

REPORT BY THE

Comptroller General

OF THE UNITED STATES

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Unauthorized Commitments: An Abuse Of Contracting Authority In The Department Of Energy

The Department of Energy relies heavily on contractors to help carry out its missions, reporting expenditures for contracted goods and services during fiscal year 1979 of about \$9.2 billion.

GAO's review disclosed that contractors perform work for DOE without a contract. This occurs because agency personnel, who do not have the authority to bind the Government to a contract, make unauthorized commitments to contractors. These commitments avoid competition and circumvent procurement regulations.

Although GAO identified several reasons why unauthorized commitments occur, such commitments are never an appropriate method of obtaining goods or services. DOE's use of unauthorized commitments has violated Federal law and regulations.

GAO recommends actions to help eliminate the use of unauthorized commitments in DOE.



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

B-200751

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

Dear Mr. Chairman:

As requested on February 29, 1980, this report addresses unauthorized commitments used to procure goods or services in the Department of Energy. Included are discussions of other means of establishing contracts as a result of unauthorized commitments, why these unauthorized commitments occur, and violations of Federal law and regulation which have resulted from their use.

At your request, we did not obtain agency comments on a draft of this report.

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,

A handwritten signature in black ink, appearing to read "Thomas R. Staats".

Comptroller General
of the United States

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

UNAUTHORIZED COMMITMENTS:
AN ABUSE OF CONTRACTING
AUTHORITY IN THE DEPART-
MENT OF ENERGY

D I G E S T

In fiscal year 1979, the Department of Energy (DOE) reported obligations of \$9.2 billion, or 72 percent of its appropriations, for nearly 6,000 contracts; making it the largest civil procuring agency in the Federal Government.

The Federal Procurement Regulations, which govern most civilian agency purchases, give exclusive authority for establishing contracts to authorized contracting officers. However, DOE program personnel, who do not have contracting authority, have asked contractors to perform work; thus circumventing established procurement regulations and eliminating the opportunity for competition.

GAO found that these unauthorized commitments occurred because of poor program planning, emergency program needs, and program delays in approving procurement requests. Procurement officials later legitimize these unauthorized commitments using procurement practices which are not always managerially sound and which violate the Federal Procurement Regulations. Program personnel who make unauthorized commitments and accept voluntary goods or services from contractors also risk violating the Anti-Deficiency Act.

UNAUTHORIZED COMMITMENTS
AVOID COMPETITION AND
CIRCUMVENT PROCUREMENT
REGULATIONS

DOE has established special "ratification" procedures for entering into contracts after unauthorized commitments have been made. These procedures require a detailed account of why the commitment was made, reviews by the contracting officer and General Counsel, and approval by the head of the procuring

(EMD-81-12)

activity. On February 25, 1980, DOE issued a notice which upgrades the level of review to also include the cognizant Assistant Secretary and the Chief Financial Officer.

GAO could not determine the extent of ratifications either before or after the February notice because DOE does not routinely track the number of times they occur. Tabulation of the true number of unauthorized commitments is also difficult because the various DOE procurement offices treat unauthorized commitments differently.

Some offices have predated contracts or issued retroactive precontract cost authorizations 1/ instead of following DOE ratification procedures for unauthorized commitments. Neither of these actions require the documentation, review, or approval of a formal ratification, and avoid the controls designed to minimize the use of unauthorized commitments. Because of this, program officials may also "shop around" for the procurement office which provides the fastest, easiest processing of a contract initiated by an unauthorized commitment. 2/ DOE officials

1/Predating is the process of making the effective date of a contract prior to the date when the contract is executed, thus authorizing work which has already been performed. A precontract cost authorization is an advance authorization by a contracting officer allowing a contractor to begin work at its own risk with the understanding that if a contract is subsequently established, the precontract costs will be reimbursed. A retroactive precontract cost authorization authorizes work already started without proper approval by the contracting officer.

2/Under DOE's procurement organization structure, program officials may, with some exceptions, use any DOE buying office to process their procurements.

believe that unauthorized commitments have declined since the notice was issued, however, no information was readily available to confirm this claim. (See pp. 4 to 13.)

THERE ARE SEVERAL REASONS
WHY UNAUTHORIZED COMMIT-
MENTS OCCUR

Circumventing the normal procurement cycle will likely continue until DOE successfully eliminates the causes of unauthorized commitments. GAO identified three major reasons for unauthorized commitments:

- DOE program officials often fail to plan procurement needs far enough in advance to utilize normal contracting procedures. Thus, these officials make unauthorized commitments so that contract work can begin without procurement-related delays. This interrupts the normal procurement process and often delays those procurement actions which were properly planned.
- Program officials encounter emergency program requirements and do not believe that enough time is available to go through normal procurement procedures. Thus, they make unauthorized commitments, unaware that legitimate contracting practices are available to handle emergency situations without circumventing the authority of the contracting officer.
- Program offices fail to expeditiously review, approve, and transmit procurement requests to the procurement office. Thus, the contractor is often permitted to start or continue work while the contract or contract modification is being processed. (See pp. 14 to 18.)

UNAUTHORIZED COMMITMENTS
CAN VIOLATE FEDERAL LAW
AND REGULATIONS

Regardless of the cause, the Anti-Deficiency Act is violated when DOE program officials make unauthorized commitments and accept

voluntary goods or services from a contractor before funds have been appropriated by the Congress. This situation occurred in DOE and involved a large computer system operated by a contractor that required the services of at least 35 other contractors. Although the contracts expired at the end of the fiscal year, DOE elected to accept voluntary services from the contractors rather than cease operation of an important agency function because funds were not available. This was a violation of the Anti-Deficiency Act, even though DOE considered the contractor functions important to the agency's mission.

In addition, DOE Procurement Regulations do not contain the same restrictions as the Federal Procurement Regulations on ratifying unauthorized commitments. This could result in contracting officers ratifying improper commitments which would not be allowed by the Federal Procurement Regulations. In particular, DOE's practice of approving unauthorized commitments through precontracting and retroactive precontract cost authorizations increases the potential that improper contracts will be approved. (See pp. 19 to 23.)

While there may be instances where it is necessary to allow a contractor to begin work before a contract is established, unauthorized commitments are never an appropriate means of obtaining goods or services. Legitimate contracting tools, such as letter contracts ^{1/} and precontract cost authorizations, can be used to authorize the contractor to immediately commence working, thus avoiding the use of unauthorized commitments.

^{1/}A letter contract is a written preliminary contract allowing a contractor to begin work, but which must be superseded by a definitive contract at the earliest practicable date.

