LL 4-13 088819

9 nov I

9778

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

IN REPLY REFER TO: B-194139

April 11, 1979

Do not make available to public reading

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

HSE 02303

Dear Mr. Chairman:

We refer to your letter dated February 8, 1979, concerning contract ~~No. EB-78-C-01-6428~~ between the Economic Regulatory Administration ~~(ERA)~~, Department of Energy ~~(DOE)~~, and Stone & Webster Management Consultants, Inc. (S&W). The contract's purpose is to help develop materials to assist State public utility commissions and major nonregulated utilities in evaluating and, if appropriate, adopting improvements in certain ratemaking procedures, including both rate design and regulatory practices.

AGC 00972 DLG 00359 DLG 01468

In your letter, and through subsequent informal discussions with a member of the staff of your Committee, you request our opinion on a number of matters concerning the solicitation for the contract effort, the procedures used by DOE in conducting the procurement, the award of the contract to S&W, and the propriety of contract modifications proposed by DOE. In addition, you ask whether in our view the contract should be terminated.

The response below is based substantially on our review of the written record provided to our Office by your staff. We have not requested any further information from DOE, nor are we providing that agency with a copy of this reply.

1. Whether the contract, which you state "obviously was entered into in anticipation of the enactment of Public Law 95-617," was authorized?

letter

504923

Section 111(a) of the Public Utility Regulatory Act of 1978 (PURPA), Pub. L. No. 95-617, 92 Stat. 3117 (1978), provides that each State regulatory authority (with respect to each electric utility for which it has ratemaking authority), and each nonregulated electric utility, shall consider the six Federal standards established by subsection (d) of section 111, and then make its own determination whether to implement a standard to carry out the purposes of PURPA Title I, "Retail Regulatory Policies for Electric Utilities." Section 113(a) provides that not later than 2 years after the enactment of PURPA, those entities shall, after public notice and hearings concerning the Federal standards at subsection (b) of section 113, determine the propriety of adopting those standards. Section 131, "Voluntary Guidelines," states that the Secretary of DOE may prescribe voluntary guidelines respecting the standards established by sections 111(d) and 113(b). The legislative history of section 131 provides that in prescribing such voluntary guidelines, the Secretary should utilize a procedure which involves significant input from concerned persons. It also indicates that the guidelines should represent "the Secretary's opinion of the standards, which opinion the States would weigh as they would other opinions on how these standards should be interpreted." S. Rep. No. 141, 95th Cong. 2d Sess. 86 (1977).

Your concern with the contract in this regard is apparently based upon your view that the contract represents an improper delegation to S&W of EPA's statutory responsibilities under PURPA § 131 to prescribe "voluntary guidelines."

DOE has consistently taken the position that the S&W contract is not intended to result in the "guidelines" referenced in PURPA § 131. In a letter to you dated January 25, 1979, the ERA Deputy Administrator states:

> "This contract was competitively solicited and awarded in Fiscal Year 1978, prior to the availability of the PURPA legislative language [i.e., the word 'guidelines' in section 131]. While the term 'guidelines' is used in the RFP, the proposal and the contract, the work being performed actually entails the preparation of technical reports and other resource materials for use in DOE's ongoing technical assistance program. The development of prescriptive DOE policy guidelines, as authorized by PURPA section 131, is not and has never been covered by this contract."

In a February 16 letter to you, the Administrator of ERA, states:

> "The Stone and Webster contract is not intended to cover the preparation of * * * [PURPA § 131 policy] guidelines. Rather, it calls for identification, description, and illustrative application of various analytical techniques that might be helpful in estimating the impact upon utilities of certain State regulatory practices. While the contractor's reports on the analytical techniques might be called 'guidelines' in the broad sense of that term, those reports definitely will not constitute DOE's policy guidelines regarding the PURPA standards.
>
> "It should be noted, in this respect, that DOE is authorized to perform two very different types of functions in carrying out PURPA. The first is to

> help State commissions do a professional job of objectively considering the standards. The second is to present and support a particular point of view regarding the advantages and disadvantages of each standard, in light of national energy policy. The contract with Stone and Webster falls into the first category, while our policy guidelines and intervention work falls into the second. * * *"

