I

(Information)

COURT OF AUDITORS

SPECIAL REPORT No 10/2000

on the public contracts awarded by the Joint Research Centre, together with the Commission’s replies

(pursuant to Article 284(4), second subparagraph, EC)

(2000/C 172/01)

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<td>The Commission’s replies</td>
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</table>
INTRODUCTION

The objectives and scope of the audit

1. This report by the Court follows on from its previous reports on the implementation of the fourth research framework programme (fourth FP) for the period 1994 to 1998. However, in contrast with the previous reports, which were devoted to an examination of the management of the programmes of indirect research, this one sets out to analyse the management of the public contracts that the Joint Research Centre (hereinafter referred to as the Centre or the JRC) must award in order to procure the resources it needs to pursue its activities (1).

2. The JRC, which was given Directorate-General status by a Commission Decision of 10 April 1996, is made up of several scientific institutes and horizontal management departments which are responsible for planning the Centre’s work and managing its logistical resources. The distinctive feature of this Directorate-General, which is the main tool at the Community’s disposal for the successful achievement of its direct research tasks, is that, pursuant to the Decision of 10 April 1996, it has a managing board made up of representatives of the Member States, to which the Director-General must submit the most important management decisions.

3. The regulations concerning the awarding of public contracts aim to achieve two basic objectives:

(a) to enable public bodies to procure the work, supplies and services which they require at the best quality/price ratio, and
(b) to ensure equal access to public contracts for all enterprises with the necessary skills and which can supply the required guarantees.

4. The Court took these two aspects as the criteria for its opinion on the legality/regularity and the quality of the financial management of all the JRC’s activities in so far as these activities involved the awarding of contracts to third parties. The contracts obtained by the Centre for services rendered by its various institutes for the benefit of third parties, which are subject to different management criteria, were not covered by this audit.

5. The Court’s work focused on the JRC’s system of management and on its supervision of the contracts at all stages. The management tools and procedures and a sample of 90 contracts (see Table 1), accounting for a total of EUR 81.5 million, were analysed. The latter amount covered 43 transactions in connection with files which had been submitted to the Advisory Committee on Procurements and Contracts (ACPC) and 47 others which were not submitted to this Committee. These files involved EUR 79 million and EUR 2.5 million respectively.

Table 1
Sample examined during the audit

<table>
<thead>
<tr>
<th>Contracts selected for the sample</th>
<th>Ispra</th>
<th>Seville</th>
<th>Geel</th>
<th>Karlsruhe</th>
<th>Petten</th>
<th>Total</th>
</tr>
</thead>
<tbody>
<tr>
<td>Number of ACPC/JRC contracts</td>
<td>23</td>
<td>2</td>
<td>6</td>
<td>5</td>
<td>7</td>
<td>43</td>
</tr>
<tr>
<td>Number of non-ACPC/JRC contracts</td>
<td>11</td>
<td>5</td>
<td>9</td>
<td>9</td>
<td>13</td>
<td>47</td>
</tr>
<tr>
<td>Total</td>
<td>34</td>
<td>7</td>
<td>15</td>
<td>14</td>
<td>20</td>
<td>90</td>
</tr>
</tbody>
</table>

Analysis of ACPC/JRC contracts

| Total amount approved | 37 069 199 | 9 340 324 | 10 819 651 | 9 758 881 | 12 006 320 | 78 994 375(a) |
| Total amount committed  | 8 528 424 | 4 287 058 | 4 353 362 | 5 548 489 | 5 051 114 | 27 768 447   |
| Total amount paid       | 7 331 267 | 2 608 937 | 3 031 784 | 3 961 827 | 4 029 313 | 20 963 128   |

Analysis of non-ACPC/JRC contracts

| Total amount committed | 539 075 | 207 844 | 247 311 | 994 013 | 570 056 | 2 558 299(b) |
| Number of contracts selected by private treaty | 10 | 4 | 6 | 7 | 9 | 36 |
| Number of contracts selected by informal invitation to tender | 1 | 1 | 2 |
| Number of contracts selected by formal invitation to tender | 1 | 0 | 3 | 2 | 3 | 9 |

Overall value of the contracts selected (a) + (b) 81 552 674

Source: European Court of Auditors.
The legal framework and the volume of finance involved

6. The area covered by the audit is governed by a number of texts of varying type and scope:

(a) Council Decisions 94/918/EC and 94/919/Euratom of 15 December 1994 (2), adopting the special research programmes which set out the objectives of the JRC for the implementation of the fourth FP;

(b) the general provisions of the Financial Regulation, which lay down the procedures for the implementation of the budget of the European Community (EC). These provisions are complemented by the special provisions applicable to research appropriations, which are set out in Title VII of the same Regulation;

(c) the European Directives concerning public service (92/50/EEC of 18 June 1992), supplies and work (93/36/EEC and 93/37/EEC of 14 June 1993) contracts, as amended by Directive 97/52/EC of 13 October 1997 (3), which are binding on the Commission as on all contracting authorities in the Member States.

7. Over the period covered by the special research programmes (1995 to 1998), the JRC had an overall budget of EUR 1 413 million at its disposal. Of this total, EUR 494 million (excluding reused appropriations) were used to finance the contracts. The allocation of the budgetary funds and the files examined by the ACPC are shown, by financial year, in, respectively, Tables 2 and 3.

Table 2
Allocation of budgetary funds

<table>
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<tr>
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<td>170 415</td>
<td>171 692</td>
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<tr>
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<td>154 512</td>
<td>170 415</td>
<td>171 692</td>
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<td>66</td>
<td>177</td>
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<td>1 029</td>
<td>742</td>
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<tr>
<td>Total</td>
<td>304 188</td>
<td>257 707</td>
<td>337 071</td>
<td>272 939</td>
<td>366 681</td>
</tr>
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</table>

Available for the contracts

Total 1/ (a) = 96 026 | 51 644 | 109 222 | 57 060 | 132 559 | 65 037 | 156 386 | 69 872 | 494 191 | 243 611

(a) = expenses relating to staff.
Source: Commission.
### Table 3

**ACP contracts by type of decision-making procedure**

<table>
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</thead>
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<tr>
<td></td>
<td>Number of</td>
<td>Overall amount EUR</td>
<td>%</td>
<td>Number of</td>
<td>Overall amount EUR</td>
<td>%</td>
<td>Number of</td>
<td>Overall amount EUR</td>
</tr>
<tr>
<td>Total</td>
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<td></td>
<td>70</td>
<td>131,975,013</td>
<td></td>
<td>56</td>
<td>62,526,981</td>
</tr>
<tr>
<td>By private treaty</td>
<td>26</td>
<td>40,6</td>
<td>101,210,648</td>
<td>20,3</td>
<td>23</td>
<td>32,9</td>
<td>58,416,096</td>
<td>44,3</td>
</tr>
<tr>
<td>By invitation to tender</td>
<td>38</td>
<td>59,4</td>
<td>40,019,983</td>
<td>79,7</td>
<td>47</td>
<td>67,1</td>
<td>73,558,919</td>
<td>55,7</td>
</tr>
</tbody>
</table>

(1) The data concerning the 1998 financial year were not sent to the ACPC’s secretariat until after the Court had adopted this report.

(2) 41,000,000: final stockage of all highly radioactive waste produced at the HFR reactor at Petten (Netherlands) during its 30 year life in the sole Dutch stockage centre approved by the Dutch authorities for this type of waste.

1,400,000: supply of radioactive fuel rods for the HFR reactor at Petten.

Source: JRC.

