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REPORT BY THE RELEASED

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# Comptroller General

OF THE UNITED STATES

## The Department Of Energy's Practices For Awarding And Administering Contracts Need To Be Improved

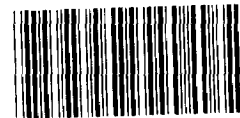
The Department of Energy relies heavily on contractors to help carry out its mission. Its expenditures for goods and services during fiscal year 1978 amounted to about \$8.5 billion.

GAO's review of the contracting practices which are used for five Department of Energy organizations indicate that there are weaknesses in the procurement system, including

- 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.

GAO recommends that the Secretary of Energy take action to correct the weaknesses noted in this report, enforce sound procurement practices, and review and periodically monitor the Department's procurement policies and practices.

This report responds to a request from the Chairman, Subcommittee on Energy and Power, House Committee on Interstate and Foreign Commerce.



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COMPTROLLER GENERAL OF THE UNITED STATES  
WASHINGTON, D.C. 20548

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The Honorable John D. Dingell  
Chairman, Subcommittee on  
Energy and Power  
Committee on Interstate and  
Foreign Commerce  
House of Representatives

*[Handwritten signature]*

Dear Mr. Chairman:

*✓ HSE 2303*

As requested on November 21, 1978, this report addresses selected aspects of the Department of Energy's procurement practices. Included are discussions of the Department's use of sole-source contracting, contracting for basic management functions, and contract administration.

At your request, we did not obtain agency comments on a draft of this report. The facts contained in this report were discussed with Department officials and changes were made where appropriate.

Unless you publicly announce its contents earlier, we plan no further distribution of this report until 30 days from the date of the report. At that time we will send copies to interested parties and make copies available to others upon request.

Sincerely yours,

*James B. Steute*

Comptroller General  
of the United States

*Contract administration  
Procurement  
Contracting practices  
Federal agencies  
compliance with  
Federal procurement  
proc. reg.*



COMPTROLLER GENERAL'S REPORT  
TO THE CHAIRMAN, SUBCOMMITTEE  
ON ENERGY AND POWER, HOUSE  
COMMITTEE ON INTERSTATE AND  
FOREIGN COMMERCE

THE DEPARTMENT OF ENERGY'S  
PRACTICES FOR AWARDING AND  
ADMINISTERING CONTRACTS  
NEED TO BE IMPROVED

D I G E S T

The Department of Energy awarded about 5,000 contracts totaling over \$8.5 billion during fiscal year 1978, more than any other Federal agency. The Department's procurement system is not, in GAO's opinion, operating effectively and efficiently. The Department lacks assurance that it is contracting for goods and services which are actually required and that acceptable goods and services are obtained at the lowest possible price.

GAO's review of contracting practices which are used for five Department organizations disclosed (1) contracting practices which avoid or limit competition, (2) contractor involvement in the performance of basic management functions, and (3) need for more control over contract administration.

CONTRACTING PRACTICES WHICH  
AVOID OR LIMIT COMPETITION

Extensive use of sole-source contracts, task order contracts, and quick-reaction work-order master contracts avoid or limit competition. The Department reported that about 55 percent of all of its obligations susceptible to competition in fiscal year 1978 were awarded non-competitively. Of the 124 contracts we examined, 38 were awarded on the basis of one firm's having exclusive capability. The justifications for 29 of these contracts did not adequately document that only one firm was competent and available to do the required work. Other firms claimed to have similar expertise and were interested in performing the work.

Program officials have entered into informal commitments with contractors, which may be subsequently approved by a contracting officer. Such commitments weaken the Department's overall control over contract award since they take place outside the usual procurement process.

A task order contract is initially awarded to a single contractor; all tasks are later assigned to that contractor without competition. Quick-reaction work-order master contracts involve the selection of several contractors who are placed on retainer; proposals for work orders are subsequently solicited from at least three of the pre-selected contractors. Competition is, in all cases, limited to those firms initially awarded master contracts. (See pp. 3 to 8.)