DOE needs to establish a formal method of monitoring unauthorized commitments. Until it can accurately estimate how widespread the use of unauthorized commitments is, it will be difficult to attempt to eliminate them. The DOE notice concerning ratification of unauthorized commitments did not establish procedures for monitoring these actions, and a lack of data prevented GAO from determining the extent of the problem. However, the contracts selected for review demonstrated that DOE's procurement system still lacks sufficient controls to prevent the use of unauthorized commitments to obtain goods or services. Without such controls, the potential for abuse through unauthorized commitments is great.

In most instances, the problems identified in this report are correctable through actions taken by the Secretary without unduly affecting the normal business of the agency. However, Anti-Deficiency Act violations will remain a problem as long as yearly appropriations are not passed sufficiently in advance of the fiscal year to allow funds to be obligated on October 1. Although we examined this problem only in DOE, it affects all other Federal agencies. GAO is currently studying the problem of late appropriations. The results of that study are expected to be available in early 1981.

RECOMMENDATIONS TO THE SECRETARY OF ENERGY

GAO is making several recommendations to the Secretary of Energy aimed at improving the Department's procurement process in general and specifically, controlling unauthorized commitments and tracking the number of times they occur. See pages 26 to 28 for a discussion of these recommendations.

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As requested by the Chairman, a copy of this report was not sent to DOE for official comments.

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GLOSSARY

- unauthorized commitment - an informal agreement, between a contractor and a Federal employee who does not have contracting officer authority, to begin work.
- ratification - the process of establishing a contract to incorporate the terms of an unauthorized commitment. Procedures for ratification are described in the Federal Procurement Regulations, section 1-1.405; and in the DOE Procurement Regulations, section 9-1.405.
- precontract cost authorization - a contracting officer's advance authorization which allows a contractor to begin work at its own risk with the understanding that if a contract is subsequently established, the precontract costs will be reimbursed.
- retroactive precontract cost authorization - a precontract cost authorization which authorizes work already performed without proper approval by the contracting officer.
- predating - the process of making the effective date of a contract prior to the date when the contract is executed, thus authorizing work which has already been performed.
- letter contract - a written preliminary contract allowing a contractor to begin work, but which must be superseded by a definitive contract at the earliest practicable date.

Anti-Deficiency Act -

Title 31, Section 665, of the U.S. Code. This law forbids Federal employees from (1) entering into contracts on behalf of the Government when funds are not available for such contracts and (2) accepting voluntary goods or services from contractors in anticipation of a contract when funds are not currently available.

CHAPTER 1

INTRODUCTION

The Department of Energy (DOE) is the largest civil procuring agency in the Federal Government. In fiscal year 1979, it reported awarding nearly 6,000 contracts totaling \$9.2 billion--about 72 percent of its \$12.7 billion appropriation. It is essential, therefore, that DOE have an efficient and effective procurement function to ensure that acceptable goods and services are acquired at the lowest possible price, as required by Federal law.

The Federal Property and Administrative Services Act of 1949 governs the purchase of goods and services from sources outside the Government by most civilian agencies, including DOE. This act is implemented by the General Services Administration through the Federal Procurement Regulations which set forth detailed rules to be followed. These regulations reflect a congressional preference for competition which offers all qualified contractors the opportunity to compete, helps to minimize the opportunities for favoritism or collusion, and provides greater assurance that acceptable goods and services are obtained at the lowest possible prices. In addition, DOE has established its own procurement regulations which expand on and supplement the policies and procedures established in the Federal Procurement Regulations.

Under the Federal and DOE Procurement Regulations, a contracting officer is the only person who has authority to enter into and administer contracts on behalf of the Government. If a Federal employee without contracting officer authority asks a contractor to perform work for the Government, an unauthorized commitment has occurred. When work is performed as a result of such a commitment, the work cannot be paid for until a legitimate contract is established through "ratification" by an authorized contracting officer. An unauthorized commitment is never an appropriate method of obtaining goods or services; however, both the Federal and DOE regulations allow ratification of unauthorized commitments in certain circumstances to protect the Government's interest.

REASON FOR THE REVIEW

On November 2, 1979, we issued a report to the Chairman, Subcommittee on Energy and Power, House Committee on

Interstate and Foreign Commerce 1/, which, among other things, reported that DOE program personnel made informal (unauthorized) commitments allowing contractors to begin work without following the usual procurement procedures. Although these commitments were later ratified by authorized procurement personnel (which is permissible under Federal and DOE Procurement Regulations), this type of action effectively eliminated any possibility of competition and did not adequately assure that acceptable goods and services were purchased at the lowest possible price. Subsequently, during a February 29, 1980, subcommittee hearing on DOE contracting practices, the Chairman requested that we further examine DOE's practice of ratifying unauthorized commitments after the work has already been started. This report is responsive to that request.

OBJECTIVES, SCOPE, AND METHODOLOGY

Our objectives in conducting this review were to determine (1) whether DOE's regulations concerning unauthorized contract commitments conform with the Federal Procurement Regulations, (2) whether DOE's processing of unauthorized commitments conforms to its own regulations, (3) how extensively unauthorized commitments are being made in the agency, and (4) why unauthorized commitments are being made, rather than using the normal procurement process.

We conducted our review at three DOE offices: the Headquarters Buying Office in Washington, D.C.; the Chicago Buying Office in Argonne, Illinois; and the Strategic Petroleum Reserve Buying Office in New Orleans, Louisiana. The Headquarters and Chicago Buying Offices were chosen because they are responsible for the largest number of active contracts in DOE; about 4,000 and 2,500 respectively. While the Strategic Petroleum Reserve Office is responsible for only a few hundred active contracts, these contracts represented over \$700 million in DOE contract expenditures for fiscal year 1979.

We reviewed DOE's regulations concerning unauthorized commitments to determine whether they conform to the Federal Procurement Regulations. We also examined a total of 81 contract files at the three buying offices to determine whether DOE's processing of unauthorized commitments conforms to its own regulations; 50 at Headquarters, 25 at Chicago,

1/"DOE's Practices for Awarding and Administering Contracts Need to be Improved," EMD-80-2, November 2, 1979.

and 6 at the Strategic Petroleum Reserve Office. Our selection of contract files was based on lists of contracts identified by DOE as ratifications or precontract cost authorizations, or on our own examination of procurement request documents where we identified contracts with a potential for unauthorized commitments. Our selection of contracts was judgmental in nature and is not intended to allow predictions of the universe. Our primary goal was to determine whether weaknesses exist in DOE's procurement management which could allow for extensive abuse. We also discussed the processing of unauthorized commitments with representatives of DOE's Office of the Chief Financial Officer and Office of General Counsel.