### SUMMARY OF THE MAIN OBSERVATIONS

8. The management system used by the JRC cannot generate data of a type which could provide, in a usable form, a comprehensive and accurate overview of the contracts awarded. The explanation for this situation is to be found in the combined effect of the inadequacy of the computer tools, which do not permit a link to be established between a specific contract and the project to which it is connected or the production of management charts, and by the loss of the history of the operations when the operations are transferred from the Sibeca accounting software (1) to the Sincom II software (2) (see paragraphs 19, 25 to 31, 43 to 51).

9. The salient features of a system which is an exception to ordinary law are the existence of a special Advisory Committee on Procurements and Contracts (ACPC-JRC) and the drawing-up of a document known as an ‘administrative arrangement’, according to which the Commission is in the position of having to conclude an agreement with itself (see paragraphs 20 to 24, 36 to 41).

10. Supervision of the contract procedures at all stages, from identification of the requirements to the monitoring, by the authorising officer, of the service provided, is generally inadequate due to the absence of a genuinely estimate-based form of management of requirements and on account of failings in the application of the rules on competition and, finally, because of the poor quality of the controls carried out on the services rendered (see paragraphs 52 to 64).

11. In addition, these shortcomings are aggravated by the absence of a text defining the composition of the committees responsible for the preparation of the contracts and setting out their working methods. The contracts’ entire preparatory phase suffers, as a consequence, from a lack of transparency (see paragraphs 34, 35, 54).

12. The JRC also granted contracts by private treaty which did not comply with the relevant rules as interpreted by the Court of Justice. The audit also confirmed the possibility of fraudulent agreements between service companies (see paragraphs 65 to 75).

13. The JRC managed the differentiated appropriations as if they were non-differentiated, disregarding the characteristic features of the two different types of appropriation, a practice frequently combined with various techniques for splitting up the contracts (see paragraphs 76 to 80).

14. The files do not always supply objective facts in support of the descriptions of the contracts and the drawing-up of the cost estimates. This lack of clarity leaves some doubt, in certain cases, as to the validity of the decision not to submit these cases to the ACPC-JRC (see paragraphs 61 and 62).

15. What is more, under cover of service contracts, the Centre was, in reality, recruiting staff in an irregular manner (see paragraphs 63 and 64).

16. In two cases it was observed that the entire contract had been subcontracted. This is open to criticism from a legal point of view: the Directives relating to public contracts make no mention of the possibility of subcontracting except in terms of parts of the contracts. Subcontracting entire contracts is not acceptable because it is not in accordance with the legal philosophy underlying the entire public contracts procedure. In addition, from the point of view of sound financial management, the successful tenderer becomes an intermediary and this leads to additional costs (see paragraphs 81 and 82).

17. The shortcomings discovered during checks on the services actually provided and their quality raise the problem of to what extent the authorising officer is actually discharging his responsibilities (see paragraphs 86 to 89).

18. However, the Court notes with satisfaction the speed and the scale of the reforms initiated by the Commission in order to deal with the weaknesses identified during the Court’s audits. These reforms, which were announced by the Commission in response to the observations set out in this report, are intended to give the JRC the tools it needs for high-performing management and improved control of contracts.
THE JRC’S MANAGEMENT SYSTEM

19. The management system operates within an unusual and constricting framework constructed around annual work programmes, accounting systems and a body of procedures. An analysis of the component parts of this system and an examination of the sample selected revealed weaknesses which had encouraged the development of debatable practices.

An unusual framework

20. Two fundamental features highlight the unusualness of the framework within which the Centre is pursuing its activities. Both of them influence, in varying degrees, the management of the contracts. The first concerns the special body (6) of Community institutional law which applies to the JRC, the second concerns its decentralised structure.

A special operating system

21. The JRC’s system of operation is unique in more than one way:

(a) on the one hand, at the level of the budget, where, in contrast with the other departments of the Commission, the entire appropriations at its disposal (including expenditure on staff and operating expenditure), are operating appropriations entered under Part B of the budget;

(b) at the legal level, on the other hand, the JRC can obtain financing from budget headings devoted to various Community policies managed by other Commission Directorates-General, such as, for example, Phare, Tacis or even MEDA, by a procedure where it competes with third parties but according to different procedures. The Centre only submits one estimate while the third parties are subject to all the provisions stipulated by the Directives concerning public contracts. Where the Directorate-General in charge considers that the JRC’s estimate is more favourable than the bids submitted by the external operators, the latter are notified, without any comparative examination by the ACPC, that their offers have not been selected. In such cases, the Commission is in the situation of having to conclude an agreement with itself. As this is legally impossible, the Commission bypasses this difficulty by drawing up a document called an ‘administrative arrangement’;

(c) finally, at the administrative level, there is a double idiosyncrasy in the existence of a management board and, since 1971, of a special ACPC (hereinafter the ACPC-JRC).

Decentralised management

22. The siting of the eight JRC institutes, each distinguished by scientific responsibilities in special areas of research, at five different locations (Geel, Ispra, Karlsruhe, Petten and Seville) and the existence of horizontal management departments situated either in Brussels or in Ispra has made considerable delegation of decision-making powers to the directors unavoidable. The latter, whose responsibility it is to monitor the scientific quality of the results of the projects of which they are in charge, act, at the same time, as authorising officers. This combination of tasks and the numerous journeys they are forced to make because of the distance from Brussels have led them to subdelegate a large number of these latter responsibilities (7).

23. The volume of logistical operations managed by the resources unit alone had become so great that it was difficult for this structure to manage them on its own. This situation led the JRC to decide, during the summer of 1998, to divide the responsibilities of the resources unit between two new units, one being given the task of managing infrastructures and the other that of managing the administration.

24. In practice, this decentralised management resulted in the existence of approximately 60 managers and 80 subdelegate authorising officers for some 50 000 transactions per year.

Management tools and procedures

The tools

The annual work programmes

25. Each year the management of the JRC programmes, located in Brussels at the Director-General’s office, draws up the annual work programme in consultation with the various research institutes. This document constitutes the key tool by means of which the JRC translates the objectives set for it by the European legislature into a coherent body of programmes. The work programme, which is approved by the Centre’s Management Board prior to its implementation, has two parts, one concerning research activities, the other supporting activities. It presents, in the form of synoptic sheets, a description of the projects adopted, highlighting their main features, their objectives and the human and budgetary resources allocated to them.

The accounting systems

26. The budget accounts, inventory and analytical accounts are computerised and they are monitored with the help of various kinds of software, which were being used consecutively and sometimes simultaneously during the period under consideration.

The budget accounts

27. Until November 1997, the use of the appropriations allocated to the Centre was monitored using Sibeca software. The drawback to this system was that it could not be consulted directly by departments other than those of the JRC. On the other hand, it had the advantage, in addition to allowing the implementation of the budget to be monitored, of permitting expenditure to be linked to the relevant contracts in those cases where the latter had been submitted to the ACPC for an opinion and had received an identification number in the process. It was replaced by Sincom II at the end of 1997.
28. Sincom II is built around three modules which are intended to monitor the managers’ and authorising officers’ operations, to monitor approvals by the financial controller and the accounting officer and to monitor the generation of statistics and reports. This third module had still not been installed at the time of the Court’s audit in June 1998.

Analytical accounts

29. As the Centre works on the basis of operating appropriations but is also in a position to acquire external financing in return for the services it provides for third party accounts, it has an analytical accounting system which allows it to identify the operating costs of each unit of its various institutes on the basis of a breakdown of the overall costs, which are additional to direct expenditure. It allows the Centre, in addition, to monitor the use of appropriations according to the type of activity. Finally, it provides the Centre with information on the utilisation of reused appropriations.