#### CONTRACTOR INVOLVEMENT IN THE PERFORMANCE OF BASIC MANAGEMENT FUNCTIONS

Each of the five organizations within the Department of Energy appear to be contracting with private firms to carry out some of its basic management functions. These contracts are written so that the contractors are required to perform activities such as program planning and development and establishing goals and priorities. Some of these contracts also appear to provide contractors wide latitude for participating in the development of energy policy and offer the potential for allowing the contractor to determine energy policy.

For example, one contract was for a study to (1) identify the Department's responsibilities for dealing with energy emergencies, (2) design and develop an energy emergency-planning process, (3) define a strategy for implementing an energy emergency-planning process, and (4) assist in the establishment of a strategy for distributing fuels in periods of short supply. (See pp. 9 to 11.)

NEED FOR MORE CONTROL OVER  
DEPARTMENT CONTRACT ADMINISTRATION

Contracting officers, in discharging their duties, need the assistance of the program offices. Such assistance is especially important with respect to monitoring contracts where, for example, the data for evaluating progress and performance and for approving payments involve highly technical terms and complex subjects not entirely familiar to contracting officers. Department of Energy program officials, however, do far more than provide assistance to the contracting officers. Program personnel are actually performing some of the functions of the contracting officers. The Department's contracting officers are relying on program personnel to (1) review and approve contractor cost vouchers for payment and (2) monitor the technical progress of the contractor's work. The practice of delegating responsibility for these areas to program personnel weakens the Department's control over work performed by contractors. This is particularly important in view of the Department's heavy reliance on contractors to help carry out the Department's missions.

In addition, at the time of GAO's review, a backlog of over 2,500 expired contracts existed in the headquarters procurement office. The Department has taken steps to send all expired contracts to the Defense Contract Administration Services for closeout. Timely closeout of expired contracts is important to provide final assurance that Government funds were properly expended for work performed and to avoid claims by the contractor which may be difficult and costly to handle as time progresses. While the Department's action has reduced the workload for procurement personnel, GAO believes departmental responsibility for the contracts has not ended. Department contracting officers should monitor Defense Contract Administration Service progress on contract closeouts to ensure that further delays are not taking place. (See pp. 13 and 14.)

## CONCLUSIONS

All of the problems noted have resulted from the Department'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. GAO 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.

Because the Department's procurement office appears to be stressing its role as a service organization at the expense of adhering to sound procurement practices, GAO believes the Department's personnel would benefit from undergoing a reeducation process. This "reeducation" should focus on the proper procurement roles and responsibilities of the Department's various activities and on the importance of adhering to sound procurement practices.

In addition, the Department's procurement activities should be monitored periodically to ensure that the problems noted in this report do not recur and that other procurement problems do not exist. The assistance of the Department's Office of the Inspector General may be beneficial as part of this periodic monitoring effort.

## RECOMMENDATIONS TO THE SECRETARY OF ENERGY

To correct weaknesses in the Department's contracting which are noted in this report, the Secretary of Energy should direct the Department to:



--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, GAO also recommends that the Secretary of Energy direct that contracting officers maintain administrative control over contracts in the areas of voucher approval and contract monitoring and maintain responsibility for contracts assigned to other Government agencies for closeout.

In regard to the need for adhering to sound procurement practices, GAO recommends 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, the Secretary of Energy should 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, the Secretary should ask for the assistance of the Department's Office of the Inspector General.



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ABBREVIATIONS

DCAS	Defense Contract Administration Services
DOE	Department of Energy
GAO	General Accounting Office
OMB	Office of Management and Budget



## CHAPTER 1

### INTRODUCTION

The Department of Energy (DOE) was established on October 1, 1977, by the Department of Energy Organization Act (Public Law 95-91). Among the many responsibilities which this act placed on DOE are (1) achieving effective management of energy functions; (2) carrying out the planning, coordination, support, and management of a balanced and comprehensive energy research and development program; and (3) developing and commercializing the use of solar, geothermal, and other renewable energy technologies. To help carry out these responsibilities, DOE uses contracts, cooperative agreements, interagency agreements, and grants.

