

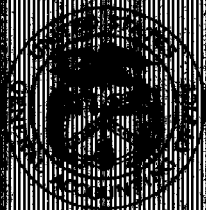
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U.S. General Accounting Office, Committee on
Energy and Natural Resources, U.S. Senate

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ENERGY MANAGEMENT

Inadequate DOE Monitoring of Contractors' Acquisitions From Affiliates





United States
General Accounting Office
Washington, D.C. 20548

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**Resources, Community, and
Economic Development Division**

B-255787

February 11, 1994

The Honorable John Glenn
Chairman, Committee on
Governmental Affairs
United States Senate

Dear Mr. Chairman:

As you requested, this report presents the results of our work examining the Department of Energy's (DOE) requirements for management and operating contractors' acquisitions from affiliated entities—that is, any divisions, subsidiaries or affiliates of the contractors or their parent companies. We are recommending that the Secretary of Energy (1) provide for increased monitoring of the contractors' acquisitions from affiliated entities and (2) require that affiliate acquisitions comply with the DOE Acquisition Regulation requirement regarding competition and subject such acquisitions to the same standards that apply to transactions with nonaffiliated third parties. We make other recommendations dealing with internal controls and specific acquisitions.

As arranged with your office, unless you publicly announce its contents earlier, we will make no further distribution of this report until 30 days after the date of this letter. At that time, we will send copies to the Secretary of Energy and the Director, Office of Management and Budget. We will also make copies available to others on request.

This work was performed under the direction of Victor S. Rezendes, Director, Energy and Science Issues, who can be reached on (202) 512-3841, if you or your staff have any questions. Other major contributors to this report are listed in appendix II.

Sincerely yours,

Keith O. Fultz
Assistant Comptroller General

Executive Summary

Purpose

The Department of Energy's (DOE) management and operating (M&O) contractors are spending millions of dollars acquiring supplies and services from affiliated entities—that is, any divisions or subsidiaries of the contractors or their parent companies. Because of concerns that M&O contractors and their affiliates may be obtaining an unfair competitive advantage and that the government may be paying more than is reasonable or necessary, the Chairman, Senate Committee on Governmental Affairs, requested that GAO review a large M&O contractor's acquisitions from affiliates to determine whether (1) DOE is effectively monitoring the contractor's compliance with procurement requirements and (2) DOE's requirements for acquisitions from affiliated entities are adequate to protect the government's interests. As agreed with the Chairman's office, GAO's review focused on the acquisitions of the Westinghouse Savannah River Company (Westinghouse), DOE's principal M&O contractor at the Savannah River Site in South Carolina.

Background

In general, the DOE Acquisition Regulation permits an M&O contractor to make acquisitions from affiliates as long as certain requirements are met—for example, that the award is made in accordance with DOE-approved policies and procedures designed to permit effective competition. DOE's contract with Westinghouse allows for the noncompetitive acquisition of necessary or desirable support from Westinghouse's affiliates.

During fiscal years 1990, 1991, and 1992, Westinghouse's acquisitions totaled over \$5 billion. This amount included nearly \$100 million in acquisitions from Westinghouse's affiliates and the affiliates of a subcontractor, Bechtel Savannah River, Inc. (Bechtel). DOE considers Westinghouse and Bechtel a single entity for contracting purposes because Bechtel constitutes an integral part of Westinghouse's responsibility for the design, construction, management, operations, and maintenance of the Savannah River Site. Bechtel's contract also allows that company to noncompetitively obtain necessary or desirable support from affiliates.

Results in Brief

DOE's monitoring of Westinghouse's and Bechtel's acquisitions from affiliates is inadequate to ensure that DOE pays fair and reasonable prices for such acquisitions. GAO's analysis of 60 selected Westinghouse and Bechtel acquisitions, totaling about \$48 million from the sample's overall universe of about \$100 million, identified various problems, such as inadequate cost controls and performance problems, unallowable and

other questionable costs, and inappropriate contract approvals and contract payments. Factors contributing to these problems included weaknesses in Westinghouse's management systems and DOE's limited internal controls.