30. A document entitled ‘Table of equivalence’ provides a link between the analytical accounts and the budgetary accounts. This allows the implementation of the fourth framework programme to be monitored and, in the synoptic tables, the budgetary estimates and their implementation to be compared. An additional advantage of this document is that it allows the management of the Centre to carry out regular audits. On the other hand, it does not allow the contract awarded, to which the expenditure is connected, to be identified directly nor, a fortiori, the establishment of a connection between this contract and the project under which it was financed.

Inventory accounting

31. The sites have different software for the inventory of goods and the administrative management of procurement. The software used at Ispra, Seville and Petten ensures monitoring of the itemised goods; the one at Karlsruhe, which is older, records the data but is not able to group them according to the type of goods.

A contract database

32. The ‘Contracts’ unit of the former Resource Management unit has progressively built up a contracts database containing the contracts awarded by the Centre. During the audit carried out in June 1998 on the contracts obtained by one particular contractor, an appreciable difference appeared between the amounts entered in the accounts and those supplied by the database. This anomaly was subsequently corrected.

The framework contracts

33. The framework contracts are used for supply contracts and, more particularly, for the purchase of computer equipment. They are concluded for a period of two or three years, as a rule, and give the Centre’s purchasing departments considerable flexibility. Once the framework contract has been concluded, these departments may, depending on their requirements, purchase goods by simply issuing an order voucher. In addition, the signature of such a contract does not require the appropriations to be tied up in advance, as they are committed as and when the order vouchers are issued.

The procedures

34. The management procedures applied by the Centre have been codified in a document for internal use which includes, on the one hand, the provisions of the Financial Regulation and the rules for their application, which are binding on all the Commission’s departments, and, on the other, the JRC’s own rules. Following the example of the Commission’s other departments, the Centre makes use of the ACPC’s guidelines for public contracts.

35. However, the procedures necessary at the different stages of a contract and the monitoring of its implementation have not been formalised. The Centre has created various internal committees, such as for the preparation of operations relating to the acquisition of large quantities of equipment, but no text mentions them or defines their composition or lays down their responsibilities and their working procedures.

The weaknesses of the system

The consequences of the special system

The JRC’s special ACPC

36. In contrast to the Commission’s other scientific Directorates-General (the Research, Information society and Energy DGs), the JRC files concerning public contracts were not submitted to the Commission’s ACPC between 1971 and July 1998 but to a special ACPC on the grounds that the Centre’s operations were scientific in nature.

37. During its preliminary controls the Court found that the existence of such an ACPC was neither justified nor desirable. In fact, the role of the ACPC is not to give an opinion on the scientific content of a file but to ensure compliance with the rules concerning competition, to guarantee equality of treatment for the tenderers and to check the quality of the specifications, in particular with regard to the definition of objective criteria which enable a comparison of the offers to be carried out. In addition, in contrast to the Commission’s ACPC, which meets every three weeks, the very large number of JRC staff on this ACPC means that only four or five meetings per year are possible and this circumstance is also detrimental to its independent and neutral image.

Dealing efficiently with decentralisation

38. The absence of written procedures has naturally favoured the development of heterogeneous management practices and it was not possible to check whether the committees mentioned in paragraph 35 intervene systematically.
39. The geographical distribution of the installations over several sites and the effective decentralisation of the Centre mean that the Directors are obliged to make frequent trips, which limits the time they can devote to supervision and controls of their subordinates' management. Combined with the failure to adapt the JRC's accounting tools, this situation has led to the weakening of the management hierarchy's control. The checks carried out by the Court on the sample selected confirmed the existence of these weaknesses at all the stages of the management of the contracts.

40. The JRC may be required to compete with third parties in respect of the implementation of Community policies managed by other DGs, which places the Commission in a difficult situation. Not being able, from a legal standpoint, to reply to its own calls for tenders or, a fortiori, to conclude contracts with itself, the Commission has had to adopt a parallel procedure. According to the terms of this procedure, the JRC submits an estimate. If this estimate appears more favourable than those submitted by third parties the relevant operation is the subject of a document called an 'administrative arrangement' between the DG concerned and the JRC. The ACPC is not consulted. In the contrary case the ACPC only receives bids received from third parties for its opinion.

41. The Court’s examination of the two transactions in the sample connected with work carried out by the JRC within the framework of the implementation of two administrative arrangements revealed that the Centre had had recourse to this procedure to subcontract a part of the contracts, a minor part in one case but considerable in the other, without any recourse to competitive procedures.

42. Moreover, from the point of view of sound management, criticism must be levelled at a public body which, having the scientific, technical and administrative means at its disposal to enable it to meet its requirements, nevertheless imposes on itself the deadlines and additional costs entailed by the launching of an invitation to tender and the JRC's drawing up of a file for submission.

The quality of the information system

The generation of data

43. For the annual work programme a provisional budget is drawn up by project and the accounting systems allows monitoring of the use of the appropriations and the cost of the Centre's activities. Nevertheless, in the absence of auxiliary accounting for the projects, these two factors together mean that no links can be established between contracts and specific projects and, as a consequence, with the work programme, nor can comprehensive and reliable information on the contracts concluded be generated, nor, finally, can charts for the Centre's management be produced.

44. In contrast with Sibeca, the previous accounting system, Sincom II is a simple budget implementation software which does not offer the possibility of identifying contracts by means of the corresponding commitments.

45. In addition, the Sincom II third-party data file planned originally was still not operational at the time of the audit in June 1998. The creation of such a file would however allow the management to carry out cross-checks with the contract database.

46. On top of this, the transfer of Sibeca data to Sincom II was only partially completed. The records of the operations for which the commitments had been paid were thus not recorded in the new system. In effect, they had disappeared, rendering impossible the production of a comprehensive and reliable table of the contracts awarded. In an attempt to produce this information, the JRC tried to reactivate Sibeca. In spite of considerable effort the result was not satisfactory.

47. As a result of this the Centre is deprived of any genuine knowledge of all the contracts which it has awarded, and does not possess management charts allowing it to monitor, on the basis of the implementation of the contracts, their connection to a specific project. A tool of this kind would be all the more valuable as an aid as the number of projects started, approximately 700 for the 1995 to 1998 period, is considerable.

48. In addition to the weaknesses of some inventory software, such as that in Karlsruhe, the checks carried out at Ispra showed that the efficiency of the software was impaired by the absence, for years now, of a physical inventory and by the application of an administrative procedure which does not require the physical withdrawal of downgraded items and items that have been removed from the inventory.

49. Following the recommendations made by the Court during the audit, the responsible departments of the JRC undertook to draw up an inventory of equipment in February 1999. During checks carried out afterwards the Court ascertained that for approximately 20 000 articles recorded, this inventory revealed a discrepancy of 14 % between the physical reality and the records entered in the accounts.

The contract database

50. The lack of user-friendliness of the database installed by the Contracts unit often meant that, in spite of the reliability it had acquired, the departments did not use it and preferred parallel monitoring on the basis of a spreadsheet.
The monitoring of the framework contract order slips

51. While the implementation of the framework contracts inevitably involved the issuing of a large number of order slips by the various departments of the JRC, the latter had no computerised system with which to carry out general and centralised monitoring of these departments.

CONTROL OF THE CONTRACT PROCEDURES

52. The contract procedures are divided into three key stages: the preparation of the operation, the award of the contract and the monitoring of its implementation. The Court’s main findings are presented in this order. Prominence has been given to cases which are particularly serious because of the existence of, either, anomalies at various stages of the contract, or of doubtful practices.