A review of all DOE procurement request documents for fiscal year 1979, as well as requesting information through DOE's Integrated Procurement Management Information System, were the methods we used to review how extensively unauthorized commitments are being made in the agency. In determining why unauthorized commitments are being made, we spoke to contracting officers and procurement specialists in all three buying offices. We also contacted program personnel in various program offices, including DOE's Office of Fossil Energy, Office of Automatic Data Processing Services, and the Office of Health and Environmental Research to follow up on some contracts reviewed and found to have unauthorized commitments.

In obtaining information on DOE procurement policies and expenditures in the contracting area, we spoke to representatives of the Procurement Policy Branch of the Procurement and Contracts Management Directorate and the Office of the Controller.

When we began the review, we contacted DOE's Office of Inspector General to obtain any internal documents pertinent to the subject. We found that this Office was also initiating a review of unauthorized commitments. Rather than duplicate each other's work, the Inspector General agreed to stop his review, since GAO's work had been requested by a House Subcommittee Chairman.

CHAPTER 2

UNAUTHORIZED COMMITMENTS AVOID COMPETITION

AND CIRCUMVENT PROCUREMENT REGULATIONS

DOE has frequently ratified unauthorized commitments, allowing contractors to be paid for work agreed to and performed without a contract. By doing this, the agency avoids the competitive process and circumvents procurement regulations. Unauthorized commitments have been processed not only through formal ratification procedures--currently a heavily scrutinized process--but also through contract pre-dating and retroactive precontract cost authorization procedures which tend to mask the true number of unauthorized commitments in DOE. Thus, it is not possible to determine the actual number of unauthorized commitments being made.

FEDERAL PROCUREMENT REGULATIONS FAVOR COMPETITION AND CONTROL BY AUTHORIZED PROCUREMENT OFFICIALS

The Federal Procurement Regulations provide civilian agencies with contracting procedures designed to maximize competition and obtain needed goods and services at the lowest possible prices. Contracting officers have exclusive authority to bind the Government to a contract. In exercising this authority, contracting officers are required to comply with all applicable laws, Executive orders, and regulations.

The Federal Procurement Regulations further stipulate that individuals be selected as contracting officers based on their experience in the field of procurement; formal education in pertinent fields, such as business administration, law, accounting, or related fields; and knowledge of applicable laws, Executive orders, and regulations. We believe it is obvious that the Federal Procurement Regulations intend that the procurement function be carried out by persons who have the knowledge and expertise to protect the interests of the Government. Unauthorized commitments, on the other hand, are made by individuals whose primary function is program rather than procurement oriented.

Removing contracting officers from the initial contract selection process eliminates an important system of checks and balances in the functioning of the agency. DOE's criteria for appointing contracting officers states that properly trained contracting officers assure that procurement actions are processed, awarded, and administered in accordance

with applicable laws, regulations, and high professional standards, thereby contributing the efficient accomplishment of the Department's mission.

Unauthorized commitments by program personnel may cause the Government to be bound by terms established by someone without the same concerns or professional standards of contracting officers. Program personnel are primarily responsible for carrying out the missions of the agency, rather than observing Federal laws and regulations concerning procurement. Their actions to establish contracts may not guarantee that acceptable goods and services will be obtained at the best price.

UNAUTHORIZED COMMITMENTS CONTINUE
TO BE A PROBLEM IN DOE

DOE has continued to allow unauthorized commitments to be made and has continued to ratify such actions. We could not determine the total number of either unauthorized commitments or ratifications in the agency because no such data was routinely collected Department-wide or in individual buying offices. However, the Headquarters Buying Office identified 72 commitments between October 1, 1979, and March 20, 1980, which were processed as ratifications. While DOE did not identify the amount of new obligations required by the commitments, 40 of the contracts were worth over \$60 million. The Headquarters Buying Office has also used retroactive precontract cost authorizations to ratify unauthorized commitments.

In addition, the Strategic Petroleum Reserve Procurement Office ratified three unauthorized commitments during fiscal years 1979 and 1980, for \$608,701 and, as of October 14, 1980, had two other ratification requests for \$259,125 under review.

The Chicago Buying Office claims to have ratified only two contracts during fiscal years 1979 and 1980 for \$77,096. However, it has until recently been the Chicago office's policy to predate contracts where work began prior to the execution of a contract. In May 1980, the Chicago office instituted a policy requiring procurement personnel to review the official file and call the program official if a procurement request specifies a start date prior to the request date. These actions are supposed to establish whether an unauthorized commitment took place. If they do not reveal an unauthorized commitment, the contract, when executed, is predated to the requested start date following approval by the Deputy Manager of the Chicago Operations Office. The effectiveness of this

procedure is questionable, however, because the file does not usually contain evidence of an unauthorized commitment, and the program official is not likely to admit having made one. As a result, we believe unauthorized commitments may be a much broader problem than the number of ratifications indicate.

The effectiveness of DOE actions
to reduce unauthorized commitments
is questionable

On February 25, 1980, DOE issued a notice 1/ to all agency personnel clearly defining the formal steps which must be taken to ratify an unauthorized commitment, including a requirement for the cognizant Assistant Secretary and the Chief Financial Officer to review and concur in all ratification requests. The notice further states that "if the Department does not ratify the employee's unauthorized commitment, the contractor has performed work at its own risk and may act to recover damages from the DOE employee." According to DOE procurement officials, this notice has received considerable attention by program personnel, and is considered by DOE to be a deterrent to future unauthorized commitments.

Because DOE did not previously track unauthorized commitments which were processed either as ratifications or other types of procurements, we could not determine what effect the notice has had on the number of unauthorized commitments. As of June 30, 1980, DOE Headquarters officials told us that the number of procurement requests which indicate that the contractor is already working has not seemed to decline since the notice. However, officials believe this was due to unauthorized commitments made prior to the notice, but processed afterward. They believe that, as of October 1, 1980, ratification requests have declined, although they did not provide us with supporting information, and such information was not readily available. All identified unauthorized commitments are now returned by DOE Headquarters procurement personnel to the program office for official processing as ratifications. However, no ratification requests processed since the notice was issued have been disapproved. As of October 1, 1980, DOE had ratified 29 such commitments since the February notice.

1/ "Ratification of Unauthorized Contract Awards," DOE Notice 4220.1.

We believe that the actions taken by DOE are not enough. Indeed, this is not the first time that DOE has attempted to correct the problem. On May 1, 1978, it issued an internal policy letter stating that predating and ratification of unauthorized commitments were occurring in substantial numbers and were undesirable practices. In 1978 and 1979, DOE procurement officials attempted to curb unauthorized commitments by issuing letters and holding meetings with both program and procurement personnel. Because the Office Manager of the Strategic Petroleum Reserve Office would not tolerate unauthorized commitments, the Office was able to virtually eliminate such actions; however, DOE's Headquarters Buying Office was not as successful. DOE's Chicago Buying Office had only one ratification at that time because its policy was to predate contracts rather than go through the more difficult contract ratification process.

