's narrow mandate did not include an assessment of the quality of Commission products, we have found that the reports lack the substantive and methodological rigor worthy of the Commission's history and seal.

This structural and administrative dysfunction at the U.S. Commission on Civil Rights is not new. In its 1997 report, "U.S. Commission on Civil Rights: Agency Lacks Basic Management Controls," GAO reported on the dismal management and structural issues at the Commission. This report recommended that the USCCR update its regulations, improve its internal management guidance, and establish a management information system.

Six years later, the Commission has yet to implement the first recommendation. It has not published updated regulations that accurately reflect the Commission's practices. In response to a congressional inquiry in 2002, the Commission did send a version of the regulations to the Federal Register. However, this version did not reflect the 1998 Commission's vote and adoption of draft regulations. Further, when Commissioners inquired in 2002 and 2003 as to why the updated version of the Commission's regulations did not reflect the consensus of the Commissioners, the deputy general counsel characterized serious mistakes in the regulations as "typos" and stated that there would be amendments. As of the date of this letter, the amended regulations have not been published in the Federal Register and Commissioners have not received an update.

Without clear and substantive lines of authority between the Commissioners, the staff director, the senior staff, and the staff, the Commission is unaccountable and inevitably inefficient. Many of this report's findings reveal examples of such inefficiency – i.e., the Commission's dismal contracting practices, its disturbing relationship with its public relations firm, and the lack of qualified personnel at the Commission to handle contracting functions.[2]

A culture of unaccountability is a firmly entrenched feature of the Commission's administrative character. Structural changes geared to clarify the ministerial function of the staff director and to increase Commissioner involvement in shaping the Commission's reports, findings and policy recommendations should be a predicate to further appropriations.

The Commission could function as the nation's conscience if its deliberative processes were rational, open, and fair; its findings objective and unimpeachable; and its membership fully engaged in framing, shaping and drafting its reports. Instead, the Commission teeters on irrelevance. In short, we agree with the sentiment expressed in a recent *Washington Post* editorial. "A serious, rigorous commission could create breathing space for creative civil rights dialogue unbeholden to the orthodoxies of either the left or

[2] Some Commissioners and other outside advocates have argued that increased appropriations would resolve many of the Commission's problems. We disagree. If management were sound, the Commission could do more with less. The Commission, according to GAO, has not taken effective steps to streamline or appropriately track key cost information. Neither commissioners nor senior Commission staff systematically receive project cost information. The Commission refuses to compete or justify its largest dollar services contract and to fully utilize the Commissioner's expertise, which is considerable, on management and policy issues. And, in spite of requests for detailed financial information, the Staff director is unwilling or unable to produce it.

the right."[3] Unfortunately, the Commission as currently managed, is far from achieving this goal.

Sincerely,

Peter N. Kirsanow, Commissioner

Russell G. Redenbaugh, Commissioner

Abigail Thernstrom, Commissioner

[3] *Sins of the Commission,* WASHINGTON POST, February 11, 2002.

UNITED STATES
COMMISSION ON
CIVIL RIGHTS

624 Ninth Street, N.W.
Washington, D.C. 20425

October 14, 2003

Mr. Robert E. Robertson
Director
EWIS-Room 5928
General Accounting Office
Washington, D.C. 20548

Re. GAO-04-18, *U.S. Commission on Civil Rights: More Operational Financial Oversight Needed (Report to the Chairman, Subcommittee on the Constitution, Committee on the Judiciary, House of Representatives)*

Dear Mr. Robertson,

I respectfully concur with the conclusions and recommendations contained in the above-referenced report on the U.S. Commission on Civil Rights. I write separately to urge Congress and the GAO to continue monitoring the Commission and its compliance with the recommendations contained herein. I am hopeful that with the implementation of sound management practices and continued public monitoring we might begin to restore the political legitimacy of this once respected federal agency. Thank you for your role in that enterprise.

Sincerely,

JCBraceras

Jennifer C. Braceras
Commissioner

Appendix IV: Comments from the Commission's Staff Director

Note: GAO comments supplementing those in the report text appear at the end of this appendix.

UNITED STATES COMMISSION ON CIVIL RIGHTS
WASHINGTON, D.C. 20425

OFFICE OF STAFF DIRECTOR

October 15, 2003

Robert E. Robertson
Director
Education, Workforce, and
Income Security Division
U.S. General Accounting Office
441 G Street, N.W.
Washington, D.C. 20548

Re: GAO Draft Report

Dear Mr. Robertson:

This letter is in response to the draft report prepared by GAO. We have reviewed the report closely and are both pleased that it recognizes the positive aspects of the agency's management processes, as well as concerned with some of its analysis of the Commission's management issues. We are particularly pleased that the report acknowledges the Commission has addressed the concerns highlighted in GAO's last examination of the agency in 1997. We agree with the draft report's assessment that since 1997, the Commission has updated its management policies and procedures to better manage projects in the following ways:

- Establishing and clarifying the roles of the Staff Director and senior Commission staff.
- Ensuring the Budget and Finance Division regularly provides spending data by office and function to the Staff Director to enable him to track the status of agency expenditures by organizational component at headquarters and field offices.
- Implementing a combination of techniques, such as weekly staff meetings, weekly or monthly reports from staff, and computer-generated schedules to monitor large, complex projects, to ensure that project deadlines are met.
- Ensuring that project leaders routinely monitor projects so they stay on schedule.

