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STATEMENT OF
J. DEXTER PEACH, DIRECTOR
ENERGY AND MINERALS DIVISION
BEFORE THE
SUBCOMMITTEE ON NUCLEAR REGULATION
OF THE
COMMITTEE ON ENVIRONMENT AND PUBLIC WORKS
UNITED STATES SENATE
ON THE
[NUCLEAR REGULATORY COMMISSION'S
SYSTEM FOR ACQUIRING AND USING
OUTSIDE ASSISTANCE AND EXPERTISE]

Sen 06406

Mr. Chairman and Members of the Subcommittee:

We appreciate your invitation to appear before the Subcommittee to discuss with you the findings of our review of the Nuclear Regulatory Commission's (NRC's) system for acquiring and using outside assistance and expertise. As you know, our work was performed at the request of both the Subcommittee Chairman and the then Ranking Minority Member.

Our March 7 report concentrates on NRC's use of contractors, consultants, and the Department of Energy's (DOE's) laboratories and focuses on those aspects which appeared to be weak. Our report is brief, and with your approval, Mr. Chairman, I would like to submit a copy of it for inclusion in the record.

I would first like to discuss the portion of our report on NRC's use of the DOE laboratories, which I understand is of primary concern to the Subcommittee at this time.

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Afterwards, I will summarize our concerns regarding NRC's use of contractors and consultants.

NRC'S CONTROL OVER WORK PLACEMENT
WITH DOE LABORATORIES

The Energy Reorganization Act of 1974, as amended, provides authority for NRC to obtain research and other services from DOE--including the DOE laboratories--and other Federal agencies. The Federal Procurement Regulations (FPRs) do not apply to transactions undertaken through this authority. Notwithstanding the fact that the FPRs do not apply to work done for NRC by other Federal agencies, sound acquisition policy designed to ensure the acquisition of the best goods and services at the most reasonable costs should be applied to these transactions.

In fiscal year 1978, NRC spent about \$142 million at DOE laboratories. This represented 86 percent of the total dollars spent by NRC for acquiring outside goods and services. However, the use of these laboratories was made without written justification to assure that NRC would receive the best goods and services at the most reasonable cost to the Government. This occurred primarily because NRC is not required to follow normal contracting practices in placing work with DOE laboratories.

Our review of NRC's procedures for placing work at the DOE laboratories showed that such placements were made without considering the possibility that other performers might

be qualified to do the work. In the absence of competition, we believe that a rational process of justification for the use of DOE laboratories must exist and be fully documented for each project.

NRC's rationale for placing work at DOE laboratories, is based largely on the laboratories' historical ability to meet NRC's needs. Prior to NRC's creation in 1974, NRC's roles, missions, and responsibilities rested with the then Atomic Energy Commission (AEC). Most of DOE's laboratories were either established by AEC or became AEC's responsibility upon its creation in 1946. Over the years, AEC and the laboratories built extremely close working relationships, and the facilities available for nuclear energy research and testing at the laboratories were considered the best in the world. Even though AEC has since been abolished and its functions absorbed within NRC and DOE, these traditionally close working relationships between NRC and DOE on the one hand, and the DOE laboratories on the other, have continued.

These continuing close relationships can, in part, be tied to the various provisions of the Energy Reorganization Act of 1974, which created NRC. The legislative history to the act states that it was not intended that NRC build its own laboratories and facilities for research and development and instructs NRC to draw upon other Federal agencies for research and such assistance as may be needed in performing its functions. In this connection, the Secretary of Energy

is required to make DOE laboratories and other facilities available to NRC for carrying out its functions.

The various provisions of the act permit, rather than mandate, NRC's use of the DOE laboratories. The act, therefore, should not be considered a constraint to placing NRC work with outside contractors.

One of the reasons provided by NRC as to why more NRC research work is not placed with outside contractors is that the placement of the work at the laboratories offered greater assurance of independence and freedom from potential conflict of interest situations.

Two other reasons provided by NRC officials, which are discussed in more detail in our report, are:

1. The DOE laboratories offer unique research facilities and outstanding scientific expertise generally not available elsewhere; and,
2. There are considerable time savings in placing work with the laboratories because the delays associated with the normal procurement process (e.g., preparing and issuing requests for proposals, advertising, reviewing and evaluating proposals, negotiating for terms and conditions, and making selections) are avoided.