We believe that DOE should increase its efforts to curb the number of unauthorized commitments. To date it has attempted to do this by issuing letters and notices or developing formal contracting procedures (i.e. requiring management approval of all ratifications). DOE officials believe that unauthorized commitments have declined, although evidence to this effect was not supplied by the agency. Nevertheless, we believe procurement controls should be strengthened; specifically, DOE should take more action to educate, train, and penalize program people who continue to allow contractors to work without following required procurement procedures. Until these program personnel become fully aware that they are performing unauthorized acts in making express or implied commitments to contractors, unauthorized commitments probably will continue in the agency. Although not required by the notice or any other directive, DOE's Chief Financial Officer has issued memorandums to some program heads recommending changes in management practices and reprimands for personnel responsible for making such commitments.

RETROACTIVE PRECONTRACT COST
AUTHORIZATIONS INAPPROPRIATELY
"RATIFY" UNAUTHORIZED COMMITMENTS

DOE has used "precontract cost authorizations" to retroactively approve unauthorized commitments. Used properly, a precontract cost authorization is a letter signed by the contracting officer that permits a contractor to begin work without a contract and stipulates that costs incurred will be reimbursed if a contract is subsequently established. It also notifies the contractor that the Government will not be liable if the contract is not established. More importantly, a precontract cost authorization should be issued

by a contracting officer prior to the initiation of work, and then only when based on negotiations and other assurances that the Government is getting reasonable prices for the goods and services being purchased. In effect, it is a procurement tool that allows a contractor to begin work while the contract is being processed so that delivery schedules can be met.

We found, however, that DOE has issued precontract cost authorizations (at the request of program officials) after, not before, contractors started working. Such actions imply that the program officials had already committed DOE to contracts before submitting requests for precontract cost authorizations to the contracting officer. For example, letters from one contractor indicate that the DOE program personnel (rather than procurement personnel) told the contractor to begin work in October 1978. The Headquarters Buying Office, however, did not authorize the contractor to incur costs until November 1, 1978. This authorization was for \$500,000 and covered the period from October 1 to December 31, 1978. No further action was taken on this procurement action until July 10, 1979, when precontract costs were again retroactively approved for a total of \$1.8 million. Finally, on July 13, 1979, DOE executed a contract which called for a total contract cost of almost \$2 million and a completion date of September 30, 1979.

We identified 23 retroactive precontract cost authorizations that were issued by the Headquarters Buying Office between May 1978 and July 1979. These authorizations allowed the incurrence of \$8.9 million after the contractors had started working. As of January 1980, the Headquarters office began retaining copies of all precontract cost authorizations. Prior to that time, no record was kept of how often these letters were issued.

We believe that these retroactive precontract cost authorizations are, in effect, ratifications of unauthorized commitments. Unlike a formal ratification, however, DOE procedures do not require that such actions be fully documented or approved by the cognizant Assistant Secretary and the DOE Chief Financial Officer. Since DOE's February 1980 notice, the Headquarters Buying Office has recognized this problem and returned all requests for retroactive precontract cost authorizations to the program office for processing as formal ratifications. We noted that all Headquarters precontract cost authorizations since then permitted the incurrence of costs prospectively rather than retroactively. Nevertheless, we believe procedures should be established by DOE to prevent future abuse of this contracting practice.

PREDATING CONTRACTS "HIDES"
UNAUTHORIZED COMMITMENTS

DOE has allowed unauthorized commitments to be formalized by predating contracts rather than following formal ratification procedures. Predating is merely the process of making the effective date of a contract prior to its execution date. This procedure, which appears to be common practice in the Chicago Buying Office, not only has the procurement disadvantages of unauthorized commitments, but also circumvents the review procedure established by DOE for ratifying unauthorized commitments.

For example, a university contract awarded through the Chicago office expired on February 29, 1980. Although the university continued to work, the procurement request to renew the contract was not received by the Chicago Buying Office until May 7, 1980. The contract was subsequently executed on June 10, but was predated to March 1. Thus, the contractor worked for over 3 months with no contract and no control by DOE procurement officials. Although predating is not expressly discussed by the Federal and DOE Procurement Regulations and, thus, is not specifically prohibited, the use of this procedure could result in excessive costs to the Government, according to DOE procurement policy officials.

During our work we found that DOE, particularly in its Chicago office, relied heavily on predating procedures. In fact, Chicago officials said that virtually all their contracts were predated and that they deliberately excluded the the execution dates from their contracts to eliminate confusion between the effective date and the execution date of the contract 1/.

The Chicago Buying Office banned the automatic predating of all contracts (except university contracts) on August 1, 1980. Now, when a procurement request is received requesting an earlier start date, procurement personnel are required to determine whether an unauthorized commitment took place; the contract would then be ratified. If no unauthorized commitment is discovered, the request is still predated following approval by the Deputy Manager of the Chicago Operations Office.

1/By Chicago Announcement No. 24, dated March 18, 1980, signature pages were being revised to provide a space for dating signatures. Contracting officers are now required to enter the execution date when signing contracts.

We reviewed 50 predated contracts from the Headquarters and Chicago offices totalling about \$41.2 million and found the contract files generally did not disclose who authorized the contractors to begin work or when that authorization was made. In addition, neither procurement nor program personnel could recall whether a DOE program official made an unauthorized commitment or whether the contractors began in anticipation of receiving a contract. In our view, however, it is unlikely that contractors would begin work on their own unless a DOE employee made some informal or unauthorized commitment that the contractor would be paid for work performed.

Renewal contracts with educational institutions are exempt from the ratification process

Under current DOE policy, where program continuity is "mandatory" 1/ educational institutions can continue work for DOE without contractual coverage while program and procurement personnel in DOE evaluate the proposed additional work. When the details of the contract are agreed upon, the contract is executed with an effective date predated to the expiration date of the previous contract. Predating these contracts requires a written justification approved at a higher level than the contracting officer, but no higher than the head of the procuring activity. This policy has been in effect since May 1, 1978. Thus, the procedures outlined in the DOE notice do not apply to renewal of contracts with educational institutions.

DOE officials said the policy allowing predating of university contracts was established for several reasons. University renewal proposals and subsequent procurement requests to renew the contracts are frequently received by the procurement office after the contract has expired. These contracts often involve support for basic research of a continuing nature and would be adversely affected if work stopped when there was no contractual coverage. DOE also believes that the procurement regulations are primarily geared toward the relationship between Government and profit-making commercial enterprises. Procurement policy officials said that the restrictions designed to protect the Government's interest are not applicable in dealing with universities

1/DOE Procurement Policy Letter 78-3. This letter, however, does not define mandatory program continuity; nor could we find such a definition in any other policy document.

and other non-profit institutions. Finally, DOE and its predecessors, the Atomic Energy Commission and the Energy Research and Development Administration, have been statutorily required over the years to foster and support research and development in areas of DOE's responsibility and to support the education of scientists within these disciplines. As a result, contracting officials said that many universities have had a longstanding relationship with DOE and understand what actions are allowable within a contract. In our opinion, this justification merely implies that DOE believes the universities would not try to take advantage of the agency.