The Commission also responded to GAO's 1997 recommendations by revising the agency's Administrative Instruction Manual, implementing a project tracking system, and revising the agency's regulations.

We are also pleased that the report determined that the Commission's project management procedures allow Commissioners, the Staff Director, senior Commission staff, and project team leaders to effectively manage long-range projects that take a year or more to complete, as well as time-critical projects that take several months or weeks to complete.

In addition, we find it noteworthy that your examination of current Commission operations revealed no "management and administrative improprieties" as were reported in GAO's 1988 examination of the Commission.[1]

We are concerned, however, with some findings in the draft report relating to the Commission's project management procedures, as well as the other two main areas examined in the report relating to financial oversight status and contracting procedures. Many of the findings in these areas are inaccurate, and there are aspects of the draft report that must clearly be modified. The remainder of this response will point out errors, unsubstantiated allegations, and misinterpretations presented in the draft report in each of these three areas that should be corrected in the final version.

PROJECT MANAGEMENT

See comment 1.

GAO's suggestions for future changes do not reveal any current deficiencies in the area of project management. In fact, here GAO focuses exclusively on the role of the Commissioners, misinterpreting their duties and purpose.

See comment 2.

The draft report presumes that it is desirable for Commissioners to shape a report's findings and recommendations when the Commission has specifically rejected this view. The Commission has a long history of the career civil servant staff researching and drafting reports with conclusions supported by the facts.

See comment 3.

Although Commissioners do not have a role in influencing the findings and recommendations in reports while they are being written, the GAO draft fails to acknowledge that Commissioners are provided opportunities to shape the scope of reports. For example, during the annual project planning meeting, Commissioners actively debate and provide specific feedback to project managers on the scope, potential resources, duration, and the scheduling of projects in light of existing priorities. Commissioners have the opportunity to meet with the Staff Director and appropriate staff members to be briefed on the progress of the projects. I have never turned down such a request. Additionally, as noted in footnote b on page 32, Commissioners change the scope of projects during Commission meetings throughout the year, providing another avenue for Commissioner involvement in project development.

See comment 4.

The draft report minimizes the amount of information provided to Commissioners about ongoing projects. Pursuant to their requests, last month the Commissioners received a timely quarterly report on project and office costs. This report will be forwarded to the Commissioners each quarter. Pages 7 and 13 of the draft report should be corrected to reflect this recent development. In addition, the draft report fails to mention the project costs data and staff hours information that

[1] Also important to note, GAO stated early on during this review that another area of inquiry was whether the Commission's Human Resources Division appropriately handled personnel matters, including the matter regarding a Commissioner's proposed special assistant. In furthering this examination, GAO asked our director of Human Resources several questions on this subject before acknowledging that our handling of the matter was consistent with proper procedures. GAO officials subsequently informed us that they dropped the examination of the Commission's personnel policies as an area of inquiry for this report.

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are regularly shared with project managers. The timeliness of Commission reports without any sacrifice to quality should be emphasized in the draft report.

See comment 5.

Additionally, in GAO's initial letter to the Commission defining the scope and purpose of this review, written by Ms. Cynthia Fagnoni and dated December 18, 2002, GAO noted that examination for compliance with prior GAO recommendations was one of two key GAO objectives. Clearly, this is an important issue to GAO, and it is only fair that our success in addressing GAO's recommendations, such as improvement in timeliness of reports, is acknowledged in the final report, rather than minimized in footnote 18. The report in footnote 18 states that as the scope of the 1997 report and the current report are different, a comparison on report timeliness is methodologically inappropriate. However, regardless of the scope of either report, it is clear that the Commission completed 21 projects in fiscal year 2002 – in contrast to the 1997 GAO report, which found that, "[d]uring fiscal years 1993 through 1996, the Commission completed 5 projects, deferred 10 others, and worked on another 7 that were still ongoing at the end of fiscal year 1996." GAO also found no evidence of lower quality in the Commission's current products. Moreover, the draft report recognizes that the Commission has instituted project planning procedures ensuring that project deadlines are met. Thus, the final report should acknowledge the improvement of timeliness in completion of projects.

Additionally, we provide the following responses to specific portions of the draft report section on project management.

See comment 6.

Page 2 Results in Brief
The fourth sentence should specify that detailed costs information is now flowing to the Commissioners and the staff.

See comment 7.

Page 3 Results in Brief
For the reasons stated above, we do not believe the last sentence in this section is necessary. To the extent that the sentence remains in the report, it should specify that the report contains recommendations for improving project management at the Commissioner level. This distinction should be made, because the report does not offer recommendations to either the Office of the General Counsel (OGC) or the Office of Civil Rights Evaluation (OCRE) for improving project management.

See comment 8.

Pages 3-4 Background
On page 3 the report states, "[t]he eight commissioners have two principal responsibilities – investigating claims of voting rights violations and studying and disseminating information, often collected during specific projects, on the impact of federal civil rights laws and policies." Please provide a citation for that sentence and see the Commission's authorizing statute for a correct description.

See comment 9.

Page 7 Procedures Have Improved, but Lack Some Key Elements of Good Project Management.
After the first sentence, insert language to the following effect: "Project management has improved to the extent that office managers now establish project timelines and report progress

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See comment 10.