The preparation of the contracts

The identification of requirements

53. With the notable exception of computer equipment requirements, which are the subject of formalised planning, examination of the files did not produce evidence of the existence of a genuinely estimate-based form of management of requirements. In addition, the checks carried out showed that the planned evaluation of computer equipment requirements was incomplete, inasmuch as the requirements of departments other than those of the JRC administration were not itemised.

54. Moreover, the opacity of the conditions under which the preparatory committees work, in the absence of pre-established rules, written agendas and minutes of the meetings, makes it difficult to express an opinion on the quality of the process of identifying requirements.

55. The audits also revealed that, for two of the transactions in the sample relating to scientific services, the contract originated not with the JRC but with the successful contractors concerned. The documents in fact contained no information on the existence of a genuine need on the part of the Centre apart from the proposals submitted by the contractors. The first of these contracts, submitted to the ACPC-JRC for its opinion, led to the signature of two contracts for a combined amount of EUR 871 638. The second, for EUR 89 000, gave rise to the drafting of several lines to serve as specifications after reception of the bid submitted. In this case, the contract was not only awarded by private treaty but the period between submission of the bid and the signature of the contract letter was not more than one week.

56. Two other study contracts in the field of transport, for amounts of EUR 11 400 and EUR 10 000 respectively, which were awarded by private treaty, were also awarded on the basis of a bid by the beneficiary, although the JRC’s files do not contain the least trace of a requirement or of specifications.

The quality of the specifications and the technical annexes

57. Finally, in one case, laboratory equipment, the installation of which was not scheduled until the year 2000, was ordered in 1997 and delivered in 1998 with the sole objective of using up the appropriations for that financial year. Apart from the fact that it conceals the real cost of the creation of the laboratory from the budgetary authority, this procedure entails premature expenditure.

58. The comparison of the specifications drawn up within the framework of the contracts which were examined by the ACPC-JRC and those for contracts which may be awarded without its prior opinion shows that no comparison of the quality of the former with that of the latter is possible.

59. The quality of the specifications submitted to this committee for its opinion is, on the whole, acceptable. Weaknesses were nevertheless revealed by the checks such as, for example, the incompleteness of some specifications and, in one case, the use of the price lists of a supplier who is very much in evidence at the Ispra location to draw up the specifications.

60. The quality of the technical annexes, which are the equivalent for non-ACPC contracts of the specifications, is, on the other hand, frequently poor, in particular at the Ispra location. It is sometimes so poor that it is impossible for someone working in the relevant sector to submit a tender without obtaining additional information from the manager responsible for the operation. Of the 47 transactions in the sample involving the award of contracts outside the ACPC-JRC procedure, seven, accounting for EUR 302 550 and more than 14 % of the total population concerned, are in this category.

The description of the contracts

The description of the scientific contracts and the amount involved

61. The thresholds for submission of contracts to the ACPC-JRC depend on whether they are scientific or not. In the case of an award by private treaty, the contract threshold at and above which submission is required is EUR 46 000 if the contract concerns a non-scientific/technical subject but rises to EUR 98 700 if this is not the case.

62. The Court’s audit shows that six contracts in the sample described as scientific/technical, for amounts close to the ACPC-JRC submission threshold, were awarded by private treaty. Examination of the relevant files does not always permit an understanding of the method used, either to determine the provisional price of the contract or to confirm the scientific nature of the operation.

The description of service contracts

63. Checks on one transaction revealed the awarding of work contracts by the JRC under cover of service contracts. This
practice allowed it either to prolong the presence within the JRC of persons who should have left, according to the rules on staff management, or to finance the recruitment of new staff with different budgetary resources. By doing so, apart from misusing the description, the JRC infringed the budgetary rule of specification of appropriations.

64. Having become aware of what was going on, the highest authorities at the JRC rectified the situation. Apart from the sample examined by the Court, 47 contracts of this type were thus identified, of which 39 were rectified with immediate effect.

The awarding of contracts

Excessive use of private treaty contracts

The extent of the phenomenon

65. It appears from the ACPC-JRC’s implementation reports that the percentage of contracts awarded by private treaty fell between 1995 and 1997, both in terms of numbers and of the volume of budgetary funding. Whereas in 1995, 26 contracts were concluded by this procedure for a total amount of EUR 10.2 million, in 1997 only 14 contracts accounting for EUR 3.8 million were concluded by private treaty (see Table 3).

66. As the management system of the JRC was not capable of providing reliable information in respect of the contracts awarded outside of the ACPC-JRC procedure, it was only on the basis of the sample examined that the Court was able to form an opinion. The Court thus ascertained that the downward trend in contracts by private treaty was much less pronounced. Thus, of the 34 transactions relating to the contracts in the sample awarded in 1997, 24, representing EUR 885 000 of a total of EUR 1 955 000 were still awarded by this procedure (see Table 4).

67. This inability on the part of the JRC’s management system to identify, to collate and to present to the higher authorities of the JRC information relating to this type of operation in an appropriate form, and also the lack of attention given to these transactions on account of the small amounts they involved, favoured the high incidence of recourse to private treaty contracts.

The irregularity of the practice

68. The Court of Justice’s case law restricts the reasons (8) a contracting authority may invoke to have recourse to the private treaty procedure to three. The first is the protection of exclusive rights, the second rests on technical considerations and the last one, finally, is justification by a situation of urgency.

69. The evaluation by the Court of Justice of the technical and urgency criteria is extremely restrictive. As far as the technical grounds are concerned, the contracting authority must prove that no tenderer other than the successful tenderer is capable of carrying out the contract. The criterion of urgency is only accepted where the event was unforeseeable and the urgency extreme and incompatible with the deadlines required by other procedures. The Court of Justice demands, in addition, that there must be a causal connection between the unforeseeable event and the resultant extreme urgency.

70. In the light of the information available in the files, some of the contracts in the sample which were awarded by private treaty did not comply with the rules laid down in the Court of Justice’s case-law for justifying the use of the private treaty procedure. However, in the main, this case-law was laid down during proceedings brought by the Commission against Member States which were making unjustified use of this procedure in the awarding of public sector contracts.

71. The findings of the audit in respect of several transactions in the sample show that the conditions under which several contracts of very diverse volume were prepared, awarded and monitored constitute a body of evidence which, at the very least, reveals serious management errors.

Table 4

Non-ACP contracts on the basis of the sample

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<tr>
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<tbody>
<tr>
<td></td>
<td>Number of contracts</td>
<td>%</td>
<td>Overall amount EUR</td>
</tr>
<tr>
<td>Total</td>
<td>6</td>
<td>227 024</td>
<td>34</td>
</tr>
<tr>
<td>By private treaty</td>
<td>6</td>
<td>100</td>
<td>6</td>
</tr>
<tr>
<td>By invitation to tender</td>
<td>0</td>
<td>0</td>
<td>1</td>
</tr>
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</table>

Source: European Court of Auditors.
Existence of a de facto monopoly

72. One of the cases discussed in the preceding paragraph deserves to be given special prominence on account of the volume of finance involved (approximately EUR 1 million per year) and of the length of time concerned. Since 1979, one company has held the contract for the supply of vehicles to the Ispra site. Between 1979 and 1991 the contract was systematically renewed by private treaty. In 1991, following a public invitation to tender published in the Official Journal of the European Communities, the contract was awarded once again to the same company for a maximum of five years. On the expiry of this latter contract, an amendment was nevertheless signed to extend the contract for three months on the grounds that the JRC had not had time to organise a new invitation to tender. In April 1996, following an invitation to tender, a new contract for a period of three years but which could be extended by 24 additional months was awarded to the company.

