



*U.S. DEPARTMENT OF COMMERCE
Office of Inspector General*



***NATIONAL TECHNICAL
INFORMATION SERVICE***

*Management Over Interagency and
Other Special Agreements
Requires Further Improvements*

*Final Inspection Report
No. IPE-11021/June 1999*

**PUBLIC
RELEASE**

Office of Inspections and Program Evaluations



JUN 18 1999

PUBLIC RELEASE

MEMORANDUM FOR: Ron Lawson
Director
National Technical Information Service

FROM: Johnnie Frazier
Acting Inspector General

SUBJECT: Final Report: *National Technical Information Service—Management Over Interagency and Other Special Agreements Requires Further Improvements (IPE-11021)*

As a follow-up to our March 9, 1999, draft report, this is our final report examining the National Technical Information Service's management of interagency agreements, joint ventures, and other special agreements. This report is one in a series of reports that we are issuing as part of a Department-wide review of the various types of interagency and other special agreements that the bureaus enter into with federal and non-federal parties.

We performed a limited review of NTIS's interagency and other special agreements. We recognize that NTIS has taken steps to improve the management of its interagency agreements, and we recommend several changes to further strengthen management controls over the NTIS agreement process.

During our review we did identify specific issues that require management's attention. These include the need for: (1) written policies and procedures for drafting agreements, including direction on obtaining legal review; (2) an improved database of NTIS's agreements; and (3) improvements in the administration of joint venture agreements.

NTIS's response to our draft report generally agreed with most, but not all, of our findings and recommendations, and indicates that NTIS is taking actions to address our concerns. The Department's Office of General Counsel (OGC) also responded to our draft report. The final report includes comments from your written response and from OGC. Entire copies of both responses are included as attachments to this report.

Please provide us with an action plan addressing the recommendations in our report within 60 calendar days. We appreciate the cooperation and courtesies extended by your staff during our evaluation. If you have any questions or need additional information, please call me on (202) 482-4661.

Attachments

cc: Gary Bachula, Acting Under Secretary for Technology
Linda Bilmes, Acting Chief Financial Officer and Assistant Secretary for Administration



JUN 18 1999

MEMORANDUM FOR: Barbara S. Fredericks
Assistant General Counsel for Administration

FROM: Johnnie E. Frazier 
Acting Inspector General

SUBJECT: Final Report: *National Technical Information
Service-Management Over Interagency and Other Special
Agreements Requires Further Improvements (IPE-11021)*

As a follow-up to our March 9, 1999, draft report, this is our final report examining the National Technical Information Service's management of interagency agreements, joint ventures, and other special agreements. A copy of your entire response is included as an appendix to the report.

This report conveys observations and recommendations that we believe will improve NTIS's ability to prepare, review, and maintain agreements in accordance with federal, departmental, and agency guidance. We note that we are pleased that OGC is already working with NTIS to prepare guidelines for the preparation and review of interagency agreements. This should be a big step forward.

We are sending this final report to you because of your office's involvement in the review of NTIS's interagency agreements. We draw your attention to our discussion and recommendation regarding the need for NTIS to work closely with the Office of General Counsel to obtain legal review of NTIS agreements.

If you have any questions or comments about our report, please contact me on (202) 482-4661.

Attachment

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EXECUTIVE SUMMARY

Interagency and other special agreements are mechanisms for federal agencies to define terms for performing work for others (reimbursable agreements), acquiring work from others (obligation agreements), or coordinating complementary programs without the transfer of funds. These agreements can be between Commerce Department entities; or between one Commerce unit and another federal agency, a state or local government agency, a university, a not-for-profit organization, or a private party. They involve a significant amount of federal resources, but control processes for these agreements are largely a matter of agency discretion, unlike procurement contracts, grants, or cooperative agreements.

The National Technical Information Service (NTIS) uses such agreements to pursue its mission of being the federal government's central clearinghouse for unclassified scientific, technical, engineering, and other business related information. Agreements are one method for these agencies to formally agree to share information, provide needed services, or coordinate their programs to optimize the benefits from each agency's efforts. If properly prepared, monitored, and controlled, agreements are necessary and beneficial to define the roles and responsibilities of each of the parties so that the greatest return is realized from similar or complementary programs.

This is one report in a series to be issued as part of the Office of Inspector General's Department-wide review of agreements. The purpose of our inspection was to evaluate policies, procedures, and practices being followed by the bureau in its preparation, review, and management of agreements. Overall, we found that the bureau uses agreements to support its mission. However, we also identified the need for improvements in the administration of agreements.

During our review of bureau agreements, we made the following observations:

- **NTIS needs to improve its processes and procedures covering agreements.** After reviewing a sample of NTIS's agreements and agreement files, as well as conducting interviews with NTIS staff, we concluded that the agency's agreements processes and procedures need to be improved. We found two problems with the preparation and review of NTIS agreements: a lack of written policies and procedures for drafting agreements and insufficient legal review of agreements. We are recommending that NTIS prepare a comprehensive set of guidelines for preparing all types of bureau agreements and that NTIS work with OGC to improve legal review of agreements (see page 3).
- **NTIS needs to consolidate and organize its interagency agreement files.** Currently, NTIS maintains two separate sets of files for its interagency agreements. We found problems with the organization of both sets of files. The record keeping problems in both sets of files resulted in poor management over NTIS's projects. In one instance, NTIS lost the project file for the procurement of goods and services worth over \$1.0 million. We believe that NTIS should maintain one complete set of records for each agreement in the

respective program office in order to improve the organization and control over its agreements (see page 5).