With reported obligations of \$8.5 billion for about 5,000 contracts in fiscal year 1978, DOE is the largest civil procuring agency in the Federal Government. DOE's contracting obligations represented 79 percent of its total fiscal year 1978 appropriations of \$10.8 billion. With such a heavy reliance on contractors to help carry out its missions, an effective and efficient procurement function is essential to ensure that DOE obtains acceptable goods and services at the lowest prices.

On November 21, 1978, the Chairman, Subcommittee on Energy and Power, House Committee on Interstate and Foreign Commerce, expressed concern about a number of aspects of DOE's contracting practices and requested that we testify on such practices in February 1979. Subsequently, we were requested to review, in greater detail, contracting practices in five DOE program offices: Conservation and Solar Applications; Energy Information Administration; Economic Regulatory Administration; Policy and Evaluation; and Environment. As agreed to in discussions with the Chairman's office, our review was directed primarily to (1) support services contracts 1/ which avoid or limit competition, (2) support services contracts which call for the performance of basic management functions which would more properly be performed by DOE personnel, and (3) contract administration. We previously reported on two additional concerns of the Chairman--DOE's efforts to encourage small business contracting, 2/ and DOE's policies and

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1/Support services contracts are contracts used to assist DOE in performing its mission and program tasks.

2/Letter report to Senator John A. Durkin (New Hampshire) on DOE's procedures for avoiding conflict of interest situations (EMD-79-85, July 26, 1979).

implementing procedures for avoiding contractor conflict-of-interest situations. 1/

As requested by the Chairman, a copy of this report was not forwarded to the agency for either formal or informal comments. The facts presented in the report, however, were discussed with DOE officials.

#### SCOPE OF REVIEW

Our review of DOE's procurement practices and procedures focused on the previously mentioned five DOE organizations and DOE's Procurement and Contracts Management Directorate. We also did some work at DOE's San Francisco and Nevada Operations Offices. We talked with procurement and program officials and reviewed pertinent procedures, orders, and regulations. DOE's automated procurement information systems could not produce a list of support services contracts. Therefore, from a broader list of contracts for the five DOE organizations, based on short work statements, we selected the contracts which appeared to be support services contracts. This resulted in our reviewing 124 contracts and the associated contract files.

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1/Letter report to Congressman Thomas A. Luken (Ohio) on small business (EMD-79-83, June 2, 1979).

## CHAPTER 2

### CONTRACTING PRACTICES WHICH

#### AVOID OR LIMIT COMPETITION

In 1959 the General Services Administration established the Federal Procurement Regulations which set forth detailed rules for civilian agencies to follow when purchasing supplies and services from commercial sources. These regulations reflect a congressional preference for procurement by formal advertising; however, procurement by negotiation is authorized under certain circumstances. Under either method, offering all qualified contractors the opportunity to compete helps to minimize the opportunities for favoritism or collusion, and provides greater assurance that acceptable supplies and services are obtained at the lowest prices. DOE has also issued regulations which further implement and supplement the Federal Procurement Regulations.

In carrying out its procurement activities, DOE does not appear to be offering maximum opportunity for competition. About 55 percent of all of DOE's obligations susceptible to competition in fiscal year 1978 were not awarded competitively. In addition, DOE is using certain procedures which either avoid or restrict competition--e.g., task order contracts and master contracts. GAO is currently reviewing the legality of DOE's use of quick-reaction work-order master contracts and task order contracting procedures.

#### 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. The DOE procurement regulations further contain a detailed format, critical considerations and the review process to be used for approval of a sole-source procurement. These regulations require a written justification containing a statement of facts from which it has been concluded that the vendor is the only source of supply.