The manner in which DOE, at Savannah River, has chosen to implement its regulations on acquisitions from affiliates fails to adequately ensure that the government's interests are protected. DOE has not required that acquisitions from affiliates comply with the DOE Acquisition Regulation stating that competition must be obtained. Furthermore, Westinghouse and Bechtel have been able to obtain support and services from affiliates without undergoing the same level of scrutiny by DOE that would apply if the purchases were made from nonaffiliated third parties.

Various DOE studies show that problems with acquisitions from affiliates exist elsewhere in DOE. In fact, DOE headquarters officials emphasized to GAO in December 1993 that DOE, through reviews over the last 18 months, has recognized the need to ensure that adequate procedures are developed for determining whether acquisitions from affiliates are in the best interests of the government. These officials also agreed, however, that the information presented in GAO's report demonstrates that acquisitions from affiliates need increased attention.

Principal Findings

DOE's Monitoring Activities Are Inadequate

DOE's monitoring of Westinghouse's and Bechtel's acquisitions from affiliates has been inadequate. GAO found examples showing that some acquisitions were not in the best interests of the government. For instance, a Westinghouse affiliate's employees continued to work on a cost-plus-fixed-fee subcontract after it expired, which resulted in an unauthorized cost overrun of \$1.3 million. Without obtaining DOE's approval, Westinghouse transferred the cost overrun to another subcontract with the same affiliate that had sufficient funds obligated to cover the overrun. In another instance, a 1992 Westinghouse internal review reported that adequate control procedures and management oversight had not been established to properly plan for, procure, monitor, and pay for Bechtel's acquisitions from its parent corporation. Other Westinghouse reviews of the Bechtel parent corporation's invoices showed substantial amounts of improper costs. For example, one review

identified \$291,592 in unallowable costs, \$51,900 in charges from prior years that may have already been paid, and about \$500,000 in charges that, according to the review, were prohibited by the Bechtel contract. For another affiliate's acquisition, DOE did not know that about \$80,000 of the approved amount had already been billed and paid under extensions of a separate affiliate acquisition that had not been approved by either Westinghouse or DOE.

A number of factors have contributed to the monitoring problems facing DOE. They include weaknesses in Westinghouse's management systems and limitations in DOE's internal controls. For example, Westinghouse's system for monitoring procurement awards does not provide some data needed for DOE's oversight, such as a list of procurements that require DOE's review and approval. In addition, DOE does not have internal controls to verify that Westinghouse submits acquisitions from affiliates for approval, as required. Instead, DOE relies on Westinghouse to comply with the requirement. As a result, in fiscal year 1992 DOE did not review and give the required approval for 26 of Westinghouse's acquisitions from affiliates, costing \$514,240.

GAO found that many of these same problem areas were highlighted in DOE's April 1993 review of Westinghouse's and Bechtel's transactions with affiliates. In addition, on the basis of other DOE studies, the procurement problems GAO identified involving affiliates at Savannah River are not unique. For example, a fiscal year 1992 DOE review of Kaiser Engineers Hanford Company concluded that the company relies on affiliates to perform work without making them aware of applicable contract terms and conditions, allows the affiliates to set prices and rates without obtaining documentation to support their reasonableness, and does not review invoices for unallowable costs before making payment.

DOE's Implementation of Regulations Weakens Oversight

The DOE Acquisition Regulation allows M&O contractors to make noncompetitive acquisitions from their affiliates in limited circumstances. Competition must be obtained, except for purchases of technical services from affiliates that have special expertise that is documented. Under DOE's contract with Westinghouse and Westinghouse's contract with Bechtel, each contractor may obtain services for "necessary or desirable support" from affiliates. DOE officials at Savannah River have interpreted this provision as allowing contractors to obtain noncompetitively a broad range of services, such as training and legislative monitoring, without having to document that the affiliate has special expertise. This

interpretation, which has effectively eliminated the DOE Acquisition Regulation's requirements for acquisitions from affiliates at Savannah River, seems contrary to the regulation's stated purpose of strictly controlling such acquisitions.