- **NTIS's agreements database needs to be improved.** Personnel in the NTIS Director's office maintain a database of the bureau's interagency and external agreements. We found that NTIS's current agreements database is difficult to use and requires special effort to produce reports and other information on NTIS's agreements. This database was originally designed by a computer programmer who never worked with agreements and, as a result, it is unnecessarily complex. NTIS should redesign its database in order to make it a more useful management tool (see page 7).
- **Joint Venture agreements need improvement.** NTIS has its own statutory authority to enter into joint venture agreements with private parties. The purpose of NTIS's joint ventures are to promote the broader dissemination of information. In entering into such agreements, NTIS follows procedural guidelines established by regulation that require that a business plan be created for each joint venture. In reviewing these agreements, we identified two joint venture issues that need to be addressed. First, the required joint venture business plans are inadequate and, in some cases, not prepared at all. Second, joint ventures should be awarded through a process that promotes greater competition. We recommend that NTIS create a comprehensive business plan document for each joint venture project. We further recommend that NTIS develop a more formalized joint venture awards process that promotes full competition among the joint venture offerors, and shortens the terms of joint venture agreements to further promote competition (see page 8).



In response to our report, NTIS generally agreed with most, but not all, of our findings. NTIS agreed that it should develop written guidance for its agreements that will reflect forthcoming departmental guidance. Further, NTIS responded that even in the absence of departmental guidance, NTIS will formalize its procedures. NTIS also said that it supports our recommendation that it work with the Department's Office of General Counsel to determine what legal review is necessary for NTIS agreements. However, based on our review of initial correspondence between the program Chief Counsel for Technology and OGC, it appears that there is some disagreement regarding the need for additional review by OGC. We believe that additional review of NTIS agreements by OGC would be beneficial to both NTIS and the Department.

In response to our recommendation that NTIS maintain more comprehensive files, the bureau responded that it agreed that more information should be maintained in the active files located in the program offices, but that the bureau did not believe that changes should be implemented precisely in the fashion recommended by our report. During our exit conference NTIS management agreed that its active files, located in the various program offices, needed to be maintained at a higher level of organization. NTIS agreed to systematically better organize its

files and include information in each working file that would allow the bureau to adequately plan for each transaction, monitor its own performance and that of the other party to the transaction, and allow the bureau to manage its financial resources more effectively and efficiently in order to enhance bureau profits. While we had originally believed that NTIS should also centralize its files, we agreed with NTIS's view that improving the organization without centralization of the files would address our concerns and allow the program offices quick access to the files necessary for ongoing work.

In response to our recommendations concerning NTIS's agreement database, NTIS agreed that it should strive to make its agreement database more user-friendly and consistent with the Department-wide database under development. However, NTIS cautioned that it must currently commit its programming resources to revenue-producing projects. While we agree that NTIS must work to focus on its financial viability, we believe that the development of a useable agreements database will assist the bureau in its financial management efforts.

In response to our recommendation that NTIS develop a business plan for each of its joint venture agreements, the bureau agreed that it should do so. We note that NTIS has recently made increasing use of detailed business plans for a broad range of its activities, and we encourage this trend.

With regard to our recommendation that NTIS use a more formalized process for selecting joint venture partners, the bureau agreed that it should work to ensure full competition for opportunities to participate in joint ventures and use clear selection criteria. However, NTIS also stated that this process need not be as formal as a procurement action. We acknowledge that NTIS's joint venture authority does not require as much formality as a procurement action, but we do believe that potential joint venture partners will be better able to compete whenever the selection process and criteria are well-defined.

NTIS disagreed that it should, as a matter of course, shorten the terms of its joint venture agreements and enter into joint ventures with a greater number of partners as a method of promoting competition. NTIS said the longer term arrangements with some partners are appropriate in some cases. For example, NTIS prizes publishers who are able to add their own resources and value to the government's information in creating a new product. We do not disagree. However, if NTIS opts to extend its joint venture agreements year after year without testing or surveying the market, the bureau will be less able to take advantage of new entrants and new technologies in the market that may further its goal of information dissemination.

The Department's Office of General Counsel also responded to our draft report. OGC agreed with our recommendations. OGC also reported that meetings were ongoing with the Chief Counsel for Technology to (1) support our recommendation concerning the development of a set of comprehensive guidelines for preparing NTIS's various agreements and (2) establish legal clearance procedures, with both the OGC and the Chief Counsel for Technology sharing responsibilities for legal review depending on the type of NTIS agreement.

INTRODUCTION

Pursuant to the authority of the Inspector General Act of 1978, as amended, the Office of Inspector General conducted an inspection of the National Technical Information Service's (NTIS) management of interagency and other special agreements. The inspection was conducted as part of a larger, Department-wide review of these agreements.