Of the 124 contracts which 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. We believe that the justifications for 29 of these 38 sole-source awards did not adequately document that only one firm was competent and available to do the required work.

In one case, a firm was awarded a sole-source contract on August 28, 1978, for \$86,444. The purpose of the contract was to develop a detailed plan for preparation of alternative national motor vehicle registration files for a proposed standby gasoline rationing plan. Included in the statement of work were the following tasks:

- Development of procedures to process new and used car registrations during a rationing period.
- Development of procedures to improve the quality of vehicle registration files.
- Development of a plan to establish an updated and ready national motor vehicle registration.

The program office justified a sole-source award by stating that the firm was the only one with access to the required data base and the only one with experience in dealing with files and mailing lists. Subsequent developments, however, indicate this may not have been the case. After the contract was awarded, another firm submitted a Freedom of Information request to DOE asking to see the request for proposal. An official of that firm told us that both the firm which was awarded the contract and his firm have extensive experience in compiling and processing information and have access to the required data base. In subsequent discussions with DOE program office officials, they stated that they did not believe that the firm which was not selected could do the job as well as the selected contractor. This statement appears to contradict DOE's sole-source justification.

We found another instance where five firms other than the one designated as the only firm with expertise expressed an interest in the work and requested copies of the request for proposal. All were refused, although in subsequent discussions with DOE officials, they indicated that it is DOE's policy to send requests for proposals to all interested parties.

While DOE may have made these awards based on their best knowledge, these cases indicate that a competitor may have been available and that perhaps the program office did not aggressively seek other firms. We believe that to ensure that DOE receives the best product at the lowest price, every possible effort should be made to maximize competition for DOE contracts.

We also 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 DOE headquarters contracting personnel.

DOE requires that certain procedures be followed before an informal commitment may be approved. The person responsible for making the informal commitment must submit a request containing a complete history of the action to the contracting officer. The contracting officer reviews the request to ensure that it is adequately documented and forwards it to the head of the procuring activity. The head of the procuring activity reviews the request, coordinates with counsel, and, when appropriate, authorizes the contracting officer to approve the commitment.

The commitments discussed above take place outside the usual procurement process and consequently weaken DOE's overall control over contract awards. In this regard, DOE's policy is to discourage informal commitments. However, DOE officials were not aware of any informal commitments which had not been approved. DOE procurement officials informed us that they hope that, by accepting these requests and working with program officials, they can eliminate the use of informal commitments. As part of this effort, DOE procurement officials held a meeting on March 30, 1979, with program officials from all divisions. Procurement officials discussed the problems of informal commitments and noted that such commitments result in inefficiency, dilute the strength of normal negotiation positions, and reduce the time available to seek financial, legal, or other assistance from other DOE organizations. This meeting does not appear to have had much effect on eliminating informal commitments. We noted that 8 of the 21 informal commitments have been approved since the March 30, 1979, meeting.

#### TASK ORDER CONTRACTS

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 task orders which specify work to be performed. The contractor does not compete for task orders. In effect, these contracts create a pool of resources for DOE to have work performed when requested. Of the 124 contracts we reviewed, 26 were task order contracts.

A graphic illustration of the general statement of work contained in task orders occurred in 5 of the 26 task orders we reviewed. These contracts were to provide support services to one DOE program office. The statement of work incorporated into each of the five contracts required the contractor to perform technical, behavioral and economic analysis of policy issues which affect the utility industry. In each statement of work there was only a one phrase change shifting the emphasis from one project area (e.g., financial) to another (e.g., supply planning). The work statements lacked (1) a description of what was to be analyzed within each subject area, (2) standards which would make it possible for both parties to measure performance or end results, and (3) specific duties required of the contractor.

While task order contracts may be initially awarded competitively, we believe general work statements, such as that mentioned above, make fair and meaningful competition difficult and may not assure that DOE obtains acceptable products at the lowest possible cost.