When DOE's ratification notice was issued, some confusion arose over whether the notice or the previous policy would be applied to universities. Even though there was disagreement within DOE's procurement offices, on April 25, 1980, DOE's Procurement Policy Office specifically exempted university contracts from the notice and continued to allow predating of effective dates "when delays in renewal of university contracts are anticipated or encountered." The Chicago Buying Office has been particularly affected by this policy because about 1,000 of its 2,500 active contracts are with educational institutions.

DOE's acceptance of predating contracts, either educational or commercial, is a poor procurement and management practice. In our opinion, DOE's reasons for predating university contracts do not justify the potential abuses which can result from this practice. If a contractor, through past experience, believes that DOE will pay for work performed without a contract, little incentive exists for the contractor to submit timely renewal proposals. Also, DOE technical personnel are discouraged from making timely reviews of the proposals and submitting procurement requests sufficiently in advance to allow for normal processing. Further, if the contractor has already performed a large portion of the work, the Government has little control over what work was performed, and its ability to determine the reasonable cost of the work is reduced. Finally, the practice of allowing predating of contracts could easily cover up unauthorized commitments which should be processed as formal ratifications.

CONSISTENCY IN TREATING UNAUTHORIZED
COMMITMENTS IS LACKING

During our review at three DOE procurement offices, we found that each has a different way of handling unauthorized commitments. For example, the Headquarters Buying Office requires program offices to process procurement requests as formal ratifications whenever contractors begin work without

a contract. The Strategic Petroleum Reserve Office takes a similar approach, although officials said they would not ratify a contract where the contractor began work at its own risk without any DOE commitment. The Chicago Buying Office, on the other hand, claimed to have processed only two ratifications since the beginning of fiscal year 1979. Although a large percentage of Chicago's procurement requests are received after work has started, these are predated rather than processed as formal ratifications if no unauthorized commitment is discovered.

In another example, DOE policy allows for the predating of university renewal contracts following a written justification approved by a level higher than the contracting officer. Headquarters procurement officials interpret this policy strictly and prepare specific justifications for each procurement request to be predated. The request may then be approved by a procurement branch chief; however, some have been rejected and processed as ratifications. On the other hand, the Chicago Buying Office interprets and implements this policy differently. Chicago's Assistant Manager for Acquisition and Assistance issued a "generic determination" for all university renewal contracts, justifying them for predating. This was done "to avoid the administrative burden associated with the preparation of said justification on a 'case by case' basis." These requests for renewal contracts are then automatically approved for predating.

Program personnel, according to DOE procurement officials, have taken advantage of this inconsistent policy interpretation by "shopping around" for the procurement office which will provide the easiest, fastest processing of the procurement requests. 1/ Such actions are indicative of poor management control and will continue as long as inconsistent implementation of procurement policy is allowed.

This inconsistency appears to stem from a deficiency in DOE's procurement organization. 2/ Although procurement policy and procedures were developed within the Procurement Directorate in Washington, D.C., DOE's field buying offices

1/Under DOE's procurement organization structure, program officials may, with some exceptions, use any DOE buying office to process their procurements.

2/We are currently reviewing DOE's headquarters/field organization structure. In a report scheduled to be issued early next year, we plan to address this apparent deficiency.

are not under the direct control of any Headquarters procurement manager. Instead, they report to the managers in charge of the field offices and tend to interpret procurement policies and regulations to meet local needs. These interpretations vary from office to office and are not necessarily consistent with practices used in DOE Headquarters.

CHAPTER 3

WHY UNAUTHORIZED COMMITMENTS OCCUR

Formal ratifications, predating, and retroactive pre-contract cost authorizations are frequently used by DOE to approve unauthorized contract commitments made by program personnel. While such commitments are clearly unauthorized, there are many reasons why they occur, including poor planning, emergency situations, and untimely program approval of procurement requests. Moreover, program personnel do not realize that acceptable existing contracting practices are available as options to making unauthorized commitments. The continued use of unauthorized commitments contributes to a less than effective DOE procurement function.

BETTER PLANNING OF PROCUREMENT ACTIONS IS NEEDED

Procurement officials believe that better planning of all procurement actions by program personnel is the single most important factor in reducing the number of unauthorized commitments. Ideally, procurement actions should be prioritized and submitted far enough in advance of the program need to obtain necessary approvals and to allow procurement officials to set up the most advantageous contract for the Government. In reality, however, program needs are often not known far enough in advance to allow for normal procurement processing. As a result, procurement personnel are often asked to ratify unauthorized commitments because program personnel believe their need is so time-critical that they tell the contractor to begin work without telling the procurement office until after the fact.

We found that a large number of all procurement requests are not received in the procurement office early enough to go through the normal procurement process. For instance, we reviewed about 5,000 ^{1/} procurement request documents received at the Headquarters Buying Office in fiscal year 1979 and counted about 1,200 where the request was received after the desired contract award date. Many

^{1/}The 5,000 procurement requests also included incremental funding actions, financial assistance requests, and inter-agency agreements. These were not considered in our count because the regulations concerning unauthorized commitments do not apply to those types of actions. Therefore, the universe of procurement requests should be smaller than 5,000.

of the other requests were received only a few days before the desired award date.

To correct this situation, DOE is developing a new system--a subsystem of the Integrated Procurement Management Information System--to plan the needs of the program offices. Under this system, program groups submit information on their planned procurements over \$10,000 one year in advance. This information is entered into the system and is used to establish procurement execution plans for each program group in the agency. The plans are supposed to be used by program personnel to determine (1) when program needs will occur and (2) when procurement actions must be initiated in order to meet those needs. Procurement officials believe this system will help them predict workloads throughout the year and reduce procurement backlogs.

The system, however, is not yet fully operational. According to a DOE procurement official, only 36 percent of all procurements for fiscal year 1979 were entered into this planning system; for fiscal year 1980, about 50 percent. DOE officials believe that nearly 100 percent of the agency's procurements will be entered into the system during fiscal year 1981. A DOE official stated that program officials are reluctant to plan procurement actions a year in advance because appropriations are not known at that time and priorities have not yet been set. Nonetheless, DOE believes that this planning system will eventually be able to accommodate most of the agency's procurement activities.