Inspections are special reviews that the OIG undertakes to provide agency managers with timely information about operations, including current and foreseeable problems. Inspections are also done to detect and prevent fraud, waste, and abuse and to encourage effective, efficient, and economical operations. By highlighting problems, the OIG intends to help managers move quickly to address those identified during the inspection and avoid their recurrence. Inspections may also highlight effective programs or operations, particularly if they may be useful or adaptable for agency managers or program operations elsewhere.

We conducted our primary inspection field work from May 15 through June 30, 1998. The inspection was done in accordance with the Quality Standards for Inspections issued by the President's Council on Integrity and Efficiency. At the conclusion of the inspection, we discussed our observations and recommendations with the Director of NTIS.

PURPOSE AND SCOPE

The purpose of this inspection was to evaluate the policies, procedures, and practices employed by NTIS in carrying out its responsibilities related to these agreements. This included determining whether NTIS and its operating units have improved preparation of agreements since our 1997 report on the Cyberfile project. We evaluated substantive issues, such as the relationship of the agreements to NTIS's mission and whether the agreements are possibly used to circumvent procurement or financial management procedures. We also considered NTIS's methods for tracking agreements.

The scope of our inspection included reviewing a sample of 70 of the total 678 NTIS agreements active in fiscal year 1998. We completed a full review of 10 agreements for compliance with all agreement requirements, including NTIS's Federal Register criteria for joint venture agreements and legal review. For the remaining 60 agreements in our sample, our review was limited to whether the agreements were established for an appropriate purpose, whether they contained proper terms and conditions and clearly stated the rights and responsibilities of the parties. In conducting our review, we also (1) evaluated the review, control, and record-keeping rules and processes used by the Department and NTIS; (2) interviewed appropriate NTIS officials; and (3) examined pertinent files and records relating to NTIS's operations and management.

BACKGROUND

NTIS was established in 1945 by executive order to declassify captured axis World War II data for dissemination to American industry. NTIS's responsibilities were expanded in 1950 when it was authorized to disseminate information generated by federal agencies,¹ in 1988 when it obtained joint venture authority,² and again in 1992 when it was authorized to disseminate information electronically.³ Currently, NTIS is a fee-supported agency within the Technology Administration of the Department of Commerce. In fiscal year 1997, NTIS had 336 employees and generated revenues of \$39.5 million. NTIS's mission is to be the federal government's central clearinghouse for unclassified scientific, technical, engineering, and other business related information. It acquires information from government agencies, government contractors, and foreign governmental sources. NTIS accepts orders from government agencies and private companies for technical data in return for a fee. Orders are taken and delivered through the Internet and through the use of a traditional mailing service. NTIS is also charged with the responsibility for developing new methods of disseminating information.

NTIS's collection of information exceeds 2.5 million works and covers current events, business and management studies, research and development, manufacturing, standards, translations of foreign works, foreign and domestic trade, general statistics, and more. NTIS offers a diverse range of information products including multimedia, paper copy technical reports, periodicals, CD-ROMs, computer software, electronic databases, and online services.

To carry out its diverse responsibilities, NTIS enters into a great number of diverse agreements with government agencies, private companies and foreign governments. Rather than spending appropriated funds to obtain goods and services, NTIS conducts a number of transactions on a fee basis, the terms of which are usually laid out in a written agreement. For instance, NTIS collects fees from the public, other federal agencies, and other governmental organizations, for the sale of published government reports. NTIS also collects fees from other government agencies by leasing its electronic databases, providing assistance in electronic and audio visual publication, reselling agreements for products and services, selling FedWorld⁴ subscriptions, and customizing agency products for publication. NTIS also spends its user-fee funds to acquire goods and services, use private sector copyrights, and access databases managed by other federal agencies.

¹ Pub.L. 776, 81st Cong., 2d Sess., Chapter 936, 63 Stat. 823 (1950) reprinted in 1950 U.S.C.C.A.N. 882, vol. 1, codified at 15 U.S.C. § 1151 *et seq.*

² Pub.L. 100-519, 102 Stat. 2594 (1988) codified at 15 U.S.C. § 3704b (a)(1)(A).

³ Pub.L. 102-245, 102 Stat. 27 (1992) codified at 15 U.S.C. § 3704b (e)(5).

⁴ In 1992, FedWorld was established to serve as NTIS's online locator service for its comprehensive inventory of information disseminated by the federal government.

In addition, NTIS also enters into agreements to conduct joint venture transactions, which involve exchanging federal government information for publication with private sector publishers in return for free copies of the finished publication for NTIS to sell at a non-competing price, and the publisher's commitment to widely disseminate the final publication. The private sector publisher adds its own contribution to the government information or work and obtains its own copyright on the new portion of the work which does not extend to material authored by the government. The publisher then sells the copyrighted material for its own profit.

OBSERVATIONS AND CONCLUSIONS

I. NTIS Needs to Improve its Processes and Procedures Covering Agreements

After reviewing a sample of NTIS's agreements and agreement files, as well as conducting interviews with NTIS staff, we concluded that the agency's agreements processes and procedures need to be improved. We found two problems with the preparation and review of NTIS agreements: a lack of written policies and procedures for drafting agreements and insufficient legal review of agreements.