With respect to NRC's contention that placing its work with DOE laboratories offers greater assurance of independence and avoidance of potential conflict of interest situations,

we agree that these two concepts are important in carrying out NRC's missions. The public has entrusted NRC to carry out various research, licensing, and other regulatory functions in such a manner as will assure that the public's health and safety are protected. In carrying out work relating to these functions, it is important that the results of such work are not compromised. This can be done by ensuring that the work is performed independently. To do otherwise could erode the public's trust and confidence in NRC's ability to successfully fulfill its missions.

In placing work with the DOE laboratories, however, it was not completely evident--at least from a theoretical standpoint--that independence and avoidance of potential conflict of interest are assured. On the one hand, the laboratories are permitted to place portions of NRC work with outside subcontractors--a situation which theoretically could lead to creating a potential conflict of interest. On the other hand, projects being carried out at a laboratory to satisfy a given NRC regulatory mission could conflict with prior or ongoing work at that laboratory which was undertaken to satisfy DOE's mission of promoting nuclear energy. Either situation could give rise to lack of independence or conflict of interest concerning the work performed.

During our review, we found that NRC and DOE laboratory officials were generally mindful that such situations could occur. The DOE/NRC interagency agreement concerning the use

of DOE laboratories for NRC projects calls for DOE to avoid contracting or subcontracting with an organization whose interests or relationships with others are such that NRC would not contract with that organization directly. NRC officials stated that they also consider whether the particular laboratory can provide results that are independent in light of that laboratory's work for DOE in the area of promoting nuclear energy. In those instances where such independence is questionable, NRC officials stated that they look at all alternative sources, including other DOE laboratories to do the work.

For one of the nine projects we reviewed, the laboratory's contention that it could provide greater independence than if the project had been done by private industry was not convincing. This project, which was being conducted by Sandia Laboratories, involved the protection and control of fires at nuclear powerplants. According to Sandia officials, conducting this work at Sandia provided greater independence than if the work had been done by any member of the fire protection community. However, the files and documents pertaining to this project did not support this contention. In addition, the fact that Sandia was carrying out work for DOE in the area of nuclear reactor safety could give some the impression that placing this project with a commercial contractor would provide greater assurance of independence --not less.

In commenting on this matter, NRC officials pointed out that Sandia's involvement in reactor safety research was minor and of recent origin. They agreed, however, that NRC will have to closely monitor this situation to ensure that Sandia's involvement does not evolve to the point where it could give at least the appearance of impropriety.

OTHER CONCERNS

Now, I will briefly address our concerns regarding NRC's use of contractors and consultants.

Our review of NRC's practices for acquiring outside goods and services from contractors and consultants disclosed a number of areas of concern which point to weaknesses in NRC's adherence to sound acquisition principles. These concerns generally related to the following:

- First, justifications for awarding certain contracts on a noncompetitive basis were inadequate, and certain aspects of NRC's contract administration--that is, contract monitoring and making timely closeouts of completed contracts--appeared weak.
- And finally, justifications for hiring consultants were incomplete, and controls over payments for their services were not adequate.

RECOMMENDATIONS

In concluding my remarks, Mr. Chairman, I would like to summarize our recommendations to the Chairman of NRC for

providing greater assurance that sound acquisition principals are being adhered to by NRC.

With respect to NRC's placing work with the DOE laboratories, we are recommending that the Chairman require the various NRC program offices to fully justify such placements. We are pointing out that each justification should include the reasons and circumstances surrounding the placement and where other entities have the capability for performing independent work, the justification should contain a comparison showing the related cost impact when practicable. We are also recommending that each such justification be reviewed by NRC's Division of Contracts for conformity with sound acquisition principles.

Compare with the DOE lab services

where other entities have the capability for performing independent work.

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Our recommendations pertaining to NRC's acquiring goods and services through contracts are aimed at NRC's (1) seeking greater competition in contract awards for solicited proposals, and when this is not feasible, fully documenting noncompetitive award justifications, and (2) ensuring that awards resulting from unsolicited proposals are justified in accordance with applicable Federal criteria.

We are also recommending that the Chairman of NRC monitor the Division of Contracts' actions to improve contract monitoring and to alleviate the contract closeout backlog, to ensure that such actions are done in a timely manner.

With respect to NRC's use of consultants, we are recommending that the Chairman of NRC take steps to ensure that

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consultant appointments are fully justified and the
corresponding work descriptions are sufficiently specific,
We are also recommending actions aimed at tightening controls
over payments for consultants' services.

This concludes my prepared remarks. I will now be happy
to answer any questions concerning our review.