It is apparent from the RFP's statement of work and from other language and provisions in the RFP and the resultant contract that the items to be furnished by S&W will have some impact on DOE's preparation of PURPA § 131 "guidelines," whether or not the contract was in fact "entered into in anticipation of" PURPA's enactment. However, we also believe that it is clear from the record that S&W is not establishing DOE "policy" under the contract, i.e., the firm is not performing a governmental function prescribed for the agency. Rather, we believe that that contract reflects DOE's concern that it lacks the in-house expertise and capability to provide an analytical framework for preparing "guidelines" and related assistance materials, as essentially argued by the Administrator. We adopt this view notwithstanding the criticism of the RFP in this regard as contained in a June 1, 1978, memorandum between DOE personnel which you furnished us, to the effect that "Much of what the contractor is being asked to do in the RFP involves basic decisions which are key to the development of DOE energy policy. * * * This seems like an inappropriate activity for an outside contractor."

Accordingly, in our opinion, this issue provides no basis to question DOE's "authority" to enter into the contract.

2. Whether ERA fully complied with section 33 of the Federal Energy Act of 1974, Pub. L. No. 93-275, 15 U.S.C. § 761 (1976), added by Pub. L. No. 95-70, 91 Stat. 275 (1977)?

Section 33(a) states that the Administrator of the Federal Energy Administration, now DOE, "shall, by rule, require any person proposing to enter into a contract, agreement, or other arrangement [involving] * * * the conduct of research, development, evaluation activities, or for technical and management support services," to disclose all relevant information on whether that person has a possible conflict of interest with respect to:

> "(1) being able to render impartial, technically sound, or objective assistance or advice in light of other activities or relationships with other persons, or
>
> "(2) being given an unfair competitive advantage."

Section 33(b) prohibits the Administrator from entering into such contract, agreement, or arrangement unless after evaluating all relevant information he finds that:

> "(1) it is unlikely that a conflict of interest would exist, or
>
> "(2) such conflict has been avoided after appropriate conditions have been included * * * except that if he determines that such conflict of interest exists and * * * cannot be avoided by including appropriate conditions therein, the Administrator may enter in such contract, agreement, or

> arrangement if he determines that it is in the best interests of the United States to do so and includes appropriate conditions [therein] * * * to mitigate such conflict."

Section 33(c) requires the Administrator to publish rules to implement the conflict of interest provisions of section 33 not later than 120 days after enactment (July 21, 1977).

Implementing rules were proposed by DOE in March and April of 1978, and were finalized in January 1979.

Because of the absence of implementing rules, DOE did not consider section 33 applicable to the procurement. In DOE's view, the organizational conflict of interest (OCI) regulation for application was Temporary Regulation No. 35, issued on June 24, 1977, by the Energy Research and Development Administration (ERDA), which was consolidated in subparts 9-1.54 and 9-7.50 of ERDA-PR on September 26, 1977 (ERDA's functions were subsequently transferred to DOE).

Under this regulation, an offeror on a solicitation for activities comparable to listed in section 33(a)is required to make substantially the same disclosure as that contemplated by section 33(a), and DOE is required to make the same judgments based on that disclosure as those in section 33(b).

In our discussion below of the origin of Article 5.7 of the contract we elaborate on DOE's application of the ERDA OCI regulation. For present purposes, however, in our view even if DOE's failure to actually implement in the subject procurement the statutory requirements of subsections (a) and (b) of section 33 is a technical violation thereof, the application of the ERDA OCI regulation at least reflects compliance with the intent of the section.

3. Whether the procedures followed by DOE in awarding the contract to S&W were proper in light of the fact that S&W's offered price was substantially greater than that of the next low offeror? In this connection, a member of your staff has also expressed concern that another offeror, ICF, may have been denied the contract because it already held other Government contracts.

Attachment C to the RFP provided that an offeror's technical proposal and cost proposal would be evaluated separately. Only the technical proposal would receive a numerical score (100 points maximum) in accordance with listed weighted evaluation criteria. The cost proposal would be evaluated to "(a) assess the realism of the proposed cost for the technical effort proposed, and (b) determine the probable cost to the Government." The cost proposal would also be used as "an aid to determine the offeror's understanding of the requirements of the RFP as well as to assess the consistency of the offeror's Cost Proposal with the offeror's Technical Proposal."