See comment 11.

See comment 12.

toward goals in monthly written reports to the Staff Director. Project milestone dates also are routinely provided to Commissioners in monthly reports from the Staff Director."

After the third sentence, it should be restated that GAO did not find evidence of lower quality products.

Page 11 Table 1
The following corrections should be made to the OCRE portion of the table on page 11 and to appendix I:

Briefings: 4 (Voting rights, IDEA, Welfare, Bioterrorism)
Staff reports: 2 (Election Reform, Percentage Plans)

Also, GAO misses some products that should be added. The relevant source documents are attached to this letter.

Briefing paper: 3 (GAO did not list the welfare briefing paper.)
Correspondence: 2 (GAO did not list the welfare letter.)

TOTAL: 17 products should be listed on page 11 in the OCRE column (as a result of above changes).

The following corrections should be made to the OGC portion of the table on page 11 and to appendix I:

Briefing paper: 5 (2 on Environmental Justice, 1 on Education Accountability, Florida Election Reform, and Racial Data Collection (assisting OSD)). In addition, there was no staff analysis in fiscal year 2002 for OGC. The item GAO refers to as a staff analysis is the briefing paper on Florida election reform.

Briefings: 6 (3 on Crossing Borders, 1 on Florida Election Reform, Education Accountability, and Racial Data Collection (assisting OSD)).

Executive Summaries: 6 (3 on Crossing Borders, 1 on Education Accountability, Florida Election Reform, and Racial Data Collection (minimally assisting OSD)). The draft report misidentifies some of the six summaries as briefing summaries and fails to count all the work produced when both categories are counted.

Page 15
First full paragraph. The text suggests that Commissioners did not discuss the Percentage Plan report. However, it was discussed at the November 15 meeting in San Diego. The relevant portion of the transcript is attached to this letter.

Page 31 Appendix I
The table needs to be corrected as follows:

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Item 21 the words "Briefing Paper" should be in bold because it fits the definition on the preceding page.

Add item 34: Welfare Reform Briefing Paper
Add item 35: Welfare Reform Correspondence

Re-number to allow for above changes. There should be 38 products total.

Footnotes:
The second footnote should indicate that it is specifically referencing a project assigned to OGC because there was a separate OCRE project during the same time.

See comment 13.

Since collateral duties of other offices are noted, a footnote should be added to the effect that OCRE has responsibility for processing/referring the more than 4,000 complaints that the Commission receives annually. It is noteworthy that during the review period, OCRE staff also covered Public Affairs Unit (PAU) functions such as producing *The Civil Rights Journal*, scanning daily newspapers for civil rights-related news, clipping and distributing relevant news items to Commissioners and the staff, briefing international visitors, and planning special-emphasis months.

See comment 14.

Page 33 Appendix II
Correspondence: As stated above, the Correspondence listed here was assigned 12 days before the close of the fiscal year, thus there was not an expectation that it would be implemented before the end of the fiscal year.

Staff Report: This report was assigned to OCRE in June by the Staff Director. There was not an expectation that it would be completed and released before the end of September.

For the foregoing reasons, the two deliverables referenced here do not qualify as being carried over from the previous year.

FINANCIAL OVERSIGHT

See comment 15.

See comment 16.

See comment 17.

The financial oversight section of the draft report, like others, contains inaccuracies and simply makes recommendations without any findings of improper conduct or mismanagement. It is completely appropriate that the Staff Director relay financial information to the Commissioners. Page 22 of the draft report implies that this flow of financial information from the Staff Director to the Commissioners is in someway wrong without providing any further explanation.

The reference to the Commission's longstanding policy on Commissioner and staff interaction is inappropriate, but somewhat typical of more than a few of GAO's suggestions. That is, it argues for overturning a policy that has always existed at the Commission, as far as we can tell, and certainly since the early 1980's. Responsibility for determining policy on Commissioner interaction with staff is a function delegated by statute to the Commissioners, and the Commissioners have reaffirmed on numerous occasions the current policy regarding interaction with staff. GAO did not make any findings of impropriety in this policymaking process, as

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indeed they could not, since the policymaking is entirely appropriate. The policy also does not dictate that the Staff Director reply only to the Commissioners as a body, as stated on page 22. On the contrary, information is routinely provided to individual Commissioners and their Special Assistants in response to their inquiries.

CONTRACT ACTIONS

Regarding GAO's draft criticisms of the Commission's contracting processes for contracts entered into or ongoing in fiscal year 2002, the characterizations and assertions in GAO's draft report are overstated and erroneous.

Commission's contract practices are fundamentally sound

In pursuing contract actions each year, whether by small-scale purchase orders, interagency agreements, or contracts with private entities, the Commission's contract practices are fundamentally sound. The Commission takes part in hundreds of contract actions—both large and small, and of varying complexity—each year to procure goods and services. These contract actions can come in a variety of arrangements. Most of them are in the form of credit card purchases or purchase orders issued directly to vendors. As the Commission is a very small agency with a yearly budget of approximately only $9 million, most of its purchases of goods and services are modest and done through small scale purchase orders below the micro-purchase threshold.

See comment 18.