Another situation which may further limit competition is a method of funding task order contracts called "piggy backing." Piggy backing occurs when a task order contract is awarded for work for one program office, but that program office does not intend to commit funds for the entire contract amount. Tasks may be assigned subsequently from other program offices and funds from the other program offices are transferred to cover the estimated cost of the task. This practice, like all task order contracts, tends to avoid competition in all but the original contract (if that contract was awarded competitively).

An example of this is a task order contract awarded to assist one program office in the analysis of information and assessment of policy options and legislative proposals. Maximum funding for this contract was \$200,000. This contract was piggy backed by another program office by issuing a \$75,000 task order to assist that office in expediting the commercialization of coal conversion technologies.

This example is not isolated. The same program office which originated this contract has had contracts awarded with an aggregated maximum funding of approximately twice the actual budget of that office. Program officials explained that this was done in anticipation that other DOE offices would fund the portions of the contracts not funded by the originating program office. If the remainder is not funded, procurement officials have to renegotiate the contract to reduce its face value. While there exists a risk with all contracts that initial estimates are in error and they must be

renegotiated, the practice of initially overestimating contract amounts increases the risk of renegotiation.

QUICK-REACTION WORK-ORDER  
MASTER CONTRACTS

One of the five DOE organizations which we reviewed also uses a type of contracting called quick-reaction work-order master contracts. This type of contracting tends to limit competition for work in certain areas to a relatively small number of contractors for a long period of time. A quick-reaction work-order master contract contains a general statement of work. Similar master contracts are awarded to a number of firms. Specific work orders (for some type of end item, rather than for staffdays as in task order contracts) are formulated by program personnel, and proposals are solicited from at least three of the firms holding master contracts. The proposals submitted are evaluated and the work order is awarded to the best offerer, price and other factors considered. Department officials informed us that these contracts are used only for work orders of great urgency which cost \$250,000 or less and require performance periods of 6 months or less.

Quick-reaction work-order master contracts require DOE to pay the contractor a specific amount even if the contractor has not been awarded any work orders. In our view, this does not appear to be an effective expenditure of Federal funds. In effect, the contractor is on a retainer for the Government. Of the 124 contracts we reviewed, 50 were technical consulting and management support quick-reaction work-order master contracts which DOE awarded to 25 different contractors (2 contracts per contractor). These contracts were awarded in September 1978 for 1 year with options to extend them for another year. DOE exercised these options. The contracts could involve expenditures in excess of \$175 million. DOE is committed to pay \$2,500 for each contract even if a work order is not awarded under the contract. Since these contracts were awarded, 32 work orders have been issued under 22 different contracts. If work orders are not awarded under the remaining 28 contracts, DOE will be required to pay a total of \$70,000 for having the contractors available, even though they did not actually work for DOE.

Under quick-reaction work-order master contracting DOE's policy is to solicit at least three contractors to bid when work develops in an area. Even though DOE has, in effect, paid the contractors to have qualified staff available, procurement officials informed us that in the past the contractors often did not bid because they did not have the personnel or expertise available at the time or did not believe they

were required to bid. Competition among three contractors will be used only if there is sufficient time for the shortened procurement process. DOE officials informed us that if the work orders are awarded sole-source, the same procedures and standards are followed as with all sole-source contracts.

CHAPTER 3  
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 has issued directives and DOE has published orders regulating the behavior of Government in its relationship with its contractors. Specifically, the orders state that contractor personnel should not perform tasks involving basic management responsibilities of the Government: e.g., selecting and directing Government employees, assigning organizational responsibilities, establishing performance goals and priorities, evaluating employee performance, conducting program planning and development, and promulgating departmental regulations or policies.

Although DOE officials have stated it is not their intention to contract for the performance of basic management functions, they have awarded contracts which appear to require the performance of such functions. These contracts appear to 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 DOE can only be determined by a complete review of all DOE contracts, we found contracts in each of the five organizations we reviewed which appear to require the performance of basic management functions. It appears to be the practice of DOE's headquarters procurement office not to question the scope of work and to rely exclusively on the program offices for determining needs and defining the scope of work. It, therefore, appears that the potential for contracts requiring the performance of basic management functions exists throughout DOE.