73. The checks carried out revealed a whole series of both factual and legal factors which indicate that the JRC allowed this company to create an exclusive position for itself. The JRC accepted amendments to the initial contractual conditions which ran counter to the Community’s interests and to equality of access to publicly financed operations. Lastly, it also refused to assume the responsibilities incumbent on authorising officers by failing to check diligently the actual services invoiced.

74. The following was established:

(a) the three-month extension to the contract, signed as a result of the contract awarded in 1991, on the inadmissible grounds of lack of time, was contrary to the terms of the contract, which stipulated a maximum duration of five years, and the cause of extra costs which can be estimated at EUR 380 000;

(b) by the terms of this amendment, signed on 27 March 1996, the prices charged for the supply of a vehicle and the kilometre charge came to EUR 3 922/month and EUR 0.3331/km respectively. The bid in connection with these same services, submitted at the same time in response to the invitation to tender launched by the JRC, was 27 % less for the former service and 52 % less for the second;

(c) the date of receipt on the confirmation of receipt for the bid mentioned was altered;

(d) the address of the information meeting in respect of the conditions of the tender was erroneous, with the result that one interested enterprise arrived too late, which reduced the number of tenderers to two;

(e) the prices which formed the basis on which the contract was awarded were never applied. A first endorsement authorised the contractor to invoice the higher prices agreed in the preceding contract then a second increased the price fixed in the contract concluded following the call for tenders;

(f) pleading that, owing to the lack of staff, it was impossible to check each and every invoice submitted in respect of this contract, the authorising officer, as from 1993, merely verified that the service was provided on the basis of a sample of invoices. Such a practice is in contravention of the provisions of Articles 40 and 41 of the Financial Regulation;

(g) finally, the average number of kilometres invoiced annually came to 194 223 km per vehicle, i.e. almost 540 km per calendar day.

The possible existence of illicit agreements

75. The Court noted that the weaknesses in the management system made it impossible for the Centre’s management to prevent the formation of a group of tenderers who were often to be found on the same contracts of the same institute of the JRC. In one case, the successful tenderer for a contract for the supply of services identified himself as the sales manager of a computer-equipment supplier which was also tendering for the same contract. Examination of the bids revealed, in addition, that two tendering companies were managed by members of one and the same family.

The splitting of contracts

The use of differentiated appropriations (splitting contracts in the accounts)

76. Examination of the financial tables produced by the accounting system revealed irregular utilisation of differentiated appropriations. It was ascertained that the financial cover for one and the same contract was not guaranteed by a single commitment, as the rule requires, but that the JRC often raised several successive commitments which, in the majority of cases, corresponded to the annual instalments of the contracts.

77. The Court must point out that the existence of differentiated appropriations is due to the desire on the part of the legislator to guarantee the manager financial cover for operations where it can be foreseen that they will last longer than the financial year, and to facilitate controls, in particular by the budgetary authority, in accordance with Article 1(4) of the Financial Regulation, by attaching the entire expenditure relating to one operation to a specific commitment.

78. The primary advantage of diligent observance of this rule is that it allows the rate of implementation of a contract to be checked by simply reading off, at the end of every financial year, the amounts remaining to be settled for the relevant commitments. It requires explanations of the persons in charge when the level of utilisation of the appropriations does not match the contractual obligations. The second advantage is that it obliges the manager to state the reasons why any commitment of additional appropriations proves necessary to successfully conclude the contract, while clearly identifying the cause of this increase.

Legal splitting (contracts in the form of 1+x years)

79. This practice consists of awarding the entire contract to the same contractor while signing a contract with him that only
covers the first year of implementation. Each successive annual instalment is the subject of a new contract awarded automatically to the same contractor. This practice, when used in combination with the preceding one, therefore allows the budgetary commitment to coincide with the legal commitment but at the price of a budgetary irregularity to the detriment of an overall view of the contract and of the quality of the monitoring of implementation. Fourteen of the 43 transactions in the sample concerning the contracts submitted to the ACPC-JRC, i.e. more than 32 %, were in this form.

80. In the case of one transaction in the sample, it was found that the contract was artificially divided up into two separate phases with the sole intention of getting around the obstacle of inadequate commitment appropriations available at the time the contract was signed, in order to cover the whole of the legal commitment.

Other procedures for awarding contracts

Subcontracting the entire contract

81. The audit revealed that two contracts for the supply of various items of computer equipment had been subcontracted in their entirety by the successful tenderers to the same company, a regular partner of long standing of the Centre and already beneficiary of approximately 30 contracts.

82. From the point of view of both legality/regularity and sound financial management, this subcontracting of an entire contract must be condemned. On the legal level, it should be noted, first of all, that the Directives relating to public contracts make no mention of the subcontracting of a contract except in parts. When it is total, this subcontracting breaks the intuitu personae nature of the contractual relationship and turns the legal contractor into a mere intermediary, whose middle-man role necessarily entails an increase in the cost borne by the contracting authority.

Awarding of contracts in the absence of sufficient appropriations

83. It appears from the invitation-to-tender file of a contract concerning the setting up of the European Observatory of Science and Technology that the final bid submitted by the tenderer for the first year of implementation of the contract came, after negotiations authorised by the ACPC-JRC, to EUR 1.6 million. As this amount was more than the budgetary appropriations available, the Centre should have declared the invitation to tender void. A contract for EUR 993 560 was nevertheless concluded. Some months after its signature this contract was the subject of an amendment covered by new appropriations opened in respect of the new financial year in order to make the cost of the operation match the amount of the bid after negotiation with the Centre's management (see paragraph 85).

Monitoring implementation

The management of contracts

84. The audit showed that the various authorising officers of the JRC frequently signed contracts without first obtaining the signature of the successful tenderer. This practice entails the risk that services will be rendered before the actual signing of the contract by the contractor, with no legal cover, or that amendments may be made to the terms of the contract. The Court also found, on several occasions, that the implementation reports had been drawn up before any signature had been placed on the relevant contracts.

85. In contrast, considerable delays in the supply of the services and the drawing up of the reports did not give rise to any penalty, or even a warning. The ease with which the Centre grants advantageous amendments is another illustration of the lack of rigour of the management of contracts. Apart from the case already mentioned (see paragraphs 64 to 66) concerning the car fleet contracts, it was found that, in connection with the creation of the European Observatory of Science and Technology, that, in spite of the inadequacy of the successful tenderer's services in respect of his contractual obligations, the Centre granted him, nine months after the signing of the contract, an increase in the overall price of more than 60 %, even though the utilisation of appropriations was extremely poor. At the time only EUR 230 005 had been invoiced, i.e. only 23 % of the initial commitment (see paragraph 83).

Checking services rendered

86. In numerous cases delays in implementation on the part of the suppliers were not the subject of any reminder on the part of the Centre. The controls thus revealed a contract for computer maintenance which, 18 months after the expiry of the contract (the planned duration of which was 120 days), had not led to any proven service. A single invoice, dated 20 March 1997 and concerning 30 % of the contract, had been drawn up and was still unpaid 15 months after expiry of the contract, while the file contained no trace of any reaction of any kind on the part of the accounting officer or of the service supplier. Apart from the obvious absence of monitoring, one can only wonder about how real the needs covered by this contract were and whether the services invoiced were really performed.