Westinghouse and Bechtel have also been able to obtain support from affiliates without the same level of DOE documentation that would apply if the purchases were made from nonaffiliated third parties. These transactions have not been subject to the same DOE requirements, such as organizational conflict-of-interest disclosure statements and detailed cost estimates, that generally apply to purchases from third parties. When it lacks this kind of information, DOE is relying on both contractors to determine that their acquisitions from affiliates are in the best interests of the government. As illustrated by the problems GAO identified, this has not always been the case.

Recommendations

To ensure that acquisitions made from affiliated entities of Westinghouse and Bechtel at Savannah River are in the best interests of the federal government, GAO recommends that the Secretary of Energy (1) provide for increased monitoring of the contractors' acquisitions from affiliated entities and (2) require that such acquisitions comply with the DOE Acquisition Regulation stating that competition must be obtained and subject such acquisitions to the same standards that apply to transactions with nonaffiliated third parties. GAO makes other recommendations in chapter 2 dealing with internal controls and specific acquisitions.

Agency Comments

GAO discussed the facts of this report with DOE officials at both Savannah River and DOE headquarters, including the Chief of the M&O Contractor Oversight Branch and the Director of the Office of Contractor Management and Administration, respectively. These officials generally agreed with the facts presented and suggested changes for clarification and updated information, including some corrective actions that were taken, which GAO incorporated where appropriate. In addition, the DOE headquarters officials stressed the extent of DOE's reviews over the last 18 months that examined contractors' acquisitions from affiliates. As requested, GAO did not obtain written agency comments on a draft of this report.

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Abbreviations

BSRI	Bechtel Savannah River, Inc.
DEAR	Department of Energy Acquisition Regulation
DOE	Department of Energy
GAO	General Accounting Office
M&O	management and operating
SRS	Savannah River Site
WSRC	Westinghouse Savannah River Company

Introduction

Background

The Department of Energy's (DOE) Savannah River Site (SRS) is a government-owned, contractor-operated nuclear weapons production facility in South Carolina. It is a large site—about 300 square miles—that has produced nuclear weapons materials since the mid-1950s. Three management and operating (M&O) contractors—the Westinghouse Savannah River Company (WSRC), Wackenhut Services, Inc., and the University of Georgia—are responsible for the site's production-related activities, physical security, and nonproduction environmental activities, respectively. Their acquisitions of supplies and services with appropriated funds for the use of the federal government totaled about \$5.4 billion during fiscal years 1990, 1991, and 1992. Wackenhut Services' and the University of Georgia's acquisitions comprised less than \$20 million of the total.

M&O contractors are allowed under certain conditions to acquire support and services from affiliated entities (any divisions, subsidiaries, or affiliates of the contractors or their parent companies). For example, nearly a combined \$100 million in support and services was acquired from affiliated entities of WSRC and affiliated entities of Bechtel Savannah River, Inc. (BSRI). Although BSRI is a subcontractor of WSRC, both agreed that DOE considers them as a single entity for contracting purposes because BSRI constitutes an integral part of WSRC's responsibility for the design, construction, management, operations, and maintenance of SRS. Most of the acquisitions from WSRC's and BSRI's affiliates were noncompetitive cost-plus-fixed-fee subcontracts and intercompany transfers.¹

DOE follows specific regulations in administering M&O contracts. These regulations are referred to as the Federal Acquisition Regulation and the DOE Acquisition Regulation (DEAR). The DEAR provides requirements for DOE's oversight of M&O contractors' acquisitions from affiliates.