One contract which was written so as to require the contractor to perform the basic management functions of planning and development, and establishing goals and priorities was a task order contract for \$363,157. This contract was awarded to a firm to provide planning, economic, and technical analysis in the area of energy storage. Specifically, the contract required the contractor to:

- Determine the need for, and timing of, energy storage projects.
- Review and update energy storage plans.
- Support the program office with quick response support on issues arising from congressional requests, budget information, congressional hearings, and other hearings and meetings.

While procurement directives and orders are quite clear that contracting for basic management functions is not permitted, there appears to be no clear delineation between the performance of a basic management function for DOE and assisting DOE 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 DOE. 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 DOE.

An illustration of such a contract is an ongoing DOE study of the feasibility of establishing a national power grid system for electrical power transmission. Based on an earlier study of this issue by the Congressional Research Service, the Senate expressed concern that the authors of the study were forced to rely on data supplied by industry sources which strongly opposed a national power grid.

In a letter dated September 12, 1977, to the Secretary of DOE, the late Senator Lee Metcalf requested that DOE prepare a similar report to the Congress by March 1978. Senator Metcalf specifically asked DOE to use its own employees to conduct the study. In an October 5, 1977, letter to the Senator, the Secretary of DOE stated that DOE was committed to undertaking this study and that it had his full approval and support. About the same time, the President specifically directed DOE to address the issue of a national power grid. However, after performing a preliminary analysis, DOE determined that it could not complete the study within the requisite time frame and that it would be too expensive to conduct in-house. DOE decided to use industry data and to rely on contractors.

Approximately \$500,000 was spent for eight contractors to perform the bulk of the study including generating proposals for the restructuring of the national power grid. In addition, parts of the work which originally were assigned to DOE, including planning for the study, were actually performed by the utility industry through one of its council organizations. Senator Metcalf specifically cited this council when he expressed concern about using industry sources. Nine of the council's representatives were involved in the study, despite the vested interests of the utility industry and the congressional request for objectivity. While DOE may exercise the ultimate policy decision (the contracts have not yet expired), the contracts allowed for considerable contractor input and influence in DOE policy determination.

We found other contracts which appear to offer contractors opportunity to either determine or substantially influence energy policy. One contract in the amount of \$9,900 was for a study to determine DOE's authority to control anticompetitive practices of common carrier petroleum pipelines. DOE officials told us that the study resulting from this contract is the basic source document for making petroleum pipeline regulation policy decisions.

Another contract for \$87,000, was for a study to (1) identify DOE's responsibilities for dealing with energy emergencies, (2) design and develop an energy emergency planning process, (3) define a strategy for implementing an energy emergency-planning process, and (4) assist in the establishment of a strategy for distributing fuels in periods of short supply. DOE officials informed us that the contractor was selected, in part, because it is a firm which has sufficient credibility and reputation that senior Government officials would feel comfortable with its judgements.

In the above illustrations, it appears that the contracts' statement of work requires the contractor to perform basic management functions. Whether the contractor actually performed these functions or only assisted DOE in their performance is open to debate. In the examples found during our review, lack of available in-house expertise was often cited as a reason why a contractor was hired. Such lack of in-house expertise would, however, in our view, limit the ability of DOE to consider energy policy, planning, or priority options other than that proposed by the contractor. It would appear that the confusion as to who actually performed these functions could be substantially reduced if the contract specifications were written to include basic policy, priority, or planning options and the contractor was then asked to delineate the relative advantages and disadvantages of each.