A. NTIS Needs Written Policies and Procedures for Drafting Agreements

Properly constructed agreements define in detail the terms of a project and help to avoid misunderstandings and conflicts between the parties. While NTIS has some 11 standard-text agreements—so called “boilerplate” text—NTIS has no written policies and procedures to explain the elements contained in the boilerplate agreements to program personnel responsible for drafting agreements. As a result, we found problems with NTIS's agreements during our review. Specifically, most of NTIS's agreements lack specificity in terms of the budgetary and financial information. Also, many of NTIS's agreements lack adequate delivery schedules and most lack a definition of the duration of the agreement.

To correct these deficiencies, NTIS should prepare a comprehensive set of guidelines for preparing all types of bureau agreements that is consistent with forthcoming departmental guidance. In September 1998, we issued a report to the Department's Chief Financial Officer and Assistant Secretary for Administration and the General Counsel addressing our concerns about Department-wide internal management and oversight of agreements.⁴ We recommended that the Department prepare formal policies and procedures, outlining the types of agreements that can be entered into by Commerce bureaus; the minimum necessary contents and steps for preparing agreements; standard language or form agreements; and the review, approval, and renewal policies and procedures that should be followed by all Commerce bureaus. The Department will soon develop Department-wide guidance on agreements and NTIS will have to

⁴ Final Inspection Report: *Office of the Secretary--Interagency and Other Special Agreements Require Better Management and Oversight*, IPE-10418, September 1998.

make its internal procedures consistent with this forthcoming departmental guidance. These procedures should incorporate the requirements for legal review of agreements as discussed later in this report. In addition to making sure that its guidance conforms with that being developed by the Department, NTIS should ensure that its new guidelines address the following:

- standardized agreement definitions, steps for preparing agreements, and the provisions necessary for compliance, and at least the following requirements: full cost recovery (where applicable), equitable apportionment of costs for joint projects and joint ventures, citation of legal authorities, appropriate level of approval, applicable written justifications, total project costs, and termination dates and/or review periods;
- formal procedures to notify other agencies and outside parties of what terms are required in NTIS agreements and to modify or amend incomplete agreements; and
- mechanisms that ensure bureau agreements are reviewed, and revised or renewed as appropriate, at least every three years.

NTIS should also distribute relevant information for preparing and processing agreements internally. Any subsequent changes in federal, departmental, or bureau regulations or procedures and applicable laws should also be widely distributed. Once NTIS's policies and procedures have been finalized, training should be provided to all appropriate staff on how to properly prepare and process agreements.

B. Legal Review of NTIS Agreements Needs Improvement

Another issue that must be addressed in NTIS's policies and procedures for agreements is legal review. We found that although NTIS sends its agreements to legal counsel within the Technology Administration, it does not send any of its agreements to the Department's Office of General Counsel (OGC) for legal review. NTIS's internal legal review by Technology Administration counsel alone may not be sufficient for all agreements. Over time, the agency has developed familiarity with many types of agreements that it regularly constructs. However, in some instances new agreements may contain legal complexities with which NTIS and the Technology Administration counsel might be unfamiliar, such as agreements for work that may conflict with the statutory responsibility of other agencies,⁵ and the application of other federal laws, such as the Paperwork Reduction Act and the Privacy Act.

In the past three years, OGC has reviewed approximately 12 NTIS agreements forwarded to its office by other Department of Commerce agencies that participated in projects with NTIS. None

⁵ In one instance, Stat-USA and NTIS both claimed that they had the most relevant statutory authority to do a project for the Bureau of Export Administration.

have been forwarded directly to OGC by NTIS. OGC told us that in reviewing these 12 agreements, they did find legal deficiencies in most of these agreements.

We recognize that it is unlikely that all NTIS agreements need to be sent to OGC. However, the current NTIS policy of sending no agreements to OGC for review limits the agency's opportunity to bring the maximum amount of expertise to bear on the preparation of its agreements. This practice also ignores an April 1994 memorandum from Commerce's General Counsel stating that Economy Act and joint project agreements should be sent to OGC for review. Therefore, NTIS should work with OGC to determine what types of agreements should be sent to OGC for review and then incorporate these new standards into NTIS's policies and procedures. Also, if NTIS intends to retain its boilerplate agreements in the new policies and procedures, it should work with OGC to secure legal approval of such boilerplate text.



In response to our report, NTIS agreed that it should develop written guidance for its agreements that will reflect forthcoming departmental guidance. Further, NTIS responded that even in the absence of departmental guidance, NTIS will formalize its procedures.

NTIS also supports our recommendation that it work with OGC to determine what additional legal review is necessary for its agreements. The bureau said that it would work with its Chief Counsel for Technology and OGC to develop clear guidelines on the legal review of NTIS agreements. However, based on our review of initial correspondence between the Chief Counsel and OGC, it appears that there is some disagreement regarding the need for additional review by OGC. We believe that additional review of NTIS agreements by OGC would be beneficial to both NTIS and the Department. We have thus reaffirmed our recommendation that NTIS work with OGC to establish criteria as to what types of NTIS agreements should receive legal review by OGC.