87. In another case, the data mentioned in the invoices submitted did not allow the authorising officer to identify who had supplied the services, offered no real description of these services and did not allow him to check the dates and duration of the work carried out or even ascertain what kind of work it was. As a result, he was not able to check whether the amounts invoiced were justified. In addition, the audit revealed that an amount had been paid in error by the Centre for this contract, which actually concerned an operation carried out in Sicily within the framework of the Envitreg European initiative.
88. In another case concerning a contract of a duration of 18 months, the service had still not been completed six months after expiry and the Centre had not even sent a reminder. Furthermore, the file did not contain any supporting document for the payments made.

89. The scale of the delays sometimes cast doubt on the desirability of certain contracts at the time they were granted. A contract concerning an amount of EUR 2,58 million illustrates this finding. Awarded in January 1997, this contract for the installation of a computer system for the management of documents only gave rise to the issuing of one invoice for EUR 25 628,16 months after the signing of the contract.

CONCLUSIONS/RECOMMENDATIONS

90. The aim of the rules governing the awarding of public contracts is to ensure equal access for all enterprises to publicly financed contracts and to assure the best service at the best price. However, it appears from the audit that the management system in place at the JRC at the time of the Court’s audit did not guarantee the achievement of this aim.

91. The reasons for this situation can be found both in the weaknesses of this system, which is not even capable of providing reliable information in summary form, and in the irregular use of differentiated appropriations favouring the current practice of splitting contracts and the use of dubious procedures.

92. Finally, the special arrangements applied to the JRC with, in particular, the existence of a special ACPC and recourse to ‘administrative arrangements’ between the Commission’s departments also had a negative impact on the management of contracts.

93. The JRC, having become aware of the seriousness of the situation, has started a process of reform. It has thus, in particular, suspended the operations of the ACPC-JRC, restructured its organisation chart, created an internal control unit and conducted a physical inventory of its goods. These measures, taken as a whole, must be approved and consolidated. The suspension of the ACPC-JRC must, above all, be the prelude to its abolition and the physical inventory now in progress should not remain an isolated exercise but must be repeated on a regular basis. These measures must, nevertheless, be complemented by an improvement in the management system and vigorous action in respect of monitoring the various stages of the contract procedures.

94. The JRC should adopt auxiliary accounting for the projects, thus allowing contracts to be linked to specific projects or actions and also permitting advance planning of its requirements in order to optimise the allocation of the budgetary resources available.

95. For all that, nothing will be achieved unless all the irregular, questionable and dubious practices which have been identified in the course of this audit are terminated by appropriate means. In order to do this, the Court reiterates (9) that, if disciplinary or even legal measures need to be implemented, any lasting solution must lie in the effective shouldering of the financial responsibility by the authorising and accounting officers, as laid down in Articles 73 ff., of the Financial Regulation.

96. The Court would like to observe, in this connection, that the Financial Regulation has been in existence for more than 20 years but the Community legislature has still not codified the conditions of this responsibility and the financial penalties which may be applied to the authorising and accounting officers. It must be stressed that the approval given by the Financial Controller does not constitute an exoneration of the authorising officer in respect of his own failings when he wrongly confirms that a service has been rendered and that expenditure has been settled correctly, any more than it exonerates the accounting officer when he enters the cost, in his accounts, of an operation the regularity of which he must verify beforehand. When the Financial Controller gives his approval that merely means that he takes on part of the responsibility for any untoward consequences.

This report was adopted by the Court of Auditors in Luxembourg at the Court meeting of 6 and 7 April 2000.

For the Court of Auditors
Jan O. KARLSSON
President
NOTES


(4) Sibeca: Automatic budgetary and accounting information system

(5) Sincom II: Computerised accounting system

(6) The management system to which the JRC is subject differs from the normal legal framework on more than one account.

As regards financial and accounting law:

(a) its administrative expenditure is entirely covered by administrative appropriations entered under Chapter B6 and not by Part A of the budget;

(b) the resources obtained within the framework of its competitive activities are allocated to the JRC. This allocation constitutes an exception to the budgetary principle of universality, according to which all resources from the general budget must be used to cover all expenditure;

(c) by the terms of its rules of procedure for the implementation of the budget, it has a system of analytical accounting which allows it to spread its general charges across its various institutes/managements and an imprest account;

(d) it has the possibility of keeping part of its appropriations in reserve to use them as its contribution to actions involving shared costs.

As regards administration:

(a) it is quite exceptional for a Commission DG to have a body such as the Management Board of the JRC, a body made up, in addition, of people from outside the institution;

(b) it should be noted that the Director-General of the JRC may not submit any proposal for a decision to the Commission unless this is accompanied by a preliminary opinion from the Management Board.

As regards its legal status in general:

(a) within the framework of its 'competitive activities', the JRC may be placed in a competitive situation vis-à-vis third parties to obtain contracts managed by other Commission DGs. From a legal point of view it is not possible to conclude a contract with oneself. The Commission has bypassed the problem by baptising the document concluded between the two administrative structures an 'arrangement';

(b) from a legal point of view this solution is 'shaky'. This is undoubtedly what led the Management Board to ponder the advantages there would be in giving the JRC a legal personality distinct from that of the Community.

(7) See the organisation chart at annex.

(8) See in particular:

— Judgment Commission/Italy of 10 March 1987, Case 199/85 ECR 1039, paragraphs 12 to 14 of the legal grounds (on the right to exclusive agreements),

— Judgment Commission/Spain of 11 November 1993, Case 71/92 ECR I-5923, paragraphs 36 and 37 of the legal grounds; confirmed by the judgment in respect of pharmaceutical products of 3 May 1994, Case 328/92 ECR I-1569, paragraphs 14 to 16 of the legal grounds,


ANNEX

SIMPLIFIED ORGANISATION CHART — DISTRIBUTION OF THE INSTITUTES BY SITE

JRC
Joint Research Centre

General-Directorate
Brussels

IRMM
Institute for
reference materials
and measurements
Geel (B)

ITU
Institute for
transuranium
elements
Karlsruhe (D)

IAM
Institute for
advanced materials
Petten (NL)

ISPRA (I)
Institute for
Space applications

IPTS (E)
Institute for
prospective
technological studies
Seville (E)

ISIS
Institute for systems,
informatics and safety

EI
Environment
Institute

SAI
Space applications
Institute

IHCP
Institute for health
and consumer protection
The preliminary observations of the Court for the special report on the public contracts awarded by the Joint Research Centre are the product of audit visits in 1998. The audit covered the transactions over the period 1995 to 1998. Since then the JRC has undergone significant changes, regarding both its mission and the strategy relating to its methods and organisation. The Court took note of this at meetings following the audit visits and it is partly reflected in its observations.

Throughout the Court’s audit of this matter the JRC has reacted positively to the Court’s recommendations. The organisation and procedures were adapted and improved without waiting for the final report. Here are some examples:

— the ACPC-JRC has been abolished,
— contracts are sent first to contractors before signature by the Commission,
— the contract database has been improved,
— open invitations to tender are issued in the transport field at Ispra,
— the number of projects in the work programme has been reduced from 700 to 100 and a system set up to monitor and assess these projects in close cooperation with the DG benefiting from the project,
— monitoring systems have been reinforced by establishing financial units in institutes (MSU) and setting up a system of double signatures,
— management procedures are now documented and intranet site on these procedures is being developed.

The Commission’s answers to the Court’s detailed observations are given below.

SUMMARY OF THE MAIN OBSERVATIONS

8. Following the Court’s audit and recommendations, the JRC’s management systems and procedures have been adapted. The management system currently in place at the JRC is able to produce the information needed to give a comprehensive and accurate overview of the contracts awarded. The computer tools now permit a link to be established between a specific contract and the project to which it is connected.