The Federal Acquisition Regulation and the DEAR permit WSRC to make acquisitions by contract with appropriated funds for the use of the federal government from affiliates through purchase or lease. In general, DOE's regulations permit an M&O contractor to purchase from an affiliate as long as (1) the M&O contractor's purchasing function is independent of the proposed contractor-affiliated source, (2) the same terms and conditions would apply if the purchase were from a third party, (3) the award is made in accordance with DOE-approved policies and procedures designed to

¹Intercompany transfer," a term used by SRS' procurement officials, is synonymous with the term "interorganizational transfer," which is defined by DOE headquarters as the complete agreement between the procuring contractor and an interorganizational entity—an affiliate, subsidiary, or division of the procuring contractor—for producing the item or providing the work effort.

permit effective competition, and (4) the award is legally enforceable. When technical services are purchased from an affiliate that has special expertise, and that expertise is documented, the DEAR does not require competition. These regulations are made specifically applicable to WSRC by provisions in its contract with DOE.

Additionally, DOE incorporated a nonstandard contract clause—a clause in the contract that allows DOE to deviate from the standards contained in the DOE regulations—in WSRC's contract. This clause is interpreted as allowing WSRC to noncompetitively obtain necessary or desirable support at cost from affiliates through intercompany transfers. Like WSRC's contract, BSRI's contract contains a nonstandard clause, which is interpreted as allowing it to noncompetitively obtain necessary or desirable support at cost from affiliates through intercompany transfers. Under the DEAR, DOE can authorize the use of nonstandard contract clauses.

Subcontracts are awarded and administered through purchasing systems established by individual M&O contractors and approved by DOE. DOE oversees subcontracts awarded by its M&O contractors, primarily through reviews of contractors' purchasing systems. DOE field offices generally review these systems once every 3 years. On the basis of the review results, the field offices generally approve contractors' purchasing systems, with recommendations to correct identified problems, and set specified dollar thresholds above which contractors must obtain DOE's approval of subcontracts in advance. For example, in fiscal year 1992 about 30 percent of the purchasing systems that were reviewed were approved, and in fiscal year 1993 about 81 percent of the purchasing systems that were reviewed received conditional approval.² In the years between these reviews, DOE field offices are to provide oversight—termed “surveillance”—that includes monitoring contractors' responses to review recommendations, approving changes in the contractors' purchasing systems, and reviewing subcontracts in excess of the established dollar thresholds.

As required by 42 U.S.C. section 5918(a), DOE has established policies and procedures for identifying and avoiding or mitigating organizational conflicts-of-interests before contracts and subcontracts are awarded. DOE's regulations define “conflict of interest” as a situation in which a potential contractor has interests that (1) may diminish the potential contractor's capacity to give impartial, technically sound, objective assistance and advice or (2) may result in the contractor's having an unfair competitive

²Conditional system approvals are for 6 months and allow one 6-month conditional extension.

advantage over others competing for the contract. DOE's regulations emphasize that certain procurement categories are particularly susceptible to conflicts of interest. These categories include contracts for evaluation services, technical consulting, management support, and professional services. DOE requires that subcontractors at all tiers,³ before they are awarded a contract, submit either (1) a certification that they know of no relevant information bearing on possible conflicts of interest or (2) information disclosing relevant possible conflicts. A DOE official must review this information to determine whether a possible conflict of interest exists and, if so, decide on the proper course of action. Possible actions include disqualifying the offeror from award or avoiding such conflicts by the inclusion of appropriate conditions in the resulting contract.

Objectives, Scope, and Methodology

Concerned that M&O contractors and their affiliates may be obtaining an unfair competitive advantage under sole-source contract awards and that the government may be paying more than is reasonable or necessary, the Chairman, Senate Committee on Governmental Affairs, requested that we review a large M&O contractor's acquisitions from affiliates. In response to this request and subsequent discussions with the Chairman's office, we specifically examined whether (1) DOE is effectively monitoring M&O contractors' compliance with procurement requirements and (2) DOE's requirements, including nonstandard contract terms, for M&O contractors' acquisitions from affiliated entities, are adequate to protect the government's interests. We also agreed with the Chairman's office that our review would focus on the acquisitions of WSRC, DOE's principal M&O contractor at SRS.