As it now stands, however, the large number of unplanned and emergency procurement actions delay those which have been planned and entered into the system. This penalizes those program officials who make the effort to plan their procurements in advance and emphasizes the need for DOE to accelerate its efforts to make the procurement planning system fully operational. This could be done by requiring program officials to plan their procurement actions to the greatest extent practicable and enter them into the system. While emergency situations will always have to be accommodated, more effective planning should help reduce the number of unauthorized commitments.

"EMERGENCY" PROGRAM NEEDS ARE MET
THROUGH UNAUTHORIZED COMMITMENTS

An often-cited reason for making unauthorized commitments relates to an "emergency" situation perceived by the program official to require immediate contractual action. Believing the procurement need is too crucial to wait for

the normal procurement cycle before starting, the program official informally requests work to start.

Procurement lead times, or the time it takes to process a procurement request and execute a contract, are well documented facts to DOE program and procurement personnel. Depending on the dollar value and complexity of the procurement action, the standard lead time for a competitive procurement ranged from 77 to 270 days at the different sites we visited.

According to DOE procurement officials, program personnel become frustrated at the length of time needed, especially if the tentative execution date is near the end of the fiscal year. 1/ In other situations, program personnel may perceive an emergency to exist; e.g., Congress passes a law requiring some action by a specific date. In such cases the only perceived option to the responsible program official is the immediate employment of a contractor to assist in accomplishing the action. So, rather than following the normal procurement cycle, the program official informally commits to a contract so that work can begin at once.

True emergency situations will always arise requiring immediate contract action, but, in our view, program officials are currently overreacting in making unauthorized commitments. Procurement methods exist which allow the contracting officer to properly authorize a contractor to begin work without substantially jeopardizing the Government's control and negotiating position. Under these methods, the contracting officer can permit work to begin (before execution of a contract) by issuing either a letter contract or a precontract cost authorization.

Although these types of actions result in reduced Government negotiation and minimum opportunity for appropriate surveillance of contractor performance, they are preferable to unauthorized commitments by nonprocurement personnel. Letter contracts have the following advantages: there is a binding agreement between the Government and the contractor setting forth the major responsibilities of both parties; the Government has a greater control over contractor costs; and Government funds are obligated up to an amount specified in the letter contract when the contract is signed. Precontract

1/Generally, when program funds expire at the end of the fiscal year, any unobligated amount cannot be used by the program offices.

cost authorizations also offer advantages in that the contractor performs at his own risk; the Government is under no obligation if negotiations break down or Government needs change; and treatment of precontract costs is agreed to in advance. However, in using precontract cost authorizations, program personnel must not accept goods or services until a contract is established. Such acceptance would force the Government to become liable for the reasonable value of the goods or services on a quantum meruit basis. 1/

Program officials may not be fully aware of these procedures nor understand the consequences of their unauthorized commitments. While DOE, in issuing its notice concerning ratifications, has emphasized what program personnel are not allowed to do, little has been done to publicize the proper ways of handling valid emergencies. Therefore, program personnel, in our opinion, will probably continue to deal with the emergencies by making unauthorized commitments until they understand and use conventional contracting methods to meet their needs.

PROGRAM OFFICES ARE NOT TIMELY IN APPROVING PROCUREMENT REQUESTS

Program officials in DOE believe that unauthorized commitments result from delays in approving requests in the program group. This is frequently the case in contract renewals. As the procurement process works, program officials initiate procurement requests and submit them to higher program officials for approval and transmittal to the procurement office. When the contract expires, however, the program official often learns that the procurement office did not receive the request in time to award an immediate follow-on contract. In such cases, program officials often authorize the contractor to continue work in anticipation that a contract will be awarded sometime in the future.

For example, one program official said that he initiated 9 or 10 procurement requests prior to the contracts' expiration on September 30, 1979. These were held up in the program office and, thus, were not received in the procurement office until after the contracts expired. Three were later returned

1/This is true because it would be unfair for the Government to retain the benefits of the contractor's labor without fair compensation. The legal terms for this concept are payment on a quantum meruit or quantum valebat basis.

and processed as ratifications. We also found that, of the 29 ratifications reviewed by the Chief Financial Officer since the DOE notice, 8 were clearly caused by program office delays. In each case, the contractor continued to work.

In the situations described above, a contractor performs work for DOE without a contract. This happens because no one has responsibility for tracking the procurement requests through the system. Unexpected delays, therefore, could be avoided by developing a formal tracking mechanism and making someone within the program group responsible for ensuring that the request proceeds on schedule.

CHAPTER 4

UNAUTHORIZED COMMITMENTS CAN VIOLATE

FEDERAL LAW AND REGULATIONS

Besides avoiding competition, unauthorized commitments often cause violations of Federal law and regulations. The Anti-Deficiency Act is violated if program officials accept goods or services from a contractor before funds are appropriated by the Congress. On the other hand, the Federal Procurement Regulations are violated, unless the contractor has already conferred a benefit on the Government, if an unauthorized commitment is ratified when it would not have otherwise been a proper contract.

DOE VIOLATES THE ANTI-DEFICIENCY ACT

DOE has repeatedly made unauthorized commitments which violate the Anti-Deficiency Act. (Title 31, Section 665 of the U.S. Code). Among other things, this Act prohibits Federal employees from accepting voluntary services for the Government or entering into contracts before money is appropriated by the Congress. "Voluntary," in this case, commonly refers to services performed and accepted with expectation of future payment (as opposed to "gratuitous" service where future payment is not expected). Where such violations occur, the head of an agency is required to report to the President and to the Congress all facts concerning the violation and the corrective actions taken.

DOE has violated the Anti-Deficiency Act by accepting voluntary services when no funds were available to permit DOE to properly establish a contract. For example, the Energy Information Administration ^{1/} maintains and continuously uses a large computer system operated by a single contractor. Computer hardware and software for the system are obtained through numerous DOE contracts and provided to the operating contractor. These contracts run for one year, generally from October 1 to September 30. In the beginning of fiscal years 1979 and 1980, virtually all these contracts had expired without being renewed because funds were not appropriated by the Congress. Nevertheless, program personnel continued to use the computer system and the services of the

^{1/}The Energy Information Administration is the DOE division responsible for collecting, verifying, and analyzing energy data.

contractors. These contractors performed work and conferred a benefit on the Government with the full knowledge of program and procurement officials, but according to the program manager, without any verbal commitment from DOE. We believe this was an implied unauthorized commitment because DOE did not instruct the contractor to stop work. This situation involved 35 contracts in fiscal year 1979 and 30 contracts in fiscal year 1980 totaling \$9 million and \$3.7 million, respectively.