9. The ACPC-JRC has been abolished. The Commission shares the Court’s view that the provisions of Title IV of the Financial Regulation on the conclusion of public contracts are applicable to activities carried out by the JCR on behalf of other Commission departments, including contracts by private treaty in duly justified cases.

10. The Commission accepts that in certain cases there were weaknesses in the management of estimated requirements, the application of competition rules and monitoring of the services provided.

11. The JRC complies with the provisions laid down in the Financial Regulation and its implementing rules. There is no provision specifying the composition of committees responsible for the preparation of contracts. In the case of large contracts, the JRC will take more formal steps in the contracts’ preparatory phase.

12. The JRC applies Article 59(a) (former Article 58(a)) of the Financial Regulation up to the threshold provided for in the implementing rules of the Financial Regulation (Article 105, former Article 126) and the Directives on public contracts.

13. The Commission considers that the JRC manages the differentiated appropriations correctly (see replies to paragraphs 76 to 80).

14. Although there were occasions when the decision not to submit certain cases to the ACPC-JRC was not justified, in the Commission’s view the decision not to submit was justified in most of the cases examined by the Court.

15. The JRC was aware of the problem raised by the Court regarding service contracts and it was in the course of being corrected at the time of the audit.

16. The Commission will make sure this problem does not arise in future.

17. The JRC has set up improved monitoring systems. Where cases of irregularities were noted, it has reacted positively, imposing disciplinary measures where appropriate.

THE JRC’S MANAGEMENT SYSTEM

19. The Commission recognises that in the past the JRC had difficulties in overcoming the constraints and identifying weaknesses in the management system. In the recent past, however, the weaknesses have been clearly identified and the system improved.
A special operating system

21. (c) The Commission shares the Court's view regarding the ACPC-JRC, and abolished it on 22 July 1999. The operation of the ACPC-JRC had previously been suspended by Commission decision on 3 September 1998.

Decentralised management

22. The sitting and specialised scientific responsibilities of the JRC institutes demand decentralised organisation and management, including broad delegation of powers to those in charge in each institute, combined with a system of double signatures.

23. An administration directorate has been set up to ensure that administrative and contract transactions are executed in a more consistent and uniform manner.

Management tools and procedures

The tools

25. When it drafted the fifth framework programme, the JRC radically reorganised the management of the projects. The number of projects was cut from about 700 to 100. These 100 projects have clear objectives spread over time and determined in close cooperation with the Commission departments which are the prime beneficiaries.

The annual work programmes

28. The JRC was the first Commission Directorate-General to install Sincom II and as the pilot DG it encountered the start-up difficulties of any new IT product. Sincom II comprises three modules designed to monitor managers' and authorising officers' operations, to monitor approvals by the financial controller and the accounting officer, and to monitor the production of statistics and reports. The third module was installed after the first two (at the end of 1999) since the operational systems had to be up and running first.

Analytical accounts

29. The JRC has an analytical accounting system and in this respect is a pioneer in the Commission. The system makes it possible to monitor closely costs and services. A major effort is made continuously to improve this tool to make planning, assessment and monitoring of projects and the programme more transparent.

30. The purpose of the table of equivalence is to establish a link between staff and resources and the various actions (for each budget item) to determine their overall cost.

Inventory accounting

31. Karlsruhe now has access to the new version of the Sysbien software which is the Commission standard. This new version can group data by type of goods. The inventory is being updated and will be completed in June 2000.

A contract database

32. The JRC's contract database is an example of good practice in the Commission. The system has evolved considerably since the Court's audit. In particular it has a bidirectional interface with Sincom II enabling it to connect commitments to contracts and gives access to the same third parties file.

The framework contracts

33. The framework contracts do not represent an obligation to purchase but facilitate economies of scale.

The procedures

34. The documentation for management procedures applied by the JRC is being updated, particularly in the context of total quality management (TQM). In future the information will also be available on the JRC's intranet.

The accounting systems

The budget accounts

27. The JRC installed Sincom II at the end of 1997 with a view to integrating into the Commission common system.
35. Regarding the different stages in the award of a contract, the JRC complies with the provisions in the Financial Regulation and its implementing rules, in particular the rules for issuing an invitation to tender by a committee appointed for the purpose. In the case of large contracts, however, preparatory procedures for contracts will be more formalised.

**The weaknesses of the system**

**The consequences of the special system**

The JRC's special ACPC

36 and 37. On 1 October 1998 the Commission decided to abolish the ACPC-JCR for the following reasons:

— substantial savings could be made if all public contracts were handled by a single ACPC,

— the principle of the necessary separation of functions between the post of member of the ACPC and that of authorising officer would be better respected if JRC contracts were examined by the general ACPC,

— JRC authorising officers would benefit from much shorter processing times for their contracts since the general ACPC holds more frequent meetings per year,

— the existence of a single ACPC for all Commission departments would make management more transparent.

The decision to suspend the ACP-JRC was followed by a decision confirming its abolition on 22 July 1999.

**Dealing efficiently with decentralisation**

38. The JRC complies with the Financial Regulation and its implementing rules concerning the different stages in the award of a contract. As stated in the reply to paragraph 35, the JRC will formalise the preparatory procedures for large contracts, but attention is drawn to the number of small contracts.

39. The constraints involved in research activities account for most of the Directors’ trips. Delegation of responsibilities by the JRC’s Directors to their subordinates is now structured and documented: the area in which each can operate is specified, the need for systematic monitoring by superiors is eliminated, and a system of double signatures is applied.

40. With respect to procedures for the award of services/work contracts by another Commission department to the JRC, there are no legal provisions requiring Commission departments to issue invitations to tender or other public procurement procedures when assigning the performance of certain tasks (work or services) to the JRC.

41. The Commission endorses the Court’s view that the provisions of Title IV of the Financial Regulation on the award of public contracts are applicable to activities carried out by the JRC on behalf of other Commission departments, including by private treaty in duly justified cases.

42. See reply to paragraph 40.

**The quality of the information system**

The generation of data

43. The Commission endorses the Court’s view that it is important to have a tool for the planning, monitoring and assessment of the JRC’s annual work programme, the use of appropriations, staff services and procurement. The basic elements for systems are in place, including in particular the Court’s recommendations. Further action towards integration is necessary and this will be one of the priorities for the current year.

44. The Commission has identified and put into effect the technical method of using Sincom II in such a way as to link commitments to their contracts.

45. The Sincom II third-party data file referred to by the Court came on line in September 1998 and is used by the JRC’s contract database.

46. It is true that the design difference between Sibeca and Sincom II made a full transfer of all data impossible.

47. The number of the project to which a purchase is related can now be obtained from the contract database. This field will become compulsory very shortly as soon as the various projects have been coded.

48. A full inventory exercise was launched for all sites in 1998. It has been completed for Ispra and the other sites will be completed in September 2000.
49. Although the physical inventory revealed a discrepancy of 14%, it should be noted that at Ispra the discrepancy in terms of market value on the inventory as a whole was 3% at 31 December 1999.

The contract database

50. The contract database has been considerably improved as regards user-friendliness and integrity. In July 1999 the JRC’s Directors decided to make it compulsory to use the system. This decision is being implemented in the Petten, Geel and Karlsruhe Institutes by means of an interface with the local system.

The monitoring of the framework contract order slips

51. Since 2000 order slips stemming from framework contracts can be monitored through an interface between the contractual database and Sincom II. In the meantime following a note from the Director-General in February 2000, entry of other order slips in the database system has become compulsory. The number of the project to which the purchase relates can also be obtained on the contract database. This field will become compulsory very shortly as soon as the various projects have been coded.