For the majority of its large dollar purchases of goods and services (i.e., more than $25,000 under simplified acquisition procedures), the Commission enters into interagency agreements with other federal agencies such as the General Services Administration (GSA), the Library of Congress (LOC), the National Finance Corporation (NFC), the Bureau of Public Debt (BPD), and the Government Printing Office (GPO). For example, information technology product and service purchases for the Commission's local area network, to date worth close to $300,000, are done by interagency agreement with GSA. GSA also administers the Commission's rent agreements. The Commission obtains Lexis-Nexis and media subscription services from LOC worth between $100,000 and $200,000, and payroll and budgeting services from NFC and BPD, also worth several hundred thousand dollars. The Commission also pays GPO several tens of thousands of dollars each year for printing and storage services.

The Commission occasionally also enters into contracts with private entities for purchase of goods and services exceeding the micro-threshold. Thus, for example, the Commission has, at times, contracted out various functions to the private sector, such as the drafting of certain state advisory committee reports, the provision of background investigation services, and the provision of some media services.

See comment 19.

Out of these hundreds of contract actions, the draft report addresses only 12 and takes to task, without detail, eight. As an initial matter, the Commission is able to identify only 11 contracts (seven above $2,500) that GAO requested to examine that were entered into or ongoing in fiscal

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See comment 20.

See comment 21.

See comment 22.

See comment 23.

See comment 24.

year 2002.[2] Second, although the draft report acknowledges in a footnote that the Commission entered into a multitude of administrative contracts in fiscal year 2002, it does not include them in the final contract figures, instead leaving the wrong impression that the Commission entered into only 12 contracts for the entire fiscal year, and that it did not follow contracting regulations in a majority of its contract actions. In reality, out of the hundreds of contract actions that the Commission undertook, GAO stated that it considered only eight contained any possible problems. Thus, the Commission's overall fundamental contract practices are sound.

Contract actions identified by GAO

Documentation and micro-purchase thresholds

It is difficult to respond to the assertion that the Commission did not follow proper procedures in awarding eight contracts over the GAO-identified micro-purchase threshold of $2,500, since the draft report does not identify all eight contracts and does not describe all the alleged deficiencies in the contracting actions. While the Commission cannot be certain as to the specific alleged deficiencies to which the draft report refers, the characterization in the draft report is nevertheless overbroad and incorrect, as the vast majority of any possible contracting anomalies falls into two main categories—documentation and alternate assumptions as to the micro-purchase threshold.

The Commission acknowledges that it could improve its documentation and recordkeeping procedures in terms of its contract file maintenance, and we are examining the issue to improve the situation. The draft report, however, confuses and blurs the documentation issue with other alleged errors. For example, the draft report erroneously states that the Commission did not follow legal requirements to compete its media services contract. However, as we explained on multiple occasions to GAO, the Commission did compete the initial media services contract, and in instances where competition was not obtained, the Commission was operating under the exception outlined in sections 13.106-1(b) & (c) and others provisions of the FAR.[3] Thus, at most, there was simply missing documentation in the contract file reflecting these processes – an area that the Commission acknowledges needs improvement. In at least two of the seven contracts over $2,500 examined by GAO, this was the case.

Three of the remaining five contracts[4] over $2,500 examined by GAO were for minimal amounts less than $5,000 and treated as micro-purchases, which do not need to be competed. Here, the Commission believed there was a test provision in which the micro-purchase threshold had been raised to at least $5,000. While it appears that the applicable micro-threshold may actually be $2,500, the Commission was operating under an honest belief of the applicability of the higher threshold. Thus, even if the Commission made a mistake, the contracts at issue were at most,

[2] The 12th contract that GAO refers to in its draft report may be a fiscal year 2003 contract that was also provided to GAO per its request.
[3] As explained previously to GAO, .due to exigent circumstances, the contract was amended pursuant to urgent-circumstance and contract-amendment procedures as contemplated under Section 13.106-1(b) & (c) and other parts of the FAR.
[4] The possible 12th fiscal year 2003 contract also exceeded $2,500, but not $5,000 (so four of the remaining six contracts).

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only a few thousand dollars and a couple of thousand dollars over $2,500—a tiny percentage of the Commission's contract totals.

Promoting competition

See comment 25.

The draft report statement that the Commission did not obtain the benefits of competition and suggestion that the Commission did not compete any of its contracts are also inaccurate. The statement ignores the various instances that the Commission has taken to compete contracts exceeding the micro-purchase threshold. As noted above, the Commission competed the initial media services contract. With respect to the remaining two contracts over the micro-purchase threshold (regional office report preparation and graphic design contracts) that GAO examined, the Commission issued multiple requests for quotations under simplified acquisition procedures and obtained the benefits of competition.

See comment 26.

Furthermore, with respect to the Commission's GSA Federal Supply Schedule contract for subsequent media services, per GSA's own regulations, "GSA has determined that the prices for services contained in the contractor's price list applicable to this [Federal Supply] Schedule are fair and reasonable." Normally, when ordering goods, no additional competition is required and an agency can simply choose a vendor off of the supply schedule. At the time of the subsequent media services contract, this was true of service orders as well. Therefore, contrary to the assertion in the draft report, ordering off of the GSA Federal Supply Schedule was proper and was already indicative of obtaining benefits of competition, such as assurance of fair and reasonable value.[5]

Promoting not just competition but disadvantaged small businesses and simplified rules

See comment 27.

