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United States General Accounting Office
Washington, D.C. 20548



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FOR RELEASE ON DELIVERY
Expected at 10:00 a.m.
Friday, February 29, 1980

STATEMENT OF
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DIRECTOR, ENERGY AND MINERALS DIVISION
BEFORE THE
SUBCOMMITTEE ON ENERGY AND POWER
OF THE
HOUSE COMMITTEE ON INTERSTATE AND FOREIGN COMMERCE
ON
DEPARTMENT OF ENERGY PROCUREMENT PRACTICES

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Mr. Chairman and Members of the Subcommittee:

GAO welcomes the opportunity to be here today to discuss the results of our examination of the Department of Energy's (DOE's) procurement practices. This work was undertaken at your request, and on November 2, 1979, we issued our report to you entitled "The Department of Energy's Practices for Awarding and Administering Contracts Need to be Improved." We are furnishing a copy of the report for the record. On January 14, 1980, the Department, at your request, formally replied to you on our report. We are also furnishing for the record our evaluation of that response.

FILE COPY

My statement today briefly summarizes the findings in our report.

DOE RELIES HEAVILY ON CONTRACTORS

DOE relies heavily on contractors to help carry out its mission. With reported obligations of \$8.5 billion for about 5,000 contracts in fiscal year 1978, the Department is the

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largest civil procuring agency in the Federal Government. For fiscal year 1979 the Department reported obligations of about \$9.2 billion for about 5,800 contracts and it plans to procure more than \$11 billion of goods and services during fiscal year 1980.

Our review of the contracting practices followed by five Department program offices 1/ indicated the following weaknesses

- contracting practices which avoid or limit competition,
- contractor involvement in the performance of basic management functions, and
- a need for more control over contract administration.

CONTRACTING PRACTICES WHICH
AVOID OR LIMIT COMPETITION

In carrying out its procurement activities, DOE was not offering maximum opportunity for competition. It reported that about 55 percent of its obligations susceptible to competition in fiscal year 1978 were awarded noncompetitively. In addition, the Department's use of certain procedures--task order and quick-reaction work-order master contracts--worked to avoid or restrict competition.

1/Conservation and Solar Applications, Energy Information Administration, Economic Regulatory Administration, Policy and Evaluation, and Environment.

Sole-source contracting

DOE procurement regulations and Comptroller General opinions permit sole-source procurement in circumstances where only one source has exclusive capability to perform within the time required and at reasonable prices. DOE regulations require a written justification containing a statement of facts from which it can be concluded that the vendor is the only source of supply.

Of the 124 contracts we reviewed, 38 were awarded on a sole-source basis. All were justified, at least in part, on the basis that the contractor was the only one capable of doing the work. In our view, the justifications for 29 of these contracts did not adequately document that only one firm was competent and available to do the required work.

While the Department may have made awards based on its best knowledge, our review indicated that, in some cases, competitors may have been available and that perhaps the program office did not aggressively seek other firms. The Department's January 14, 1980, letter to you, Mr. Chairman acknowledged that the use of noncompetitive procurement requires constant surveillance and agreed to issue a Departmental Order emphasizing the importance of competition.

Also, we found instances where program personnel made informal commitments to contractors without following the usual procedures for the award of contracts. Specifically, we found 21 commitments totaling over \$18 million which were

subsequently approved by contracting personnel. While the Department permits these commitments, its policy is to discourage their use. Such commitments weaken the DOE's overall control since they take place outside the usual procurement process.

Quick-reaction work-order
and task order contracts

Quick-reaction work-order master contracts and task order contracts both encompass broad, general areas of work. After competitively awarding such contracts, DOE issues work orders or task orders for specific projects. Of the 124 contracts we reviewed, 50 were quick-reaction work-order master contracts and 26 were task order contracts.

Quick-reaction work orders are intended for urgently needed projects valued at \$250,000 or less which can be performed within 6 months and involve discrete end products. Once the master contracts have been awarded the Department solicits proposals from no more than three master contractors. DOE agrees to place a minimum of \$2,500 in work orders over a 3-year period for the contractor's standby capability.

A task order contract is a contract which establishes a relationship between the Government and a contractor for the purchase of a specific amount of time. The amount of time is usually stipulated in terms of direct staffdays or hours. Task order contracts are usually awarded competitively with a general statement of work. Specific duties or work to be

performed are not included in the contract. After the contract has been awarded, the contractor is given orders which specify work to be performed. The contractor does not compete for these orders.