CONTROL OF THE CONTRACT PROCEDURES

52. The JRC is aware of the Court’s findings and has taken extremely rigorous measures to correct the weaknesses. Regarding the practices qualified as doubtful or even irregular, the JRC had started taking steps even before the Court’s audit; in particular it had launched administrative inquiries and disciplinary procedures. Four staff members were disciplined.

The preparation of the contracts

The identification of requirements

53. Project heads are responsible for planning specific requirements for specific projects. General requirements are planned horizontally (by institute, for Ispra or for all). Wherever possible, arrangements are made for the common use of expensive equipment according to scientific topic.

In addition, invitations to tender for computer equipment and service requirements have recently been issued for the entire JRC.

54. Requirements are identified mainly by project leaders who refer them to their unit head. In each institute, the Director holds regular management meetings with all unit heads when questions relating to investments are raised.

55. Some contracts do not call for a formal specification, for example when the service or equipment is unique. In the course of its research activities it is not unusual for the JRC to receive proposals for products or findings of innovatory research it might want to acquire in order to stay at the forefront in its field.

The first case referred to followed from an invitation to tender issued in 1988. The contractor had the unique technology and expertise needed for the project, and this was still the case when the contract was extended. In the second case, the JRC transferred from a Swiss computer network to the European research network, which was unique at the time, and for this reason was also selected by other Commission departments.

56. The Director-General of the JRC called the departments’ attention to the rules in this respect on 3 March 1998.

The quality of the specifications and the technical annexes

58 to 60. The Court’s attention is drawn to the fact that already there is a marked improvement in the quality of the technical annexes. As part of the process of stepping up decentralised management, the JRC will make sure efforts continue in this direction.

The description of the contracts

The description of the scientific contracts and the amount involved

62. It is normal for the Court’s samples to include contracts for amounts close to the threshold. Further, the JRC now has a double signature system which provides improved control.
The description of service contracts

63 to 64. According to the files on the award of work contracts under cover of service contracts, the JRC had already started rectifying the situation at the time of the Court's audit. The irregular situation was partly due to an imbalance in the JRC's establishment plan. The JRC's plan is separate from that of the rest of the Commission. It has too many B and C posts compared with A posts. Only in 1998 was the imbalance rectified by an increase in the number of A posts together with a corresponding reduction in B and C posts.

The awarding of contracts

Excessive use of private treaty contracts

The extent of the phenomenon

66 and 67. The JRC's management system is now capable of providing reliable information in respect of the contracts awarded outside the ACPC procedure and incorporates the Court's recommendations.

The irregularity of the practice

68 to 71. The Court of Justice's case-law in this area is relatively limited. Current rules provide for more grounds for private treaty than those cited (in particular for additional work). The JRC has taken steps to increase competition and plans to take further steps to extend competition, even below the specified thresholds. Financial control has already noted a considerable improvement in this area.

Existence of a de facto monopoly

72. A fresh invitation to tender for the supply of vehicles to Ispra was issued and published on 4 November 1999. A significant effort was made to notify potential suppliers (advertising sent directly to over 300 taxi firms in the region). At the same time the management system and monitoring of services was considerably improved.

73. The vehicle service was outsourced on the grounds that the services of an outside firm would cost less than an internal service. Until very recently, the number of taxi firms in the region was limited in view of the distance from Milan Linate airport. In addition, the service provided was impeccable.

The possible existence of illicit agreements

75. The JRC had already noted possible irregularities in the award of contracts, in particular illicit agreements, and had carried out the appropriate administrative inquiries. Subsequently, the four staff involved were disciplined. The files were sent to OLAF at the beginning of 1998. Inquiries are under way and may be followed by further disciplinary or criminal procedures. The facts noted by the Court appear in the files of the JRC and OLAF.

The splitting of contracts

The use of differentiated appropriations (splitting contracts in the accounts)

76 to 78. Regarding the use of differentiated appropriations, in the cases examined by the Court the JRC had obtained ACPC authorisation for several years for the contracts in question which were concluded for one year at a time, with an option to extend year by year. This procedure is adopted to ensure transparency of contracts and regular monitoring of the quality of the service provided.

The Commission takes the view that in such cases the legal and financial commitments are limited to a single year. Therefore when it is decided to extend the contract each year it is logical to enter into new commitments. If the entire ceiling authorised by the ACPC were committed it would give a false impression of budgetary security. In the event of problems with the contractor, appropriations would have to be released for the part of the contract not to be carried out by the supplier in question, and the commitment appropriations would have to be recovered to complete the contract with another supplier, something which would be extremely difficult, not to say impossible.

Legal splitting (contracts in the form of 1 + x years)

79. See reply to paragraphs 76 and 78.

Internal splitting of contracts

80. The contract in question was designed in two phases from the outset for technical reasons and in the interests of quality control of the service offered. It was announced in the invitation to tender. The financial commitment was made accordingly.

Other procedures for awarding contracts

Subcontracting the entire contract

81 and 82. The Commission fully agrees with the Court regarding subcontracting contracts in their entirety. These are isolated cases and the JRC will take steps to prevent any recurrence.
Awarding of contracts in the absence of sufficient appropriations

83. The JRC entered into a legal commitment up to the level of available appropriations, and extended the field of work when additional appropriations were made available, but it did remain beneath the ceiling.

Monitoring implementation

The management of contracts

84. The JRC has changed the order in which signatures must be placed on contracts. The reports submitted before signature of the contract by the JRC all concerned competitive projects which had already been launched by the time the JRC’s procedure was completed.

85. The JRC entered into a legal commitment up to the level of available appropriations, and extended the field of work when additional appropriations were made available, but it did remain beneath the ceiling.

Checking services rendered

87. The JRC has now asked contractors to prepare more detailed invoices. Certain types of contract were also modified so that the invoices should be accompanied by documents showing the amount of time actually worked (acceptance form). The case in question concerns a framework contract for which order forms can be issued by various departments, and each is responsible for monitoring delivery.

88. The case in question relates to the installation of a new computer system for the library. Acceptance of the system was delayed several times on technical grounds (instability of the system and risks concerning the millennium bug). Contact with the contractor was maintained throughout the installation period. The system is now up and running.

89. The case concerned a framework contract at Commission level worth an estimated EUR 2.58 million. The JRC was involved only in establishing a single pilot site to test the system, and in the light of the results decided not to extend it. The Commission sees this as evidence of sound management.

CONCLUSIONS/RECOMMENDATIONS

90 to 94. Like the Court, the Commission wants the rules governing the award of public contracts to be correctly applied, and is determined to equip itself with efficient planning, monitoring and assessment tools, in particular at the JRC.

For this reason it has initiated a number of measures setting up exemplary systems, procedures and organisation. These measures had been launched before the Court’s audit. The Court’s observations and recommendations have been a great help and the Commission thanks the Court for this.

The Commission believes that arrangements now in place at the JRC are a suitable response to the Court’s criticisms. This is not the end of the matter, however, and priority will be given in particular to improving the auxiliary accounts projects.

95 and 96. The Commission confirms that certain cases examined by the Court have been the subject of administrative inquiries, followed by disciplinary procedures in accordance with sound international management practice. The procedures were launched well before the Court’s audit. Disciplinary measures have been applied to four JRC staff members. The cases have been forwarded to OLAF for referral to the judicial authorities if necessary. The general problem of the financial and disciplinary liability of authorising officers will be reviewed in the context of administrative reform and the recasting of the Financial Regulation.