The exclusive focus of GAO's draft report on the benefits of competition ignores other equally important goals of government contracting. While reaping the benefits of competition is a valid goal of government contracting regulations, the draft report does not discuss the statutorily mandated goals of promoting traditionally disadvantaged small businesses in government procurement and pursuing simplification of contracting procedures. In doing so, GAO unfairly imposes its own subjective and arbitrary judgment as to the relevant goals of the Commission's contracting practices without sufficiently weighing other important statutory and regulatory considerations.

Disadvantaged small businesses

Beyond the simple goal of competition, the Commission, also puts great value in promoting the hiring of traditionally disadvantaged and women-owned small businesses—a government goal codified in and exemplified by the Small Business Administration's (SBA) 8(a) program. For

[5] GSA regulations at the time of the contract awards stated only that a request "*should* be provided to three (3) contractors . . . " (emphasis added). Reasonable people may differ as to the interpretation of this language, and it was the Commission's understanding that the procedures permitted an agency to identify at least one vendor and issue the request to that vendor. This interpretation is not only consistent with the general principle that the federal supply schedule exists to simplify contracting procedures by permitting selection of vendors off of the schedule, but is underscored by the fact that the language was amended in April 2003 to state that the request "*shall* be provided to three (3) contractors," clarifying that soliciting from three vendors was no longer optional but mandatory.

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See comment 28.

example, the Commission's media services vendor is both minority and women owned and operated, and has been 8(a) qualified for the entire time it has been under contract with the Commission. In 2001, the Commission wished to enter into a new contract with the vendor under the SBA's 8(a) program, which *specifically permits sole sourcing*, but decided to select the vendor off of a GSA Federal Supply Schedule, due to limited staff resources at the time preventing pursuit of the 8(a) process.[6] Furthermore, in contracting out media services, the Commission was acting consistent with OMB Circular A-76, which encouraged that government commercial functions be contracted out to the private sector, such as small businesses, wherever possible. In any event, the Commission was seeking the most efficient and cost effective way to accomplish the Commission's media service goals.[7]

Simplified contracting procedures

See comment 30.

Another goal of government contracting regulations is to streamline contracting through the implementation of simplified acquisition procedures, a very important objective—especially for small agencies such as the Commission that do not often enter into high dollar, complicated contracts exceeding the simplified acquisition threshold. In this light, the statement in the draft report that the Commission does not provide information on specific tasks to be performed on a performance-based statement of work is subjective and erroneous. A statement of work is attached to each of the contracts examined by GAO. The Commission 's statements of work describe what the required output is and establish standards of performance "to the extent practicable" as required under contracting regulations. For example, the statement of work for the regional office report preparation contract describes the reports to be produced in detail and the timeframe for producing them. These statements of work are entirely adequate for a small agency operating under simplified acquisition procedures, and the draft report provides no explanation as to why it makes the blanket statement that the Commission does not issue performance-based statements of work.

See comment 31.

Performance monitoring of contracts is occurring

See comment 32.

The criticism that the Commission has not established a system to monitor contractor performance, especially that of the media services contractor, is also erroneous. Five of the 11 contracts[8] examined by GAO pertain to legal or advisory services in which the vendor works in close relationship with the contracting officer's technical representative (COTR). Thus, there is constant monitoring of the contractor's performance. Four of the remaining five contracts were for purchases under the micro-purchase threshold, where work was not complicated and monitoring consisted mainly of evaluating the receipt of the final product or service, such as delivery of subpoenas, or completion of routine security investigations. The last two remaining contracts were for production of specifically designed products—graphical designs and reports, in which the vendor was monitored periodically to ensure an acceptable final product. In any

See comment 29.

[6] In fact, the vendor is now under contract with the Commission through SBA's 8(a) program.
[7] The relationship with the media services vendor has not evolved into an annual award with a maximum value of $156,000 as stated in the draft report. The vendor's fees under the contract never approached $156,000, as that was simply the "not-to-exceed" limit imposed on the vendor. In fact, in fiscal year 2003, total vendor fees were less than $90,000.
[8] Six of the 12 contracts, if including the contract from fiscal year 2003.

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event, if the final products were not to specification under the contracts, the Commission was not obligated to purchase them.

See comment 33.

With respect to the media services contract, as GAO was informed on more than one occasion, the vendor must submit invoices of its expenses every month to me for review and approval. The vendor also submits supplemental information on activity performed, such as work reports—almost half a foot thick—that I review. The Commission provided all of this documentation to GAO as well. I work directly with the vendor and converse weekly, if not daily, with other Commission employees who work with the vendor, and am apprised of work the vendor does for the Commission. I am able to make an informed analysis as to whether fees and expenses submitted by the vendor are reasonable. When I have questions or concerns, I do not hesitate to talk directly with the vendor principal. Furthermore, the contract can be terminated at any time by me.

Miscellaneous factors driving contract and internal control issues

See comment 34.

With respect to the statement in the draft report that the Commission does not have personnel sufficiently qualified to conduct contract actions, we disagree with any characterization that Commission personnel are not qualified to conduct contracting. However, the Commission has experienced attrition of key contracting personnel. In small agencies such as the Commission, attrition of a single individual can often lead to a loss of institutional knowledge. Nonetheless, despite constraints posed by a decade long flat-lining of the agency's budget and decline in real spending power, the Commission is attempting to acquire additional contract and procurement expertise.[9]

In approaching the divergent views represented by the draft report and this response, two factors should be kept in mind. First, the head of the Commission's Administrative Clearinghouse Services Division, who was also the Commission's primary contract expert, retired from the Commission shortly before GAO initiated its investigation. The Commission was, thus, left without her institutional knowledge of the Commission's historical contracting activities, including the 2002 contracts. Neither did the Commission have the benefit of her services in assessing and addressing contractual issues raised by GAO.