DOE's fiscal year 1979 contract for the overall operation of the computer system was also not renewed on time because funds were not available. The contractor, therefore, threatened to stop providing service to the agency. It is evident from contract documentation that DOE program and procurement officials understood that a contract or authorized commitment could not be made, because doing so before appropriations were available would violate the Anti-Deficiency Act. Therefore, a deliberate attempt was made to maintain voluntary services of the contractor until funds were appropriated. Unfortunately, such action was also a violation of both the letter and the intent of the Anti-Deficiency Act. DOE did not report the above violations to the President or to the Congress as required by the act.

Although we identified only 65 contracts where Anti-Deficiency Act violations occurred, we believe the practice is more widespread in DOE. In fiscal year 1979, the two DOE appropriations bills were not signed until mid-October; nor was there a continuing resolution for the Department of Interior portion of DOE's funding from which the Energy Information Administration receives its funds. The soonest that DOE could have used these funds was early November. ^{1/} Thus, because DOE could not legally renew the expired contracts, the agency accepted voluntary services in anticipation that contracts would be awarded when appropriations became available. In the case of the Energy Information Administration, which only receives funds for a specific fiscal year, the only other alternative would have been to require the contractors to cease operation.

DOE program and procurement personnel apparently are not fully aware of the provisions of the Anti-Deficiency Act, which prohibit a Federal employee from accepting

^{1/}An official of DOE's Office of Budget stated that funds are not available for obligation to contracts for a minimum of 20 days after the appropriations bills are signed. The delay is due to required approvals of apportionment requests by the Office of Management and Budget.

voluntary service from a contractor when a lack of funds do not allow for establishing a contract. . Moreover, DOE personnel do not appear to be aware that the act states that willful violations of the Anti-Deficiency Act constitutes a criminal act which, upon conviction, could result in a fine, or imprisonment, or both.

DOE PROCUREMENT REGULATIONS
DO NOT CONFORM TO THE FEDERAL
PROCUREMENT REGULATIONS

While neither the Federal nor the DOE Procurement Regulations define the appropriate use of ratifications, the Federal Regulations stipulate that unauthorized commitments must be "otherwise proper." The DOE Procurement Regulations, however, do not specifically limit ratifications to these situations. Therefore it is possible for ratifications to be consistent with DOE's rules while violating Federal rules. 1/

We interpret "otherwise proper" to mean that a contracting officer can only ratify the unauthorized commitment if it would have been proper to enter into a contract before the commitment was made. Thus, a ratification is not allowed if the unauthorized commitment violated any substantive legal requirement or exceeded the contracting officer's authority. For example, a contracting officer could not ratify a sole-source contract if the sole-source determination would not have been justified before the unauthorized commitment took place.

How often this type of situation occurs is unknown. DOE regulations do not require procurement officials to determine whether unauthorized commitments are "otherwise proper." Federal procurement regulations imply that such determinations be made before ratifications are approved. Thus, DOE could lack assurance that any ratified contracts are "otherwise proper."

We found one instance where DOE ratified an unauthorized commitment which, in our opinion, may not have been "otherwise proper" because the contractor had an organizational conflict of interest. (A conflict of interest would have prevented DOE from properly establishing a contract unless it was determined to be in the best interest of the Government.)

1/Federal Procurement Regulations take precedence over implementing regulations of Federal agencies.

DOE program personnel made an unauthorized commitment to a firm for modification of a DOE-owned computer model used to forecast petroleum trends, although the firm had extensive relationships with the petroleum industry. Later, when the procurement request was submitted for processing, the procurement office noticed that a sole-source justification was not included, and subsequently recognized that a potential for conflict of interest was present. Soon after, procurement officials also discovered that the contractor was already performing the work.

Rather than notifying the contractor to stop work, the contracting officer issued a retroactive precontract cost authorization. DOE's General Counsel, after being asked to determine whether an actual conflict of interest existed, notified the procurement office that a ratification was necessary. However, before the actual conflict of interest was established and the ratification was approved, a substantial portion of the work had been completed by the firm and accepted by the program office. Following the decision that a conflict of interest existed, the Assistant Secretary for Policy and Evaluation determined that the contract was in the best interest of the Government despite the conflict, and the contract was ratified for \$71,968.

The DOE files did not document whether the firm was actually the only one capable of meeting DOE's needs in the time required. We believe the evidence indicates that the procurement office would not have entered into this contract except for the unauthorized commitment; and that the decision that ratification was in the best interest of the Government was heavily influenced by the fact that the work was substantially complete. We believe the proper course of action should have been to tell the contractor to stop work until a proper determination was made about the acceptability of the contract commitment.

DOE General Counsel representatives, however, disagree that contracts may be ratified under DOE Procurement Regulations without being examined as "otherwise proper," because this is required by the Federal Procurement Regulations. They said that ratified contracts are processed in the same manner as normal contract actions, requiring all the same reviews. General Counsel stated that their approval does not assure that all pertinent facts indicate that the contract was "otherwise proper," but that the entire procurement process should give this assurance.

We are not sure that DOE's current procedures are sufficient to prevent the ratification of commitments which are not "otherwise proper." As long as the discrepancy in the two regulations exists, there is an opportunity for DOE personnel to overlook the requirement of the Federal Procurement Regulation while complying with the DOE regulation.

Of greater significance, DOE has approved many unauthorized commitments through predating and retroactive precontract cost authorizations. Because these procedures require less documentation than a formal ratification, there is a greater potential that they are not "otherwise proper."

Why did DOE ratify the
unauthorized commitment?

In the above example, DOE ratified an unauthorized commitment even though, in our judgement, it may not have been "otherwise proper." We feel this was done because the product had already been accepted by DOE before a decision was made that a conflict of interest existed and that a contract was in the best interest of the Government.

Although under GAO decisions, the Government is liable for the reasonable value of any goods or services accepted by the Government, it should be noted that no Federal agency is bound by the terms of an unauthorized commitment beyond the reasonable value of the goods and services accepted by the Government. For instance, if an improper unauthorized commitment involves both a benefit that has already been conferred and a future requirement, the proper action would be to pay only for the accepted goods and services and to inform the contractor that the future requirement should not be performed.

The above situation highlights the need for stronger controls in general over unauthorized commitments and more specific control by the contracting officer to ensure that acceptable goods and services are obtained at the lowest possible price. Any unauthorized commitment may expose the Government to situations where illegal acts could occur. DOE needs to take additional action to eliminate unauthorized commitments within the agency.

CHAPTER 5

OBSERVATIONS, CONCLUSIONS, AND RECOMMENDATIONS

In fiscal year 1979, DOE reported obligations of \$9.2 billion, or 72 percent of its appropriations, for nearly 6,000 contracts; making it the largest civil procuring agency in the Federal Government. Procurement, therefore, is the primary means by which DOE missions are carried out. DOE, however, circumvents established procurement regulations and minimizes competition when personnel make unauthorized commitments so that contractors begin work without a contract. Procurement officials legitimize these unauthorized commitments using procurement practices which are not always managerially sound and may violate the Federal Procurement Regulations. Program personnel who make unauthorized commitments and accept voluntary goods or services from contractors also risk violating the Anti-Deficiency Act.

