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United States General Accounting Office
Washington, DC 20548

National Security and
International Affairs Division

B-282442

May 2, 2000

The Honorable John Warner, Chairman
The Honorable Carl Levin, Ranking Minority Member
Committee on Armed Services
United States Senate

The Honorable Floyd Spence, Chairman
The Honorable Ike Skelton, Ranking Minority Member
Committee on Armed Services
House of Representatives

Subject: Contract Management: New Authority for Severable Service Contracts

Section 801 of the National Defense Authorization Act for Fiscal Year 1998 (P.L. 105-85)¹ authorizes the Department of Defense (DOD) to award severable service contracts that begin in one fiscal year and end in the next fiscal year. Severable service contracts involve recurring services, such as monthly facility maintenance or building cleaning, that can be divided into discrete segments. Prior to the enactment of section 801, contracts for such services funded by annual appropriations generally could not extend beyond the end of the fiscal year. Under section 801, severable service contracts can now cross fiscal years, allowing such contracts to be awarded at any time during a fiscal year for up to a full year of services.

The Congress directed DOD to review and report on its operations under section 801 in fiscal years 1998 and 1999.² The Congress also required us to report any abuses of section 801, such as efforts to circumvent year-end spending limitations. To identify such abuses we reviewed DOD's reports and identified instances of potentially inappropriate use of section 801. Specifically, we analyzed DOD's reported annual use of its authority under section 801 to determine (1) the extent to which DOD used

¹ 10 U.S.C. 2410a.

² House Conference Report 105-340 p. 771.

the authority in the last month of the fiscal year, and (2) whether contracts reportedly valued at about \$1 million or more and whose work was performed entirely in the following fiscal year were abuses of section 801.

SUMMARY

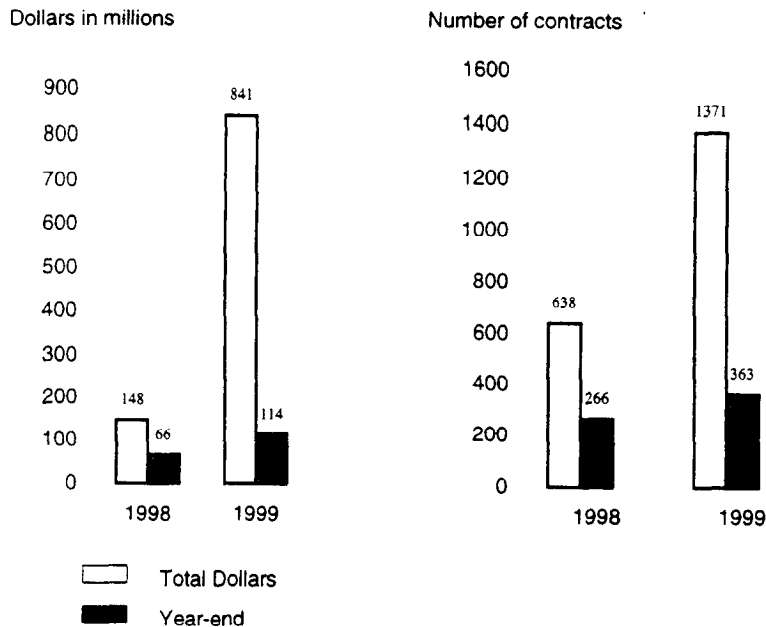
DOD reported using its section 801 authority for about 2,000 severable service contracts in fiscal years 1998 and 1999. The total dollar value of these contracts increased from \$148 million in fiscal year 1998 to \$841 million in fiscal year 1999. These contracts represented less than 1 percent of total DOD service contracts during that 2 year period. About one-third (629) of the 2,000 contracts were awarded in the last month of the fiscal year (September). DOD awarded 266 of these contracts at year's end in fiscal year 1998, and 363 at year's end in fiscal year 1999.

In the seven high-value contracts we reviewed, we found no abuses of section 801 authority. We reviewed contracts reportedly valued at about \$1 million or more and whose work started in the following fiscal year to determine whether these contracts were for legitimate needs of the fiscal year in which they were awarded. Only one of the seven contracts was properly reported as using section 801 authority. The award of this contract for work performed entirely in the following fiscal year was justified. The other six contract actions should not have been reported by DOD as using section 801 authority. Five of the six contracts did not actually rely on section 801 authority and were not actions that needed to be reported to Congress. The last contract was a section 801 contract but was a fiscal year 2000 action mistakenly reported as a fiscal year 1999 action.

DOD'S USE OF SECTION 801 AUTHORITY

Figure 1 shows the number and value of severable service contracts reported as using section 801 authority in fiscal years 1998 and 1999 and the extent the contracts were awarded in the last month of the fiscal year. DOD reported using its section 801 authority to award about 2,000 severable service contracts in fiscal years 1998 and 1999. The total dollar value of these contracts increased from \$148 million in fiscal year 1998 to \$841 million in fiscal year 1999. These reported contracts are less than 1 percent of the total number (about 267,000) and value (about \$101 billion) of DOD service contracts in the same time period. About one-third (629) of the 2,000 contracts were awarded in the last month of the fiscal year (September). DOD awarded 266 contracts at year's end in fiscal year 1998, compared with 363 at year's end in fiscal year 1999.