See comment 35.

Second, compounding this problem was the fact that while GAO investigators assigned to conduct the contract practices investigation conducted themselves professionally, they admitted that they did not have backgrounds in contract regulations or contract law, and were unable to answer certain contract regulation questions posed to them during interviews seeking clarification of GAO inquiries. For example, according to the investigators, a GAO procurement expert helped draft the prepared questions that were asked during the interviews on contracting practices. However, as the investigators were not procurement experts themselves, it was difficult to fully engage them in an interactive colloquy that may have eliminated any resulting confusion or misunderstanding.

[9] For example, the Commission resumed submitting current and prior year data to the FPDC beginning in September.

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CONCLUSION

It is clear from the draft report that the Commission has made great strides in improving its management structure and operational oversight since the GAO's 1988 report, as well as since GAO's more recent 1997 examination of the Commission. The Commission is committed to ensuring that its operations are well maintained and will consider implementing whatever recommendations and suggestions appear in GAO's final report. In fact, we have already accepted and begun to institute some of the recommendations mentioned in the draft report, such as preparing and forwarding quarterly reports on project and office costs to the Commissioners.

As noted, however, although many of the recommendations in the draft report are worth considering, they are not premised on any findings of fraud, abuse, or managerial impropriety. Rather some are merely suggestions for modifying Commissioner roles and their relation to staff, which are decisions for the Commissioners as a body to make, while others are suggestions to further refine and improve proper processes already in place. And though we welcome these suggestions, unfortunately, many of them would require the Commission to spend additional monies not available in its current $9 million budget. Information we have provided GAO documents the steady decrease in Commission funding over the past years that has greatly constrained the agency's ability to incur any additional, new expenses. Funding levels from 1995 to 2003 represent a loss of $1.3 million per year after adjusting for inflation, using a 1995 baseline. The draft report itself recognizes that although the Commission's non-inflation adjusted budget has remained essentially the same for the last 10 years, its purchasing power has been severely eroded, especially in light of unavoidable, substantial new costs. The draft report also acknowledges that the Commission's financial status has left it unable to reduce its high staff vacancy rate, which now stands at 20 percent. In fact, in 1997, GAO reported the Commission had 91 staff members, while the current draft report reflects a staffing level of approximately 70. It would be an extreme, if not impossible, challenge to institute some of GAO's recommendations and continue to produce the current quality and volume of products, given the agency's dire budgetary and high staff vacancy rate situation. Nevertheless, we continue to look for ways to improve every aspect of our operations and will consider GAO's input accordingly.

This concludes our response.

Sincerely,

LES JIN
Staff Director

Enclosures

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GAO Comments

1. Our draft report clearly indicates that we found deficiencies in the project management practices at the Commission. We focused largely on the role of the Commissioners because they comprise the Commission which, under the applicable statute, has ultimate responsibility in providing reports to Congress and the President, and carrying out other statutory responsibilities.

2. We do not concur with the staff director's comment that the Commission has rejected the desirability of Commissioners shaping the findings and recommendations of Commission projects. Commission staff play an important role in running projects and helping produce reports, but their involvement does not diminish the important role that commissioners can and should play in shaping reports on civil rights issues.

3. We disagree that our draft failed to acknowledge the Commissioners' role in helping scope projects. The draft indicates that Commissioners have some involvement, albeit limited, in the planning process. Our basic point remains: procedures do not provide for systematic commissioner input throughout projects and in practice, commissioners do not always have the opportunity to review many of the reports and other products drafted by the staff before they are released to the public.

4. We believe that the draft report accurately portrays the amount of information provided to commissioners and project managers about ongoing projects. We based our assessment on the (limited) information that has been provided to commissioners and project managers in the recent past. Project managers told us that, during fiscal years 2002 and 2003 (as of August), they were not regularly receiving project cost data and staff hour information. Additionally, the draft recognized that arrangements have recently been made to provide additional information to commissioners. As we noted in a draft recommendation, the efficacy of this action will need to be monitored. For example, the staff director's first project cost report on September 30, 2003, in response to the commissioners' April 2003 vote for quarterly cost information, was incomplete because it did not contain cost information for at least two projects that had been regularly reported in monthly staff director reports during fiscal year 2003.

5. In our discussions with Commission officials subsequent to the December 18, 2002, letter, we discussed in further detail the scope of our review. We indicated that our review would primarily focus on current management operations and not entail a specific point-by-point

assessment of the Commission's implementation of our past recommendations. Nevertheless, during our review, we learned that the Commission had made a number of improvements since our 1997 review. Our draft report discusses these improvements. However, our review was not intended to evaluate either the improvement in timeliness or the quality of Commission products since our 1997 review. Notably, Commissioners Kirsanow, Redenbaugh, and Thernstrom expressed concern in their written response to our report that although we did not include an assessment of the quality of Commission products, they found that "reports lack the substantive and methodological rigor worthy of the Commission's history and seal." The staff director may wish to pursue the commissioners' comments in further detail.