## CHAPTER 4

### NEED FOR MORE CONTROL OVER

#### DOE'S CONTRACT ADMINISTRATION

Contract administration is the process of enforcing the terms of a contract through such actions as evaluation of technical progress, monitoring contract deliveries, and approving periodic and final payments. Contract administration does not end until the work effort has been accomplished and accepted by the Government and the contract is closed.

DOE's procurement office--and more specifically its contracting officers--is responsible for all DOE contract administration activities including monitoring contractor performance and costs, and closing out contracts in a timely manner. The contracting officers have delegated most contract performance and cost monitoring to DOE's program offices and have delegated other contract administration duties to other Federal agencies. 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, DOE does not have final assurance that Government funds were properly expended for work performed. Untimely closeouts could also eventually lead to claims by the contractor which may be difficult and costly for DOE to handle as time progresses.

#### CONTRACT MONITORING

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

Program officials in DOE 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 approval authority for any contract changes requiring the signature of a contracting officer. DOE contracting officers also have given program officials authority for approving payment vouchers for costs which the Government will pay during the contract period. Only the



vouchers for the first and final payments to the contractor are approved by a contracting officer.

DOE's headquarters procurement office is currently delegating other contract administration functions to the Defense Contract Administration Services (DCAS), an agency of the Department of Defense. These functions include administrative responsibilities such as monitoring the contractor's (1) financial condition, (2) compliance with labor standards provisions of the contract, and (3) system for control of overtime. In addition, the Defense Contract Audit Agency performs pre-award and closeout audits on contractors for DOE.

According to DOE procurement officials, contract administration functions are delegated because the procurement office lacks sufficient staff to carry out the functions internally. They say the necessity for fulfilling DOE's mission through the procurement process has resulted in the efforts of the procurement staff being directed at contract award and modification rather than administration responsibilities. Although DOE has made several analyses of procurement staffing, no final staffing decision has been made. DOE officials informed us that a mitigating factor to increasing procurement staffing needs is the current emphasis on decentralization. As more activities are moved into the regions, the pressures on headquarters procurement staff should diminish.

Federal Procurement Regulations assign contracting officers responsibility for administering contracts, including ensuring compliance with contract terms and conditions. Delegation of certain functions is not, in itself, an undesirable practice. Procurement officials said that OMB encourages such delegation to better utilize the Government's resources. However, by delegating administrative contract functions outside the DOE procurement office to the extent that they have, contracting officers have abrogated this responsibility and risk losing essential control over contracts after award. In addition, 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 DOE 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.

UNTIMELY CLOSEOUTS OF  
COMPLETED CONTRACTS

The actions that the contracting officer takes in closing out contracts include making sure that (1) Government funds have been fully accounted for and properly charged for work performed under the contracts, (2) all Government property in the contractor's possession is accounted for, 1/ and (3) final acceptance of the contractor's work and payment of a final voucher are appropriate.

DOE procurement regulations established a standard that contracts should 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. There are 867 contracts on the list that are 20 or more months old; 237 of these are between 3 and 5 years old; and another 19 are more than 5 years old. Procurement officials estimated that all 2,500 contracts should have been closed out in 20 months.

Because these contracts have not been closed out in a timely manner, DOE does not have sufficient control to 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. They stated, however, that they could obtain the information on a contract by contract basis from DOE's Office of the Controller. Procurement officials again told us that the lack of staff was the main reason for the backlog of expired contracts.

DOE procurement officials have recognized that more timely contract closeouts are needed. All expired DOE headquarters contracts are now being given to DCAS to be closed. This effort began in early 1979 when the procurement office hired a contractor to collect, organize, and send the necessary contract information to DCAS. As of October 5, 1979, DOE reported that about 1,300 of the 2,500 expired contracts have been sent to DCAS, and about 650 had been closed out by DOE headquarters personnel. DOE officials believe about 200 of the contracts

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1/DOE's Office of the Inspector General is currently reviewing how DOE keeps track of property in the hands of the contractor. A report is due to be issued to the Secretary of Energy by the end of October 1979.

originally were listed in error. Procurement officials believe the remaining contracts will be sent to DCAS by the end of 1979.