Paragraph D to Attachment C stated:

"D. OVERALL RELATIVE IMPORTANCE

The relative importance of the Cost Proposal is less than the Technical Proposal. However, when the Cost Proposal is so 'out-of-line' (e.g., so unreasonably high or unrealistically low) that meaningful discussion with the offeror is precluded, further evaluation will be discontinued and the overall proposal may be considered as unacceptable.

"If, after evaluation of the Technical and Cost Proposals,

> two or more competing overall proposals are within the competitive range, evaluated probable cost to the Government may be the deciding factor for selection, depending upon whether the most acceptable overall proposal (excluding cost consideration) is determined to be worth the cost differential, if any."

Six proposals were received in response to the RFP. Those submitted by S&W, Wilson, ICF, and Ebasco were considered to be in the competitive range. After negotiations and the submission of best and final offers, the technical proposals submitted by S&W and Ebasco each received a numerical score of 86, ICF received a score of 73, and Wilson received a 70. The cost proposals submitted were $532,811 by S&W, $971,340 by Ebasco, $305,677 by ICF, and $297,861 by Wilson.

The technical evaluation comittee's reason for recommending award to the highest technical-rated offeror, S&W, despite the fact that the firm's cost proposal exceeded ICF's by over $225,000 (Ebasco's cost proposal exceeded the funding limit for the procurement), is set forth in two memoranda from the committee's chairman, dated September 14 and 20. The former states in part:

> "* * * the technical panel also determined that the proposals of two of the offerors (Ebasco and Stone & Webster) were clearly and substantially more technically acceptable than those of the other two offerors (ICF and Wilson). The panel further determined that the value to the government of either of the two highest ranking proposals would significantly exceed the value of the two lower-ranking proposals; the technical

> panel further told us that to award the contract to the lower ranking offerors--rather than to one of the two highest ranking offerors--would have a major detrimental impact on ERA's Rate-making Guidelines Program. After discussions with the panel members, I believe their judgment to be correct.
>
> "* * * Because Stone and Webster's cost proposal lies within the funding limit, and because its technical proposal has been ranked significantly above that of the other two offerors [ICF and Wilson], we have recommended * * * that this contract be awarded to Stone and Webster."

The memorandum further states:

> "The value to the government of the products expected under this effort, according to the technical panel, will be significantly higher for Stone and Webster than for either of the two lower-ranking proposals.
>
> "It is our judgment that the extra expense (approximately $200,000) involved in awarding the contract to Stone will be more than worth it to the government in terms of value received.
>
> "Indeed, in helping to judge the incremental value of the Stone & Webster proposal, it should be noted that the Stone & Webster

> proposal achieved the same high technical score as the Ebasco proposal, but at a savings to the government of more than $400,000."
>
> The September 20 memorandum states:
>
> "* * * the incremental cost (approximately $200,000) in selecting Stone over ICF or Wilson would be well worth it to the Federal Government. There is every indication on the part of the reviewers that ICF and Wilson have underestimated the number of hours required to complete the job, and even then not as well as Stone.
>
> "Based on the reviewers' evaluation comments and scores, as well as [other] evidence presented * * * there is overwhelming documented proof that Stone and Webster be selected and awarded this contract. To do otherwise would both violate sound business judgment and raise substantial doubts about this office's ability to fulfill its requirements for implementing the NEA Rate Guidelines."

See also the Administrator's February 16, 1979, letter referenced above, and the contracting officer's memorandum for the record.

There is no basis in the record to question DOE's technical evaluation of the S&W and ICF proposals. Concerning the cost proposals, in this type of contract evaluated costs provide a sounder basis than proposed costs for determining the most advantageous proposal. Analysis & Computer Systems, Inc., 57 Comp. Gen. 239, 244 (1978), 78-1 CPD 75. Moreover, in our view the determination of the realism of proposed costs is a

matter for the judgment of procuring officials. Educational Computer Corporation, B-187330, November 30, 1976, 76-2 CPD 460.

Based on these principles, and in view of the RFP's stated evaluation criteria and method, paragraph D to RFP Attachment C, and DOE's position as set out above, we see no basis to object to the award to the firm that received the highest technical rating.