The Department's OGC also responded to our draft report. OGC agreed with our recommendations and expressed its willingness to continue to assist in improving policies and procedures concerning the review and management of agreements. OGC also reported that meetings were ongoing with the Chief Counsel for Technology to support our recommendations to establish a set of comprehensive guidelines for preparing NTIS's various agreements, and to determine what types of NTIS agreements require legal review by OGC and/or the Chief Counsel for Technology.

II. NTIS Needs to Consolidate and Organize Its Interagency Agreement Files

Currently, NTIS maintains separate files for its interagency agreements. One set of files includes only the original agreements and the results of Technology Administration's legal review. This set of files is maintained by personnel in the Director's office who have bureau-wide responsibility for reviewing the drafting of agreements and forwarding these to Technology

Administration counsel for review. A second set of files is maintained by each of the individual project managers overseeing their respective programs. We found problems with both sets of files.

The Director's office files are inconsistent in their organization and completeness. All contain only limited documentation and no original agreements or other legal documents. We also found that these files contain almost no documents to indicate the project's financial activity and status. Further, not all active projects, based on agreements listed as active in NTIS's database, have a corresponding file in the Director's office.

The project files, or active files, are held by the operating unit. Many do not contain fundamental data necessary for NTIS officials to manage their respective projects. Budget and cost information as well as work progress measured against the terms of the agreement have not been maintained in the files. Without this critical information, NTIS's project managers cannot deliver its products at a profit. In addition, business plans should also be in the files as they are prepared for each project (see page 9).

The record keeping problems in both sets of files resulted in poor management over NTIS's projects. In one instance, NTIS lost the project file for the procurement of goods and services worth over \$1.0 million. There was neither a Director's office file nor an active program management file for this project, and we found only limited documentation during our review. The documentation that was found was misfiled and discovered among loose documentation. Further, this project was misidentified with the same project number as another large and totally unrelated NTIS project conducted with the Internal Revenue Service.

All project files should be identified by unique project numbers and these should be a comprehensive file of records for each project. Department of Commerce bureaus are required to create and maintain proper and adequate documentation of their essential transactions.⁶ Further, NTIS's project files should be maintained so as to be easily retrievable and designed to furnish information necessary to protect the legal and financial rights of the government.⁷ We found that NTIS's files do not meet this criteria.

In order to improve the organization and control of its agreements, NTIS should maintain one complete set of records for each agreement in the appropriate program office. Logically, the project manager would have the 'official' and complete set of records since he or she would be responsible for the success or failure of the project. A second set of files in the Director's office could be maintained to give NTIS management an additional source of data that would allow managers to quickly evaluate the financial activity occurring on active projects. The comprehensive project files in the program offices should contain all active original agreements,

⁶ U.S. Department of Commerce, Department Administrative Order (DAO) 205-1, Section 4.01.

⁷ DAO 205-1, Section 4.02.

task orders, and purchase orders executed under project agreements and any other relevant original documentation, including the results of the legal review, if required. Maintaining these documents in one comprehensive project file would help NTIS carry out its responsibilities as outlined in the agreements and represent a good management practice.



In response to our recommendation that NTIS maintain more comprehensive files, the bureau responded that it agreed that more information should be maintained in the active files located in the program offices, but that the bureau did not believe that changes should be implemented precisely in the fashion recommended by our report. During our exit conference, NTIS management agreed that its active files, located in the various program offices, should be systematically better organized. NTIS also agreed that each working file should include information that would allow the bureau to adequately plan for each transaction, monitor its own performance and that of the other party to the transaction, and allow the bureau to manage its financial resources effectively and efficiently in order to enhance bureau profits. While we had originally believed that NTIS should also centralize its files, we agreed with NTIS's view that increasing the organization without centralization of the files would address our concerns and allow the program offices quick access to the files necessary for ongoing work.

III. NTIS's Agreements Database Needs to be Improved

Personnel in the NTIS Director's office maintain a database of the bureau's interagency and external agreements. We found that NTIS's current agreements database is difficult to use and requires special effort to produce reports and other information on NTIS's agreements. This database was originally designed by a computer programmer who never worked with agreements and, unfortunately, as a result, it is unnecessarily complex. For instance, the database contains an unnecessarily large number of fields, including several that are not even used, such as "old agreement number," "old agreement category," and "inactive/cancellation reason." In addition, cross-reference data, such as task order and purchase order numbers, are not included in the database, limiting its usefulness.

NTIS should redesign its database in order to make it a more useful management tool. Such a redesigned central bureau database should include certain key elements, including project title, parties, termination date, review date, legal authority, funding information, and contact person or office. The database should also identify the type of agreement (i.e. memoranda of understanding, reimbursable agreement, or joint venture). This system could also be used to establish a document numbering system, where each entry would be assigned a unique number, which would then be placed on the actual agreement and any related documents. The bureau could then better identify and track the physical documents. Given the large number of bureau agreements and their importance to achieving the bureau's mission, a comprehensive database of agreements with relevant information would help management and program officials control and

maintain their agreements. Concerning the need for better tracking of agreements, we have made recommendations to the Department in a separate report.⁸ One of our recommendations in that report was the establishment of a Department-wide database of agreements. We recommended that the Department determine whether (1) there should be one consolidated, Department-wide system that each bureau can access to add, modify, or delete agreements; or (2) each bureau should maintain its own database that is compatible with other bureau systems.