## CHAPTER 5

### CONCLUSIONS AND RECOMMENDATIONS

DOE is the largest civil procuring activity in the Federal Government, reporting 5,000 contracts totaling over \$8.5 billion for fiscal year 1978. It is apparent therefore, that DOE's procurement system must operate effectively and efficiently to assure (1) that the Department contracts for goods and services which are actually required and (2) that it obtains acceptable goods and services at the lowest possible price. DOE's procurement system is not, in our opinion, operating as effectively or efficiently as it should.

Our review of contracting practices which are used for five DOE organizations disclosed areas needing improvement. These relate to (1) contracting practices which avoid or limit competition, (2) contractor involvement in the performance of basic management functions, and (3) need for more control over contract administration.

Competition is probably the single most effective way to ensure that the Government is obtaining acceptable goods and services at the lowest possible price. The procurement practices which are used for the five DOE organizations we reviewed showed extensive use of task order contracts and quick-reaction work-order master contracts. In addition, the justifications for sole-source procurements are not adequately documented to show that only one firm was competent and available to do the required work. All of these practices avoid or limit competition.

At the same time, energy problems are becoming more complex, and energy planning and policy decisions are having greater nationwide impact. Program officials responsible for developing solutions to these problems in each of the five organizations we reviewed are awarding contracts which require private firms to perform basic management functions. Federal procurement policies recognize the danger in this dependence, and DOE and OMB have issued specific directives and orders designed to eliminate the practice. Reliance on contractors to perform these governmental functions can dilute DOE's ability to retain essential control over its programs and to assure that its programs are being carried out efficiently and economically.

We also noted weaknesses in contract administration, notably contract monitoring and closeout of completed contracts. DOE's contracting officers are relying on program personnel to review and approve contractor cost vouchers for payment and to monitor the technical progress of the

contractors' work. The practice of delegating full responsibility for these areas to program personnel weakens DOE's control over the work performed by outside contractors. In these instances, the Government has less assurance of obtaining satisfactory products and services. We are also concerned with the backlog of contracts awaiting closeout action. Although DOE has taken steps to send expired contracts to DCAS for closeout and has thus reduced the workload for DOE procurement personnel, we believe DOE's responsibility for the contracts has not ended. DOE contracting officers should monitor DCAS progress on contract closeouts to ensure that further delays are not taking place.

All of the problems noted have resulted from not adhering to sound procurement practices. During our review, we noted a general attitude that DOE'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.

Because DOE's procurement office appears to be stressing its role as a service organization at the expense of adhering to sound procurement practices, we believe both program and procurement personnel would benefit from undergoing a reeducation process with respect to the proper procurement roles and responsibilities of DOE's various activities and the importance of adhering to sound procurement practices.

In addition, we believe that because of the heavy reliance upon contractors, DOE's procurement activities should be periodically monitored to ensure that the problems we noted do not recur and that other procurement problems do not exist. As part of this periodic monitoring, the assistance of DOE's Office of the Inspector General may be beneficial.

#### RECOMMENDATIONS TO THE SECRETARY OF ENERGY

To correct weaknesses in the Department's contracting which are noted in this report, we recommend that the Secretary of Energy direct DOE to:

- Take action to ensure that competition for DOE contracts is maximized and that sole-source contracts, task order contracts and quick-reaction work-order master contracts 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 that DOE's procurement office maintains effective control over awarded contracts, we recommend that the Secretary of Energy direct that contracting officers maintain administrative control over contracts in the areas of voucher approval and contract monitoring and maintain responsibility for contracts assigned to other Government agencies for close-out.

In regard to the need for adhering to sound procurement practices, we recommend 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, the Secretary of Energy should direct that a DOE-wide review be made of contracting policies and practices and require that these policies and practices be periodically monitored. As part of this effort, the Secretary should ask for the assistance of DOE's Office of the Inspector General.

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