While we have concluded that both types of contracts can be used legally, we believe that the Department should modify its use of them in order to achieve a greater degree of competition. A copy of our letter to you, Mr. Chairman, expressing the pertinent legal opinion is included as an attachment.

DOE has stated that quick-reaction contracting reduces the number of non-competitive awards. Our follow-on work has shown that out of the 37 work orders issued by one of the five organizations, at least 12 were sole-source awards. Since all quick-reaction work-order master contractors have been evaluated by the Department and found qualified in their general areas of work, sole-source awards should rarely occur in this type of contracting. Also, while the Department requires that quick-reaction work orders are to be used only for urgently needed projects, eight work orders, in our judgement, did not adequately document an urgent situation.

In addition, we are concerned because once master contracts have been awarded, DOE does not issue additional solicitations or award additional contracts in the designated areas of work for 3 years. Deliberately and completely excluding potentially qualified offerors for this length of time is in our view, unduly restrictive. We believe the

Department should modify its procedures accordingly. We also see no reason for the Department's decision to limit the number of contractors solicited for each work order to three.

With regard to task order contracts, we believe the broad statements of work can make meaningful competition difficult and may not ensure that the Department obtains the lowest possible price. We believe the Department should more clearly define projects to be performed under task order contracts and should avoid using them whenever possible.

CONTRACTOR INVOLVEMENT IN
THE PERFORMANCE OF BASIC
MANAGEMENT FUNCTIONS

When using contractors, care must be taken to assure that contractor support activities do not supplant normal management functions. Both the Office of Management and Budget (OMB) and DOE recognize the potentially damaging effects of having private enterprise perform basic management functions for the Government. To mitigate these negative effects, OMB issued directives and DOE has published orders regulating the behavior of Government in its relationship with contractors.

Although DOE officials have stated that they do not intend to contract for the performance of basic management functions, they have awarded contracts which apparently require those functions. Some of these contracts allow contractors wide latitude for participating in the development of Federal energy policy and offer the potential for allowing the contractor to determine energy policy. While the extent to which

this is occurring throughout the Department can only be determined by a complete review of all DOE contracts, we found contracts in each of the five organizations we reviewed which in our view required the performance of basic management functions. Based on our work, the practice of the Department's headquarters procurement office is not to question the scope of work and to rely exclusively on the program offices to determine needs and define the scope. Thus, the potential for contracts requiring the performance of basic management functions appears to exist throughout the Department.

While procurement directives and orders are quite clear that contracting for basic management functions is not permitted, we find no clear delineation between the performance of a basic management function for the Department and assisting the Department in the performance of such a function. For example, it is often difficult to distinguish between a contractor participating in a policy decision made by DOE employees and a contractor actually making the policy decision for the Department.

Some DOE contracts are being structured so that there is only a general statement of a basic policy problem and little, if any, guidance from the program office as to what work the contractor is to perform and how it is to be performed. Setting the parameters of the problem and devising solutions is being left to outside sources. We believe that this type of contract affords the contractor the opportunity for

considerable input in policy determination and offers the potential for the contractor to actually determine energy policies for the Department.

As a related matter, the Department's Inspector General, in a December 13, 1979, report, confirmed our findings. The Inspector General found that "* * * many of the activities performed by consultants appeared to supplant policymaking and managerial functions that should be handled by DOE staff."

NEED FOR MORE CONTROL
OVER DEPARTMENT CONTRACT
ADMINISTRATION

DOE's contracting officers have delegated most of their contract performance and cost monitoring responsibilities to the Department's program offices. As a result, the procurement office exercises far less control over contracts than it should to ensure that the Government gets needed products at reasonable prices. Additionally, because contracts have not been closed out in a timely manner, the Department does not know, for sure, that Government funds were properly expended for work performed.

Contracting officers, in discharging their duties, need the assistance of the Department's program offices. This is especially true where the data for evaluating progress and performance and for approving payments involve highly technical terms and complex subjects not entirely familiar to contracting officers. However, program officials at the

Department's headquarters currently do far more than provide assistance to the contracting officers.

According to procurement officials, contracting officers delegate most technical and cost monitoring activities to the program offices. However, they retain authority to approve contract changes requiring their signature and vouchers for the first and final contractor payments. Voucher approval during the contract period is delegated to program officials.

The Department's headquarters procurement office is currently delegating other contract administration functions to the Defense Contract Administration Services, an agency of the Department of Defense. According to the Department's procurement officials, contract administration functions are delegated because the procurement office lacks sufficient staff to carry out the functions internally.