Therefore, NTIS should coordinate its efforts with the Office of Executive Budgeting and Assistance Management, which is currently tasked with developing a Department-wide database of agreements. NTIS, working with responsible departmental personnel, should design its database so that it can be integrated into the Department-wide database, when completed.



In response to our report, NTIS agreed that it should strive to make its agreement database more user-friendly and consistent with the Department-wide database under development. However, NTIS cautioned that it must currently commit its resources to revenue-producing projects. While we agree that NTIS must focus on its financial viability, we believe that the development of a useable agreements database will assist the bureau in its financial management efforts.

IV. Joint Venture Agreements Need Improvement

NTIS has its own statutory authority to enter into joint venture agreements with private parties. The purpose of NTIS's joint ventures are to promote the broader dissemination of information and a new or improved product or service which provides added value to the information used, as well as a greater transfer of government-developed information technology to the business community and general public. In entering into such agreements, NTIS follows procedural guidelines established by regulation that require that a business plan be created for each joint venture. When joint ventures involve disseminating government information, NTIS's partner adds its own contribution to the government information or work and then retains the copyright for the new portion of the material in exchange for publishing the document.

To ensure broader information dissemination, NTIS typically employs award criteria that favors publishers who guarantee that a certain number of documents are produced and made available for sale (by both the joint venture publisher and NTIS). Finally, joint venture agreements require both NTIS and the private sector partner to invest resources, take risks, and share the resulting revenue.

At the time of our review, NTIS listed 13 agreements as active joint ventures in the agency's database. In reviewing these agreements, we identified two joint venture issues that need to be

⁸ Final Inspection Report: *Office of the Secretary-Interagency and Other Special Agreements Require Better Management and Oversight*, IPE-10418, September 1998.

addressed: (1) the required joint venture business plans are inadequate and, in some cases, not prepared at all, and (2) joint ventures should be awarded through a process that promotes greater competition among potential joint venture partners.

A. Joint Venture Business Plans are Inadequate

NTIS's own guidelines regarding joint venture agreements require the bureau to create a business plan for every joint venture project with a private entity. This criteria requires, at a minimum, that each business plan: (1) provide a basis for projected sales volume; (2) establish estimates of revenues, sales volumes, and costs along with the basis for the estimates; (3) describe the market and present the market research that was conducted; (4) describe the proposed product or service; (5) set forth the basis for allocating revenues between partners; and (6) outline responsibilities of each partner.⁹ Properly prepared business plans offer NTIS a unique opportunity to forecast business activity and can be used to evaluate the progress of the joint venture.

However, we found two problems with NTIS's joint venture business plans. First, business plans are not prepared for all of the bureau's joint ventures. Second, many of the business plans that are prepared lack essential elements required by NTIS's joint venture regulations. Moreover, the bureau's joint venture files are inconsistent in their organization and completeness.

As a result, NTIS is unable to effectively forecast its revenues and expenses for its joint ventures, and is unable to forecast its anticipated profits and manage its projects' cash flow. These deficiencies represent a general failure of adequate financial management over the joint venture projects. Therefore, NTIS should create a comprehensive business plan document for each joint venture project and retain the business plans in the joint ventures project files for reference and evaluation purposes. The business plan should detail the projected revenues and costs of the project, the extent of dissemination of government information, and the reasons why NTIS decided to proceed with the project.

B. NTIS's Joint Ventures Should Make Greater Use of Competition

In awarding joint venture agreements, NTIS uses a process that includes some elements of competition, and requires the potential joint venture partners to submit proposals for the joint venture effort. NTIS places notices in the Commerce Business Daily to call attention to its joint venture opportunities, and the bureau also maintains a list of publishing companies from whom it solicits bids. In one case, we found that NTIS solicited a number of offers and evaluated each against predetermined award criteria. The award criteria favored those offerors who could guarantee a large minimum production run and provide NTIS with a minimum specified number of published copies for the bureau's own sales. These evaluation elements tend to satisfy NTIS's

⁹ National Technical Information Service Joint Venture Program; Establishment, 54 Fed. Reg. 25,149 (1989).

dual goals of maximizing information dissemination to the public, while at the same time maximizing its own profit.

However, we found that some joint venture agreements have inappropriately long terms of duration—up to five years—which tend to limit the opportunity for other potential joint venture partners to compete to provide the required services. Since the joint venture agreements require a new report to be published each year, the joint venture partner has an effective monopoly over the publishing work for up to five years. Generally, the lack of competition usually drives up costs, in this case the cost—or reduced revenue—in disseminating federal agencies' documents to the public. NTIS could be failing to take advantage of changes in the marketplace if such long term agreements are not periodically re-competed or re-evaluated. For example, such marketplace factors may include the entrance of new publishers into the market or the development of new technology that might reduce publishing and distribution costs.