6. As noted above, our report includes this recent development.

7. The staff director believes that our sentence in the draft stating that the report contains recommendations for improving Commission operations should be deleted or at least modified to reflect that recommendations are directed at commissioners and not staff offices. We do not believe that a change is warranted. The implementation of our recommendations will clearly involve the commissioners, the staff director, and officials throughout the agency.

8. The Commission's responsibilities are described in the applicable statute. See 42 U.S.C. 1975a. We have qualified our description of the responsibilities we list in our report.

9. Our draft report noted that improvements in certain project management procedures have been made.

10. We believe that the staff director's comment that project milestone dates are routinely provided to commissioners in monthly reports from the staff director is an overstatement. Our draft report noted that, during fiscal year 2002, the staff director's monthly reports to the commissioners in preparation for their monthly meetings did not contain a comprehensive list of project milestone dates for all ongoing projects. Furthermore, fiscal year 2003 staff director reports to the commissioners generally did not list all ongoing projects and did not include estimated product issuance dates or project completion dates for most projects. This information was maintained and routinely updated when warranted by OCRE and OGC project managers for project planning, management and monitoring purposes but was not reported in the staff director's monthly reports to the commissioners.

11. As we note in comment 5, our review was not intended to evaluate the quality of Commission products.

12. We shared a draft of tables 1 and 2 with the staff director and other senior staff before we sent the draft report to the Commission. The officials indicated that the tables were generally accurate. Nevertheless, we made technical corrections, as appropriate, in areas clarified by the Commission.

13. The purpose of the table in which the footnote in question appears is to provide details about the projects produced by those offices that generate headquarters products. The footnote intends to inform the reader about an OGC internal product not contained in the body of the table. The footnote is not intended to convey collateral duties. Therefore, we did not add the information suggested by the staff director. We note, however, the draft report contained a background paragraph which lists the activities carried out by the Commission to accomplish its mission, including the investigation of charges of citizens being deprived of voting rights because of color, race, religion, sex, age, disability, or national origin.

14. The products that the staff director refers to were accurately described in our draft report as expected to be issued after fiscal year 2002, as he acknowledges in his description of expectations regarding each product.

15. We continue to believe that our findings on the extent of financial oversight at the Commission are factually correct. Moreover, the recommendations we made in the draft report were based on the deficiencies we found in the Commission's management practices.

16. We do not agree that the draft report implied that a flow of financial information from the staff director to the commissioners is inappropriate. In fact, the concern the draft highlights is that information is centralized around the staff director, creating a situation that precludes appropriate checks and balances.

17. We believe that the Commission's internal communication policy was an appropriate aspect of Commission operations for us to review. As noted in our draft report, some commissioners, as well as senior Commission managers, told us they believe that the current policy stifles communication and productivity within the agency and creates an environment of uneasiness. Moreover, the Commission's policy limiting direct commissioner and staff interaction is not consistent with sound management principles of highly effective organizations.

Finally, we do not believe the longevity of a policy justifies its existence when the need for change becomes apparent.

18. While it is true that the Commission has several large dollar agreements with other agencies, these agreements are not contracts awarded pursuant to the FAR, and our review did not extend to them. Our review was limited to an examination of how well the Commission used its contracting authority for purchases above the micro-purchase threshold. Our review focused on the extent to which the Commission complied with regulatory requirements applicable to these procurements.

19. When we requested a list of all contracts for which the Commission budgeted or paid funds against in fiscal year 2002, the Commission provided us with a list of 11 contracts and orders awarded by the Commission. The staff director correctly points out that we requested and received information on a 12th contract that was entered into in fiscal year 2003. This contract was specifically brought to our attention by our requester, but fell outside the timeframe we included in our scope. The draft has been corrected to show 11 contracts reported by the Commission as ongoing in fiscal year 2002. The change in the number of contracts we are reporting on did not affect in any manner our findings or conclusions.

20. Our draft report has been revised to report 11 as the number of contracts that the Commission listed to us that it entered into in fiscal year 2002. The Commission noted in a letter accompanying the list, however, that its list of contracts did not include the Commission's day-to-day administrative contracts, such as those for court reporters, temporary support services, and meeting room rentals. In discussions with the staff director and the acting chief, Administrative Services and Clearinghouse Division, we were told, as the staff director restates here, that these administrative contracts were modest and done through small scale purchase orders below the micro-purchase threshold. We noted in our draft report that we did not include these contracts in our review.

21. We disagree with the staff director's conclusion, and the logic used to reach that conclusion, that the Commission's contracting practices are currently sound. We recognize that the Commission has undertaken many other contracting actions. We did not include these in our analysis because of the reasons stated in comments 18 and 20. Our review of the 11 contracts provided to us reveals that the Commission did not follow proper procedures for the majority of these contracts, that is, all 7 above the micro-purchase threshold.

22. We refer the staff director to the list of 11 contracts provided to us earlier in our review, 7 of which were of amounts exceeding the micro-purchase threshold. The Commission, in addition to lacking documentation on whether some contracts were competed, could not provide documentation to support that publicity requirements were met for other purchases, nor in the absence of such documentation, written justifications from contract files that would explain why those requirements were not met.