Reliance on program personnel to review and approve contractor cost vouchers and provide interpretation of the contractor's performance does not provide for adequate separation of duties between the program personnel sponsoring the contract and the procurement office. Under current Department of Energy practice, program personnel who initiate procurement requests are also responsible for contract monitoring. Since program personnel are mission oriented, it would appear that their primary interest must lie in accomplishing their mission, more so than carrying out contract administration responsibilities.

with respect to contract close outs, DOE procurement regulations require that contracts be closed out in 3 months for purchase orders, 6 months for firm fixed price contracts, and 20 months for all other contracts. A listing prepared by the headquarters procurement office showed more than 2,500 expired headquarters contracts which had not been closed out as of March 13, 1979. These contracts had a face value of over \$3 billion.

Because these contracts were not closed out in a timely manner, the Department cannot assure that Government funds were properly expended for work performed. DOE procurement officials did not know the amount of funds withheld pending final closeout for these contracts or how much Government-owned equipment remained in the contractor's possession, although they stated it could be obtained from the Department's Office of the Controller on a contract-by-contract basis. Procurement officials told us that the lack of staff was the main reason for the backlog of expired contracts.

The Department's Office of Inspector General issued a report, in December 1979, entitled "Management of Government Owned Property Held by Department of Energy Offsite Contractors." In the report, the Inspector General stated that the Department did not have adequate control over Government-owned property.

DOE procurement officials have recognized that more timely contract closeouts are needed. All expired

headquarters contracts are now being given to the Defense Contract Administration Services to be closed. This effort began in early 1979 and, according to DOE's January 14, 1980, response to our report, about 800 of the 2,500 expired contracts have been closed out.

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All of the problems we noted have resulted from the DOE's failure to adhere to sound procurement practices. This lessens the Department's assurance that it is (1) contracting for goods and services which are actually required and (2) efficiently, effectively, and fairly obtaining an acceptable product at the best possible price. We noted a general attitude that the Department's procurement system exists primarily to facilitate the work of the program offices. Although the procurement system of any Federal agency must operate as a service organization, it must also function as a guarantee that sound procurement practices are followed. While these two roles are not completely compatible, a balance must be achieved which assures that program needs are met and sound procurement practices followed.

To correct weaknesses in the Department's contracting noted in our report, we recommended that the Secretary of Energy:

--Take action to ensure that competition for Department contracts is maximized and that sole-source contracts, task order contracts, quick-reaction work-order master

contracts, and contract ratifications are used only as exceptions to normal contracting practices.

--Establish specific guidelines to more explicitly delineate the types of management tasks which are and are not acceptable for contractors to perform.

To ensure the Department's procurement office maintains effective control over awarded contracts, we recommended that the Secretary of Energy direct that contracting officers maintain administrative control over contracts in the areas of voucher approval and contract monitoring.

In regard to the need for adhering to sound procurement practices, we recommended that the Secretary of Energy establish a training program to reeducate procurement and program personnel in their respective procurement roles and responsibilities.

In addition, to ensure that sound procurement practices are followed and will continue to be followed, we recommended that the Secretary of Energy direct that a Department-wide review be made of contracting policies and practices and require that these policies and practices be periodically monitored. As part of this effort, we pointed out that the Secretary should ask for the assistance of the Department's Office of the Inspector General.

Mr. Chairman, in your November 13, 1979, letter to GAO you enclosed copies of your letters to DOE and the Defense Contract Administration Services concerning our report. Each

agency was requested to provide a copy of its reply to your letters to GAO for review and comment to your Subcommittee.

On January 14, 1980, DOE submitted its comments to you. In his letter, the Secretary of Energy expressed concern with a number of issues raised in the report and agreed to take corrective action. We are somewhat perplexed, however, by the detailed comments which were attached to the Secretary's letter. There seems to be a dichotomy between the Secretary's letter and the attachment which contains statements disagreeing with many of our findings. Many of the comments contained in the attachment did not address the issues raised in the report and are in direct conflict with information obtained during our work. We have evaluated these comments and as indicated at the outset of my statement, are furnishing our evaluation for the record.

The Defense Contract Administration Services' comments, in a letter to you dated December 11, 1979, stated general agreement with our report as it related to areas bearing on Defense Contract Administration Services' involvement in the procurement activities and stated that they stand ready to assist and work with the Department in a joint effort to monitor and closeout as expeditiously as possible the Department's remaining contracts which need to be closed.

Mr. Chairman, this concludes my prepared statement. I would be happy to answer any questions you may have at this time.