We conducted this review between July 1992 and December 1993, in accordance with generally accepted government auditing standards. To develop the information on the M&O contractor's acquisitions from affiliates, we performed the following:

- Reviewed the M&O contractor's acquisitions at SRS.

³The term "tiers" refers to the fact that work under a subcontract may be subcontracted out and that the subcontracted work may be further subcontracted out, and so on.

- Reviewed DOE's controls, monitoring, and reports on related-parties transactions.⁴
- Analyzed previously identified monitoring deficiencies and procurement problems for needed improvements in regulations, monitoring requirements, and contract clauses.
- Examined efforts by the M&O contractor and DOE to increase competitive procurements.
- Reviewed reports issued by various DOE field offices that examined M&O contractors' acquisitions from affiliates, including coordinating and discussing our review with officials of DOE's Financial Management Review and Evaluation Division at SRS, since this division was concurrently performing a review of WSRC's related-parties transactions as part of its oversight of WSRC's financial management activities.
- Interviewed DOE, WSRC, BSRI, and Office of Inspector General officials at SRS and financial management officials at DOE headquarters. We also interviewed Westinghouse's Director of Government Business Development in Washington, D.C., and reviewed the files that the Director maintained in connection with one of the WSRC acquisitions we selected for review.

In carrying out our work, we judgmentally selected for review a sample of 60 acquisitions made by either WSRC or BSRI that had a total dollar value of about \$48 million. Because our sample was judgmental, the results cannot be generalized. We selected the sample from listings of acquisitions and modifications that DOE reviewed after October 1, 1989, until September 30, 1992, as well as principally from listings of acquisitions made by WSRC and BSRI from October 1, 1989, through September 30, 1992. There were a few instances where our sample universe included acquisitions from fiscal year 1989. The universe from which we selected our sample consisted of 311 WSRC acquisitions totaling about \$58 million and 430 BSRI acquisitions totaling about \$42 million. We used our sample to test DOE's compliance with monitoring and oversight requirements and to identify any effects resulting from monitoring deficiencies and procurement problems. The sample included all major types of acquisitions, including noncompetitive intercompany transfers and cost-plus-fixed-fee subcontracts, as shown in table 1.1.

⁴DOE defines related-party transactions as transactions between a contractor and its parent; a contractor and other subsidiaries of a common parent; a contractor and trust for the benefit of employees, such as pension and profit-sharing trusts that are managed by or under the trusteeship of the contractor's management; a contractor and its principal owners, management, or members of their immediate families; and affiliates.

Table 1.1: Type, Number, and Cost of WSRC and BSRI Acquisitions That GAO Selected

Type of acquisition	Number of acquisitions	Total cost
WSRC's noncompetitive intercompany transfers	26	\$11,272,563
WSRC's noncompetitive cost-plus-fixed-fee subcontracts	9	22,260,875
WSRC's noncompetitive memorandum purchase orders	4	1,845,299
WSRC's competitive subcontracts	7	1,617,581
WSRC's sole-source subcontracts	6	3,270,655
BSRI's noncompetitive intercompany transfers	8	8,102,054
Total	60	\$48,369,027

Except for some data available in Washington, D.C., we did not verify invoices from WSRC's and BSRI's parent corporations (Westinghouse Electric Corporation in Pittsburgh, Pennsylvania, and Bechtel National, Inc., in San Francisco, California, respectively). We also relied on information in WSRC audits that identified significant problems with support for the invoices from affiliated entities. Additionally, our review of M&O contractors at other sites was limited to DOE reports we obtained on related-party transactions.