Although NTIS's joint venture authority does not include an explicit requirement for competing its joint venture agreements, its authorizing legislation does require that the bureau use competition. Specifically, NTIS is required to "enter into such contracts, cooperative agreements, joint ventures, and other transactions, in accordance with all relevant provisions of Federal law applicable to such contracts and agreements, and under reasonable terms and conditions as may be necessary . . ." ¹⁰ Greater competition in the award of NTIS's joint ventures would certainly be considered a reasonable practice. For example, in the context of public contracts, procurement laws and regulations require that competition be maintained to the maximum extent possible to ensure the lowest cost and best value to the government. ¹¹

While NTIS has a well-defined description of business plan requirements, it does not have a policy or procedure to ensure that joint ventures will always be competed. Currently, NTIS advertises its joint ventures in the Commerce Business Daily. However, the bureau does not identify the selection criteria when awarding its joint ventures. NTIS should adopt a more formalized competitive process—whereby its selection criteria is clearly stated for the offeror/partners—in awarding its joint venture agreements and publish such guidelines for the benefit of its potential joint venture partners. Such a formalized process would ensure that the potential joint venture partners are treated equally and fairly when being considered for a joint venture partnership award. In addition, NTIS should award joint venture agreements more often with more numerous partners and shorten the term of its joint venture agreements to further promote competition. The maximum use of competitive processes when selecting private parties for joint venture agreements should help NTIS meet its responsibility of being fiscally self-sufficient.

¹⁰ 15 U.S.C. § 3704b (a)(1)(A).

¹¹ 41 U.S.C. § 253(a).



In response to our recommendation that NTIS develop business plans for each of its joint venture agreements, the bureau agreed that it should do so. We note that NTIS has recently made increasing use of detailed business plans for a broad range of its activities, and we encourage this trend.

With regard to our recommendation that NTIS use a more formalized process for selecting joint venture partners, the bureau agreed that it should work to ensure full competition for opportunities to participate in joint ventures and use clear selection criteria. However, NTIS also stated that this process need not be as formal as a procurement action. We acknowledge that NTIS's joint venture authority does not require as much formality as a procurement action, but we do believe that potential joint venture partners will be better able to compete when the selection process and criteria are well-defined.

NTIS disagreed that it should, as a matter of course, shorten the terms of its joint venture agreements and enter into joint ventures with a greater number of partners as a method of promoting competition. NTIS said the longer term arrangements with some partners are appropriate in some cases. For example, NTIS prizes publishers who are able to add their own resources and value to the government's information in creating a new product. We do not disagree. However, if NTIS opts to extend its joint venture agreements year after year without testing or surveying the market, the bureau will be less able to take advantage of new entrants and new technologies in the market that may further its goal of information dissemination.

Finally, NTIS reminded us that, as a government agency, it cannot convey a government copyright to a joint venture partner because the works of the federal government are not eligible for copyright protection. While we agree and have adjusted our report to reflect this, we note that NTIS is, in fact, conveying value because it provides a body of information to *only one* successful joint venture partner. That partner then adds its own contribution to the work and obtains its own copyright on this new work, although the copyright does not extend to the material originally authored by the government. In addition, depending upon the terms of the joint venture agreement, NTIS also provides a distribution chain for the publisher through its own warehouse and sales force.

RECOMMENDATIONS

We recommend that the Director, NTIS take the following actions:

- 1) Prepare a comprehensive set of guidelines for preparing all types of bureau agreements that is consistent with forthcoming departmental guidance and incorporates the requirement for legal review. Once the guidelines have been finalized, provide training to all appropriate staff on how to properly prepare and process agreements (see page 3).
- 2) Work with OGC to establish criteria as to what types of NTIS agreements should be sent to OGC for review and incorporate this criteria into NTIS's policies and procedures. If NTIS intends to retain its boilerplate agreements in the new policies and procedures, it should work with OGC to secure legal approval of such boilerplate text (see page 4).
- 3) Maintain at least one complete set of records for each NTIS agreement in the appropriate program office in order to improve the organization and control over its agreements. In addition, all project files should be identified by unique project numbers for tracking purposes. The file documentation should include all active original agreements, task orders, purchase orders executed under the agreements, financial information, and any other relevant original legal documentation (see page 5).
- 4) Redesign NTIS's agreement database with input from NTIS personnel who are responsible for its routine use. Specifically, the database fields should be reduced to a useful number of appropriate data. Task order numbers, purchase order numbers and other cost and management control information should be added to improve its usefulness. NTIS, working with responsible Departmental personnel, should design its database so that it can be integrated into the Department-wide database, when completed see page 7).
- 5) Create a comprehensive business plan document for each joint venture project and retain the business plans in the joint ventures project files for reference and evaluation purposes (see page 9).
- 6) Develop and adhere to a more formalized joint venture awards process that ensures that full competition among the joint venture offerors is sought and encouraged. NTIS should also shorten the term of its joint venture agreements to further promote greater competition, especially when it can take advantage of new entrants and new technologies in the market that may further its goals of information dissemination and increased revenue (see page 9).