23. The staff director acknowledges that the Commission could improve its recordkeeping and documentation procedures in terms of contract maintenance. He indicates that we erroneously state that the Commission did not compete its media services contract. In fact, our report states that the Commission could not document that it competed the initial media services contract. Without such documentation, we cannot ascertain whether or not this or certain other contracts at the Commission were, in fact, competed. We believe documentation deficiencies constitute a material breach of proper contracting activities.

24. The staff director's comments support our finding that documentation deficiencies were found across the contracts we reviewed. To the extent that an unfamiliarity with specific requirements contributed to the deficiencies, our draft recommendation for greater controls, including the need for qualified personnel to oversee contracting activities, becomes underscored.

25. We continue to believe that the Commission did not follow proper procedures in awarding any of its contracts over the micro-purchase threshold, and that this condition limited the Commission's ability to obtain the benefits of competition. Concerning the 2 contracts specifically mentioned in the staff director's comments, we found that the Commission did in fact send out requests for quotations; however, it could not document that it had met other regulatory requirements, such as the requirements for publicizing proposed contract actions that serve to ensure that the vendor community is made aware of an agency's need for services. By not doing so, the Commission limited the potential pool of bidders because other vendors were likely unaware of the contract and therefore did not have the opportunity to submit bids.

26. We continue to believe that the manner in which the Commission obtained media services from the Federal Supply Schedule was not consistent with GSA's established ordering procedures. While it is true that the GSA has clarified its regulation language to make clear its

intent that soliciting from three vendors is mandatory, the staff director in his comments ignores the requirements in those earlier regulations to prepare an RFQ, transmit the request to contractors, and evaluate the responses before selecting the contractor to receive the order. We maintain that even the earlier version of GSA's regulation was sufficiently clear in its requirement to solicit quotes from more than one vendor.

27. For the reasons cited in comments 28 and 30, we do not agree that we imposed subjective and arbitrary criteria when assessing the soundness of the Commission's contracting activities.

28. While the Commission's concern for small, traditionally disadvantaged and women-owned businesses is laudable, it does not provide a license for circumventing established contracting regulations and procedures to achieve these ends. We are aware of the Small Business Administration's 8(a) program. Having elected not to pursue the 8(a) program, however, it was incumbent upon the Commission to adhere to procedures governing its choice of procurement vehicles. The regulations do not state nor imply that agencies promoting small disadvantaged or women-owned businesses in government procurement may dispense with the other requirements, such as the requirement to solicit multiple bids. Moreover, we note that OMB Circular A-76 does not encourage contracting out but merely establishes procedures for public-private competition.

29. We disagree. The Commission's relationship with its media services vendor has evolved into a de facto annual award. In addition, for fiscal year 2003, the contract had a maximum value of $156,000. We did not request records from the Commission in attempt to tally a fiscal year 2003 total of funds actually spent. We did, however, tally a fiscal year 2002 total of funds spent on the media services contract and found that $131,225 was spent on a "not-to-exceed" limit of $140,000. We have added a footnote in the report section to clarify this point.

30. We disagree with the staff director's belief that our findings are subjective and erroneous. We continue to believe that it is important to provide written performance-based requirements documents and do not believe that simplified acquisition procedures preclude this need.

31. As our draft report stated, written performance-based requirements documents can help ensure contractors' work against measurable standards.

32. For the 7 contracts we reviewed with amounts above the micro-purchase threshold, the Commission did not provide contractors in writing with specific task orders, instead providing oral information on tasks to be performed. For example, for its largest contract (media services), a broad statement of work with little detail was written to accompany the order. The staff director told us that he meets regularly with the contractor to discuss specific tasks under the order. As we state in comment 31, without written performance-based requirements documents, contractors' work products cannot be successfully evaluated in a transparent manner.

33. The Commission does not maintain written information on specific work tasks communicated to the vendor, expected timeframes for specific tasks to be performed, or the definition or description of how tasks were to be performed. Rather, the work reports that the staff director refers to consisted of several press releases, meant to illustrate activities performed by its media services vendor and copies of vendor invoices that showed tasks such as, media outreach/story placement, faxing, planning and consultation, etc., for which the Commission was billed. We continue to believe that the Commission cannot effectively assess contractor performance based on the documentation we were provided.

34. The staff director recognizes that the Commission has experienced significant turnover with regard to its contracting personnel. Yet he disagrees with our characterization that the Commission's current personnel are not sufficiently qualified in certain areas of contracting. The problems identified in this report should alert the Commission to the necessity of improving its contracting support or to look for outside assistance in this area.

35. To conduct our review, we relied upon the extensive legal and technical assistance available within our agency. When issues arose during our interviews that required either GAO or Commission officials to conduct additional analysis, then a follow-on discussion usually transpired. We stand behind the findings reported in the draft report.

Appendix V: GAO Contacts and Staff Acknowledgments

GAO Contacts

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Acknowledgments

Dennis Gehley made significant contributions to this report, in all aspects of the work throughout the review. In addition, Caterina Pisciotta assisted in gathering and analyzing information and in writing a section of the report; Lori Rectanus was instrumental in developing our overall design and methodology; Corinna Nicolaou assisted in report and message development; Julian Klazkin and Robert Ackley provided legal support; and Ralph Dawn and H. Kent Bowden provided specialized assistance in the areas of contract and financial management.

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