DOE has established special procedures for ratifying unauthorized commitments. These require a detailed account of why the commitment was made, reviews by the contracting officer and General Counsel, and approval by the head of the procuring activity. On February 25, 1980, DOE issued a notice designed to discourage unauthorized commitments which upgrades the level of review to include the cognizant Assistant Secretary and the Chief Financial Officer. The notice is a step in the right direction, but DOE can do more to eliminate this practice.

We could not determine the extent of ratifications either before or after the February notice because DOE does not routinely track the number of times they occur. Tabulation of the true number of unauthorized commitments is also difficult because the various DOE procurement offices treat unauthorized commitments differently. Some offices have predated contracts or issued retroactive precontract cost authorizations instead of following DOE ratification procedures for unauthorized commitments. Neither of these actions requires the documentation, review, or approval of a formal ratification, and they avoid the controls designed to minimize the use of unauthorized commitments. Because of this, program officials use the inconsistent policy to "shop around" for the procurement office which provides the fastest, easiest processing of a contract initiated by an unauthorized commitment. DOE officials believe that unauthorized commitments have declined since the

notice was issued; however, no information was readily available to confirm this claim.

Circumventing the normal procurement cycle will continue until DOE successfully eliminates the causes of unauthorized commitments. We identified three major reasons for program personnel making unauthorized commitments:

- DOE program officials often fail to plan procurement needs far enough in advance to utilize normal contracting procedures. Thus, these officials make unauthorized commitments so that contract work can begin without procurement-related delays. This interrupts the normal procurement process and often delays those procurement actions which were properly planned.
- Program officials encounter emergency program requirements and do not believe that enough time is available to go through normal procurement procedures. Thus, they make unauthorized commitments, unaware that legitimate contracting practices are available to handle emergency situations without circumventing the authority of the contracting officer.
- Program offices fail to expeditiously review, approve, and transmit procurement requests to the procurement office. Thus, the contractor is often permitted to start or continue work while the contract or contract modification is being processed.

Regardless of the cause, the Anti-Deficiency Act is violated when DOE program officials make unauthorized commitments and accept voluntary goods or services from a contractor before funds have been appropriated by the Congress. This situation occurred in DOE, involving a large computer system operated by a contractor and requiring the services of at least 35 other contractors. Although the contracts expired at the end of the fiscal year, DOE elected to accept voluntary services from the contractors rather than cease operation of an important agency function because funds were not available to renew. This was a violation of the Anti-Deficiency Act, even though DOE considered the contractor functions important to the agency's mission.

In addition, DOE's procurement regulations do not contain the same restrictions as the Federal Procurement Regulations on ratifying unauthorized commitments. This could result in DOE ratifying improper commitments which would not be allowed by the Federal Procurement Regulations. In particular, DOE's

practice of approving unauthorized commitments through predated and retroactive precontract cost authorizations increases the potential that improper contracts will be approved.

Finally, we believe DOE needs to establish a formal method of monitoring procurement requests in order to detect unauthorized commitments or related situations described in this report. Currently, only the Chief Financial Officer--as a result of the notice--has any agency-wide information about ratifications. No similar collection of data on predated contracts or retroactive precontract cost authorizations exists. Until DOE can accurately estimate how wide-spread the use of these other mechanisms are, we believe that it will be difficult to attempt to eliminate them.

The lack of data on the use of unauthorized commitments prevented us from determining the extent of the problem in DOE. Our selection of 81 contracts for review was judgmental and not representative of the universe of contracts, so we cannot predict the frequency of unauthorized commitments in the agency. However, the contracts demonstrated that DOE's procurement system still lacks sufficient controls to prevent the use of unauthorized commitments to obtain goods or services. Without such controls, we believe that the potential for abuse through unauthorized commitments is great.

In most instances, the problems identified in this report are correctable through actions taken by the Secretary without unduly affecting the normal business of the agency. However, Anti-Deficiency Act violations will remain a problem as long as yearly appropriations are not passed sufficiently in advance of the fiscal year to allow funds to be obligated on October 1. Although we examined this problem only in DOE, it affects all other Federal agencies. GAO is currently studying the problem of late appropriations. The results of that study are expected to be available in early 1981.

RECOMMENDATIONS TO THE SECRETARY OF ENERGY

The Secretary of Energy needs to take additional actions to better control unauthorized commitments to contractors. We recommend that the Secretary take action to:

- Eliminate violations of the Anti-Deficiency Act. To achieve this end, all DOE personnel should be immediately informed in a policy directive that acceptance of voluntary services from contractors when funds are not available is a violation of the Anti-Deficiency Act and that willful violation constitutes a criminal act punishable by fine or imprisonment. Further, this directive should require that any contractor providing continuing services be told to stop work when funds are not available to renew the contract.
- Clearly define in DOE's regulations the circumstances under which a formal ratification can be made. Policies should be consistent agency-wide, so that whenever a contractor has begun work without a contract, such actions should go through the formal ratification process. This policy should stress that retroactive precontract cost authorizations and precontracting are not acceptable methods for establishing contracts under any circumstances. Precontract cost authorizations and letter contracts should be used in lieu of unauthorized commitments when normal contracting procedures are not practicable. However, when a precontract cost authorization is used, program personnel should not accept goods or services from the contractor until after the contract is executed, thus preventing the Government from prematurely incurring a liability. Any contractor performing work as a result of an unauthorized commitment should be told to stop work until an authorized contracting officer determines that it is appropriate to establish a contract.
- Require all program offices in DOE to effectively plan procurement actions one year in advance and enter them into the existing DOE planning system.
- Amend DOE's procurement regulations governing ratifications to make them consistent with the Federal Procurement Regulations. The amended regulation should state that unauthorized commitments are never an appropriate means of establishing contracts; and that, in order to be ratified, the commitment must be "otherwise proper."
- Develop a program to educate all agency personnel who are responsible for initiating procurement requests in the proper procedures for emergency procurement situations. Such training should make it clear that the contracting officer is the only

person authorized to award a contract, and that other options, such as letter contracts and precontract cost authorizations, should be used when the normal procurement process is not practicable.

- Develop a procurement request tracking system within each DOE program group to ensure that requests are reviewed and approved in a timely manner. In this regard, someone within the program group should be made responsible for ensuring that procurement requests proceed on schedule.
- Develop procedures for identifying unauthorized commitments within the Department. It may be possible for example, to adapt the Integrated Procurement Management Information System to report such information from procurement request documents. Action should be taken to penalize those individuals who abuse unauthorized commitments, possibly by written reprimand or other personnel action.

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