Regarding Mr. Finnegan's stated concern, the ERA Office of Procurement Operations (OPO) evidently did recommend to the technical evaluation committee that award be made to ICF. Also, the committee chairman's September 14 memorandum indicates that ICF's position as potential contractor in a similar procurements had some bearing on the selection of S&W. The record shows that, in fiscal years 1977 and 1978, ICF was awarded at least three DOE contracts similar to the S&W contract. However, it appears that the OPO recommendation was made prior to any detailed analysis of the ICF cost proposal. Moreover, in view of the above discussion, we cannot conclude that ICF's position as DOE contractor and potential contractor improperly caused the firm's rejection in the instant procurement.

4. The origin and meaning of Article 5.7 of the contract, and whether its inclusion therein was authorized?

Article 5.7 provides:

"ADVANCED UNDERSTANDING

"Contractor provides a broad range of services to the utility industry including significant services relating to utility rate structures. These services involve preparation of forecasts, rate design, cost of money and cost of service studies, assistance to

clients in presenting rate cases as well as expert testimony before local, state and federal agencies. In addition Contractor advises clients with respect to energy policies expressed by, and Contractor appears before, all levels of government including the DOE. Contractor has offered management training courses and proposes to offer seminars having to do with energy rate policies. One of Contractor's consultants is a partner in a law firm which represents public utilities and other clients having matters before the DOE and other federal, state and local departments, agencies and regulatory bodies. DOE agrees that the rendition of these present and future services by Contractor and such consultant and his law firm do not constitute a violation of CLAUSE 4.18 and any other applicable law or regulation having to do with conflicts of interest.

"DOE also agrees that Contractor by performing this contract and its law consultant and his firm will not be precluded from continuing any present or accepting any future representation of clients in whatever capacity, whether or not the DOE or any other department, agency or division of the United States shall be a party to or have any interest in the matter or proceeding and irrespective of whether the matter or proceeding is pending before a federal, state, municipal or local court, administrative or legislative agency or body.

> "DOE acknowledges that by reason of their expertise in the fields to which the contract relates Contractor and the law consultant and his firm have developed and will continue to develop by the utilization of their own resources and other resources work products which in the past and which in the future may closely parallel the work product to be developed pursuant to the contract. Nothing herein contained shall preclude the Contractor and the law consultant and his firm from developing and utilizing their own work products."

The origin of the article is clear from the record. As stated earlier, DOE did not finalize its own OCI regulations until January 11, 1979. Therefore, in DOE's view the OCI regulation for application during the subject procurement, which was conducted in 1978, was ERDA Temporary Regulation No. 35, issued on June 24, 1977, and subsequently consolidated in subparts 9-1.54 and 9-7.50 of ERDA-PR.

ERDA-PR § 9-1.5406(d) requires the inclusion of an OCI disclosure provision in "all solicitations for evaluation and technical consulting and management support services." The regulation also sets out at § 9-7.5006-40 a contract clause concerning OCI for required use in "all contracts or arrangements for technical consulting and management support services," (as defined at ERDA-PR § 9-1.504(c)), and for discretionary use where "evaluation services" as defined at ERDA-PR § 9-1.504(b)), are involved. That clause provides in part:

> "Organizational Conflicts of Interest
>
> "(a) Purpose. The primary purpose of this clause is to aid in ensuring that the Contractor (1) does not obtain any unfair competitive advantage over other parties by

virtue of its performance of this contract, and (2) is not biased because of its current or planned interests (financial, contractual, organizational, or otherwise) which relate to the work under this contract.

"(b) Scope. The restrictions described herein shall apply to performance or participation by the Contractor and any of its affiliate organizations of their successors in interest (hereinafter collectively referred to as the 'Contractor') in the activities covered by this clause as a prime contractor, subcontrator, co-sponsor, joint venturer, consultant, or in any similar capacity.

"(1) Technical Consulting and Management Support Services:

"(i) If the Contractor performs technical consulting or management support services, as defined in paragraph (f) below, or similar work, under this contract, it shall be ineligible thereafter to participate in any capacity in Government contractual efforts (solicited or unsolicited) which stem directly from such work, and the Contractor agrees not to perform similar work for prospective offerors with respect to any such contractual efforts. Furthermore, unless so directed in writing by the Contracting Officer, the Contractor shall not perform any such work under this contract on any of its products or services, or the products or services of another firm for which the Contractor performs similar work. Nothing in this subparagraph shall preclude the contractor from competing for follow-on

contracts for technical consulting and management support services.