Figure 1: DOD's Reported Use of and Year-end Spending Under Section 801 Authority, Fiscal Years 1998-99



The limited use of section 801 authority in 1998 compared with 1999 may have been due to the law not having been enacted until November 18, 1997, more than 1 month into fiscal year 1998. Additionally, the services did not issue guidance for using section 801 authority until later in fiscal year 1998. For example, the Army issued its guidance in March 1998; the Navy issued interim guidance in May 1998.

CONTRACTS PERFORMED ENTIRELY IN THE FOLLOWING FISCAL YEAR

A contract that starts and is performed entirely in the following fiscal year may be an abuse of section 801 authority because it may not fill a legitimate need of the fiscal year in which it was awarded. We examined seven DOD severable service contracts reportedly awarded in 1998-99 with a value of about \$1 million or more and that were expected to start and be performed entirely in the following fiscal year. These seven contracts totaled \$35 million, or 86 percent of the total value (\$40.5 million) of all 42 severable service contracts that reportedly had start dates of October 1 or later, signifying that all the work was to be performed in the following fiscal year.

We obtained documentation on these seven contracts and found one contract that was properly reported using section 801 authority and six that should not have been

reported as using section 801 authority in DOD's fiscal year 1998 and 1999 reports. The one properly reported contract was awarded on September 28, 1998, for building maintenance services and had a starting date in the next fiscal year, on November 1, 1998. Although the contract was awarded in the last days of the fiscal year for work that was to commence the following fiscal year, we determined that the contract was for a fiscal year 1998 need and did not constitute an effort by the contracting agency to "hurry-up" and spend expiring fiscal year 1998 funds. The request for the contract had been made months earlier, in April 1998, and proposals were solicited and received well in advance of the end of the fiscal year. The contract required necessary start-up time between the award date and the start date to allow the contractor to set up an office, hire workers, and acquire tools and supplies to perform the contract. Initially, the contract period exceeded the 12-month period allowed by section 801 by 1 month. After we brought this to the attention of the contracting officer, the official told us that the agency plans to modify the contract so that it does not exceed 12 months.

Agency officials provided documentation supporting their assessment that the remaining six contract actions should not have been included in DOD's reports to Congress on the use of section 801 authority. Five contracts did not involve severable services that crossed fiscal years and consequently are not considered section 801 contracts. The sixth contract was for work to be performed in fiscal years 2000 and 2001 using fiscal year 2000 funds. DOD was not required to report on the use of section 801 authority for contracts that use fiscal year 2000 funds.

AGENCY COMMENTS

DOD reviewed a draft of this report and concurred with the report (see enclosure).

SCOPE AND METHODOLOGY

To measure DOD's annual use of its section 801 authority, we analyzed the two reports submitted by DOD in fiscal year 1998 and 1999. We also contacted officials in the Office of the Secretary of Defense, the Army, the Navy, and the Air Force to ascertain how this data was collected. DOD's reports did not contain an analysis of contracts awarded in the last month of the fiscal year. Consequently, we analyzed the reported data and identified all contracts awarded in September. We obtained relevant documents for all seven high-value contracts (about \$1 million or more) that had start dates of October 1 or later. We also contacted contracting officials to further examine their justifications for using section 801 authority. We conducted our review from August 1999 through March 2000 in accordance with generally accepted government auditing standards.

We are sending copies of this report to the Honorable William Cohen, Secretary of Defense. Copies will also be make available to others upon request.

Please contact me at (202) 512-4841 or Ralph Dawn at (202) 512-4544 if you have any questions about this report. Jack Perrigo also contributed to this report.

A handwritten signature in black ink, appearing to read "David E. Cooper". The signature is written in a cursive style with a large, prominent initial "D".

David E. Cooper
Associate Director
Defense Acquisitions Issues

Enclosure

Enclosure

Comments From the Secretary of Defense



OFFICE OF THE UNDER SECRETARY OF DEFENSE

3000 DEFENSE PENTAGON
WASHINGTON DC 20301-3000

April 19, 2000

DF/CPA

Mr. David E. Cooper, Associate Director
Defense Acquisition Issues
National Security and International
Affairs Division
U.S. General Accounting Office
Washington, D.C. 20548

Dear Mr. Cooper:

This is the Department of Defense (DoD) response to the General Accounting Office (GAO) draft report, "CONTRACT MANAGEMENT: New Authority for Severable Service Contracts," dated April 6, 2000 (GAO Code 707412/OSD Case 1980).

The DoD has reviewed the draft report and concurs without further comment.

The Department appreciates the opportunity to comment on the draft report.

Sincerely,

R. D. Kerrins, Jr.
Colonel, U.S. Army
Acting Director, Defense
Procurement



(707412)

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