ATTACHMENT I

NTIS's Response to Draft Report



UNITED STATES DEPARTMENT OF COMMERCE
National Technical Information Service
1215 Port Royal Road
Springfield, Virginia 22161
OFFICE OF THE DIRECTOR

March 29, 1999

MEMORANDUM FOR: Jill Gross
Acting Assistant Inspector General
for Inspections and Program Evaluations

FROM: *Ron Lawson*
Ron Lawson
Director

SUBJECT: Draft Report IPE-11021

Thank you for the opportunity to review and comment on the subject report. It contains many thoughtful recommendations for improving our interagency agreements and our joint venture program. I am very pleased that your memorandum of March 9 recognizes and supports the changes we have made to improve these processes since your last report two years ago.

Three of your recommendations are especially valuable:

- I agree that NTIS should develop written guidance for agreements that will reflect forthcoming Departmental guidance (Recommendation No. 1). Even in the absence of such guidance, NTIS should formalize its procedures and will do so.
- I also agree that NTIS should develop comprehensive business plans for its joint ventures (Recommendation No. 5). Sample plans were shared with your staff at the exit interview and I was very pleased that the reaction was so positive.
- I also agree that NTIS should strive to make its database more user-friendly and consistent with the Department-wide database now under development (Recommendation No. 4). However, given our financial situation, I must caution you that our programming resources must remain committed at this time to projects that will have a more immediate impact on NTIS' net revenues.

I also agree in principle with the thrust of two additional recommendations, although I am not prepared to implement them in the precise manner recommended:

- I agree that the files in the Director's office should contain more information than the basic agreement (Recommendation No. 3), but I believe that, consistent with good business practice, the working file must remain with the program office responsible for an agreement's implementation. We will seek to address this issue when we issue the guidance called for in Recommendation No. 1.
- I agree that NTIS should ensure full competition for opportunities to participate in joint ventures (Recommendation No. 6) and that selection criteria should always be made clear (page 9), although I do not believe these need to be as formal as a procurement. We will certainly review each proposal to determine if we are meeting these standards.

At the same time, I am not altogether persuaded that NTIS should, as a matter of course, enter into ventures with more partners and for shorter terms as a means of promoting competition (page 9). The ventures that we prize most highly are those with a publisher who has substantial resources of its own that add value to the Government's own information. It was through such a venture that the International Trade Administration was able to reintroduce the "U.S. Industrial Outlook" as the "U.S. Industry and Trade Outlook." There are only a few potential partners that have this ability and in our experience, they are not looking for one-time product agreements. I believe that longer-term arrangements are appropriate in such cases, although I also agree that your recommendation may be appropriate in other situations.

I should note that the recommendation appears to have been predicated at least in part on the belief that NTIS is conveying valuable consideration in the form of "federal government publication copyrights" (pages 3 and 7). Federal copyright law denies copyright protection to works of the U.S. Government (17 U.S.C. 105). Our agreements typically provide that the partner may not claim ownership of any part of the product authored by the Government, but that it is free to assert such claims over the portions (e.g., chapters) that it authored. We cannot convey rights that we do not possess.

We fully support Recommendation No. 2 calling for NTIS to work with OGC to determine what legal review is necessary for NTIS agreements. In this respect, we plan to work with our program counsel, who reports to the General Counsel, and other interested legal offices to develop clear guidelines

on the legal review of NTIS agreements. This coordination process has already started (see attached letter from our counsel to Barbara Fredericks).

We have been very pleased with the caliber of legal review provided by program counsel and counsel's appreciation of the need to review these agreements quickly. We would strongly object to any alternative arrangements that cause delay or increase legal costs charged to this agency. In short, I believe that the question of whether additional review is needed should be made by program counsel based on guidance from the General Counsel.

Attachment: a/s

OGC's Response to Draft Report



UNITED STATES DEPARTMENT OF COMMERCE
Office of the General Counsel
Washington, D.C. 20230

APR 20 1999

MEMORANDUM FOR: Jill A. Gross
Acting Assistant Inspector General for
Inspections and Program Evaluations
Office of the Inspector General

FROM: Barbara S. Fredericks
Assistant General Counsel for Administration

SUBJECT: Draft Inspection Report No. IPE-11021

As you requested, we are providing comments to Draft Inspection Report No. IPE-11021 on interagency and other special agreements of the National Technical Information Service (NTIS).¹ We agree with your recommendations, and will continue to assist you in improving policies and procedures concerning the review and management of agreements.

We are particularly interested in supporting your office's first two recommendations: to prepare a comprehensive set of guidelines for preparing all types of NTIS agreements, and to determine what types of NTIS agreements require legal review. As a result, my office met with the Office of the Chief Counsel for Technology in order to implement these recommendations. We provided a draft template of a policies and procedures guide used by operating units of the National Oceanic and Atmospheric Administration, and suggested appropriate revisions that would assist NTIS in meeting your first recommendation. Within that document, we also discussed establishing workable legal clearance procedures, with both offices sharing the responsibilities of legal review depending on the type of agreement that NTIS would use. We expect to receive a draft of those guidelines in the near future.

¹Draft Report: *Management Over Interagency and Other Special Agreements Requires Further Improvements* (IPE-11021).