"(ii) If the Contractor under this contract assists substantially in the preparation of a statement of work or work or specifications, the Contractor shall be ineligible to perform or participate in any capacity in any contractual effort which is based on such statement or work or specifications. The Contractor shall not incorporate its products or services in such statement of work or specifications unless so directed in writing by the Contracting Officer, in which case the restriction in this subparagraph shall not apply.

"(iii) Nothing in this paragraph shall preclude the Contractor from offering or selling its standard commercial items to the Government. * * *"

The clause also prescribes the contractor's use of information obtained during performance and which has not been released to the public, requires the inclusion of the clause in subcontracts, states the Government's remedies if the contractor fails to comply with the clause, provides for waiver requests, and defines the term "technical consulting and management support service."

The record indicates that the contract negotiator and the ERA program staff originally considered that the RFP involved "investigative study and reporting," and, therefore, that the inclusion in the RFP and resultant contract of the ERDA provisions was not required. However, after the selection of S&W but prior to the contract award, a new contract negotiator determined that the contract clause at ERDA-PR

§ 9-7.5006-40 should be included. It was added to the RFP as clause 4.18.

A January 25, 1979, memorandum to the file from the contracting officer states that, on September 29, S&W indicated that its commercial customers might refuse to continue doing business with S&W if S&W "were perceived to be a servant of DOE." It also states that S&W was concerned that the contract work "would jeopardize its position as an expert witness before the Federal Energy Regulatory Commission (FERC), state commissions and the courts." On that basis, S&W requested postponement of the contract award to afford the firm time to contact its customers concerning whether performance under the contract would be "objectionable" to them. In the alternative, S&W requested execution of the contract "with a grace period during which S&W could withdraw from participation." The requests were denied by DOE.

On September 30, S&W presented DOE with a contract article it had drafted, which was included after some modification in the contract as Article 5.7.

Concerning the meaning and effect of the Article, we view each of its three paragraphs as separate provisions. The first paragraph reflects DOE's agreement that S&W's work outside of the contract, as listed in the paragraph, does not constitute an OCI. The record supports this view of the paragraph's intent (see for example the Administrator's February 16, 1979, letter). We see no impropriety in formalizing such a conclusion in a written provision in the contract. Our view as to the reasonableness of DOE's judgment in so concluding is discussed below. In regard to the above, we point out that there was no requirement in the RFP that an offeror make complete disclosure of affiliations that might bear on the OCI issue. However, the record also indicates that DOE was substantially aware of S&W's utility-related interests.

The second paragraph of Article 5.7 states in effect that S&W's work under this contract will not constitute an OCI regarding any present or future representations of or contracts with its clients involving any Federal, state or local entity. We share your concern over that paragraph, and we are aware that, at DOE authorization hearings before your committee on February 23, 1979, DOE admitted that the paragraph is entirely too broad.

DOE now has a statutory responsibility under section 33 of the Federal Energy Act of 1974, supra, as implemented by its recently published OCI regulations, to determine whether a conflict of interest is likely with regard to each particular contract and potential contractor. DOE is precluded from entering into a contract before making one of the determinations in section 33(b) based on an evaluation of all relevant information from the contractor bearing on the issue, and any other available information. (The pertinent part of section 33(b) is set out above.)

There is simply no authority for a provision that limits that statutory prescription or similar ones that may be applicable to DOE or other Government agencies. Therefore, to the extent that Article 5.7 purports to do so, in our opinion it is unenforceable by S&W outside of this contract. As the United States Supreme Court has stated:

> "* * * the United States is neither bound nor estopped by acts of its officers or agents in entering into an arrangement or agreement to do or cause to be done what the law does not sanction or permit." Utah Power & Light Co. v. U.S., 243 U.S. 390, 409 (1917).

Further, it is not relevant that to some extent S&W may have viewed the inclusion of that part of Article 5.7 as consideration for entering into the contract. See 6A Corbin on Contracts §§ 1526, 1527 (1962).

The third paragraph is self-explanatory. We see no impropriety in S&W utilizing a work product developed on its own outside of, but similar to that developed under, this contract, as long as such use is consistent with RFP clause 4.18.

We also point out that in view of our opinion that the first paragraph of Article 5.7 is merely a conclusory statement with respect to a particular offeror, that the second paragraph is unenforceable, and that the third is not inconsistent with the solicitation, we could not say that offerors who did not have the opportunity to consider such an article in preparing their proposals were prejudiced by its inclusion in S&W's contract.

5. Whether ERA should have entered into the contract because of apparent conflict of interest problems?

S&W's involvement with numerous utility interests either directly, through its parent company, or by other affilliation, as delineated in the record is not disputed. Nor is it disputed that those interests will be affected by PURPA. However, as already discussed, it is DOE's position that the S&W contract involves only the preparation of technical reports and the application of analytical techniques relevant to utilities' regulatory practices, and as such is sufficiently unrelated to the preparation of PURPA "guidelines" that there is no OCI. Although we do not take issue with DOE's interpretation of the purposes of the contract, we do not agree with DOE's conclusion based thereon.

ERDA-PR § 9-1.540(a) defines "organizational conflict of interest" as:

> "* * * a situation where a contractor, normally a corporation, has interests, either due to its other activities or

> its relationships with other organizations, which place it in a position that may be unsatisfactory or unfavorable (1) from the Government's standpoint in being able to secure impartial, technically sound, objective assistance or advice from the contractor, or in securing the advantages of adequate competition in its procurement; or (2) from industry's standpoint in that unfair competitive advantage may accrue to the contractor in question." (Emphasis added.)

Thus, for an OCI to exist it is not necessary that either of these situations will result, but that either may result. In fact, DOE confirmed this point in publishing its own OCI regulations on January 11, 1979. See paragraph III(2) in the "Supplementary Information" section accompanying the regulations.

The Administrator states in his February 16, 1979, letter:

> "DOE did not find there to be an inherent conflict between the contractor's utility-related interests and the ability to objectively prepare technical reports on analytical techniques. * * * we do not believe that an objective study of analytical techniques in any way jeopardizes the electric utility industry."

In a February 7, 1979, letter to the National Con-Consumer Law Center, Inc., which had indicated interest in the S&W contract, the Administrator also states:

> "* * * the impact of adopting the standards would not jeopardize the financial health of the electric utility industry, nor

> would the contractor's other interests in that industry jeopardize its performance under the contract."

However, S&W obviously recognized the OCI problem, as illustrated by their insistence that the first paragraph of Article 5.7 be added to the contract. In addition, J.W. Wilson & Associates, after being approached by ERA to monitor S&W's contract performance, raised in an October 31, 1978, letter to ERA the problems of potential bias in S&W's work product and of competitive advantage. It also is interesting to note that DOE's new OCI regulations offer the following example of an OCI:

> "Accounting firm A in response to a request for proposals, proposes to undertake an analysis of the profitability of one segment of the energy industry. * * * A advises that it derives a substantial portion of its income from the industry to be studied."

As we have stated above, it is apparent that S&W's contract effort will have some impact on DOE's preparation of PURPA § 131 guidelines. The extent of that impact is not clear from the record. Nevertheless, in our opinion there certainly is a possibility that in view of its utility-related connections S&W's work under the contract may suffer from bias, and further possibility that S&W may achieve an unfair competitive advantage from the work with regard to future PURPA § 131 guideline matters. In this connection, we note that in its recently published OCI regulation DOE cautions its personnel in determining whether OCI's exist to "pay particular attention to proposed contractual requirements which call for the rendering of advice, consultation, or evaluation services, or similar activities that lay direct groundwork for the Department's decisions on future procurements, research and development

programs, production and regulatory activities." (Emphasis added.) Section 9-1.5404(a).

We believe that DOE should have either disqualified S&W from the competition, included appropriate conditions in the contract to avoid the conflict, or made a formal determination that it was otherwise in the best interests of the Government not to disqualify the offeror, and imposed in the contract conditions to mitigate the conflict.

6. Whether, as a member of your staff has suggested, proposed modifications to the contract, which DOE alleges are designed to clarify the scope of work and mitigate any possible OCI, may exceed the contract's scope?

Pursuant to our audit function, we are reviewing DOE procurement procedures generally, and will consider this matter in the course of such review.

7. Whether the contract should be terminated?

We set out above DOE's options had it made what we consider would have been the proper OCI conclusion. It ~~would~~ be inappropriate to recommend termination of the S&W contract absent DOE's position regarding ~~those~~ options.

We trust that the above serves the purpose of your inquiry.

Sincerely yours,

Deputy Comptroller General
of the United States