DOE's Monitoring of WSRC's and BSRI's Acquisitions From Affiliates Is Inadequate

DOE's monitoring of WSRC's and BSRI's acquisitions from affiliates has been inadequate. Our analysis of 60 selected WSRC and BSRI acquisitions totaling about \$48 million identified various problems showing that some acquisitions were not in the best interests of the government. For example, DOE had not approved the transfer of a cost overrun from one affiliate subcontract to another subcontract, affiliates were charging thousands of dollars in unallowable costs, and DOE was unaware of costs being incurred under acquisitions not approved by DOE or WSRC. As a result, DOE does not know whether it paid fair and reasonable prices for some acquisitions from WSRC's and BSRI's affiliates. Weaknesses in WSRC's management systems and DOE's limited internal controls were factors contributing to these problems.

Other factors have adversely affected DOE's ability to adequately protect the government's interests when obtaining goods and services from affiliates. The manner in which DOE has chosen to implement its regulations on acquisitions from affiliates at Savannah River is one such factor. In this instance, DOE has not required such acquisitions to comply with the DEAR requirement regarding competition. Furthermore, WSRC and BSRI have been able to obtain support from affiliates without the same level of DOE scrutiny that would apply if the purchases were made from third parties.

DOE's Monitoring Efforts at SRS Are Lax, and Problems With Affiliates Exist Elsewhere in DOE

Not only has DOE's monitoring of WSRC's and BSRI's acquisitions from affiliates been lax, problems with such acquisitions exist elsewhere in DOE. On the basis of our analysis of selected acquisitions, we found various problems involving millions of dollars in acquisitions. For example, DOE's monitoring did not minimize cost, ensure receipt of acceptable goods or services, or maximize competition. Factors contributing to these problems include weaknesses in WSRC's management systems and limitations in DOE's internal controls. In addition to our identification of monitoring problems at SRS, various DOE studies show that affiliate acquisition problems exist elsewhere in DOE. Moreover, DOE headquarters officials emphasized to us in December 1993 that DOE, through reviews over the last 18 months, has recognized the need to ensure that adequate procedures are developed for determining whether acquisitions from affiliates are in the best interests of the government. These officials also agreed, however, that our work shows that acquisitions from affiliates need increased attention.

Numerous DOE Monitoring Deficiencies and Procurement Problems Exist at SRS

By using our judgmental sample of WSRC's and BSRI's acquisitions from affiliates, we identified a number of DOE monitoring deficiencies as well as several procurement problems. These deficiencies and problems illustrate the consequences of DOE's inadequate monitoring. To simplify our discussion, we have categorized these deficiencies and problems into the following three categories:

- inadequate cost controls and performance problems,
- unallowable and other questionable costs, and
- inappropriate contract approval and contract payments.

In the remainder of this section, we discuss several examples to highlight the major problem areas we found and to illustrate the consequences of inadequate monitoring. (App. I includes a detailed discussion of each example plus some others to provide further information on the types of problems we uncovered and the complex issues involved.)

Inadequate Cost Controls and Performance Problems

This example involves two WSRC noncompetitive, cost-plus-fixed-fee subcontracts that totaled about \$12.1 million when awarded for reactor restart support from the Westinghouse Nuclear Services Division. WSRC's contract files showed that employees continued to work on one of the cost-plus-fixed-fee subcontracts after it expired, which resulted in an unauthorized cost overrun of \$1.3 million. Without obtaining DOE's required approval, WSRC transferred the cost overrun to another Westinghouse Nuclear Services Division cost-plus-fixed-fee subcontract that had sufficient funds obligated to cover the cost overrun. Furthermore, according to the contract files, it appears that some of the same people worked under both contracts, although there is no clear record of how this was handled in accounting for the costs charged to both contracts.

Another example involves a cost-plus-fixed-fee subcontract for support to WSRC from Westinghouse Environmental and Geotechnical Services. According to the Subcontract Technical Representative's subcontract closeout report, WSRC terminated the subcontract due to continual problems with insufficient cost control (inadequate cost and invoice supporting documentation) and cost overruns by Westinghouse Environmental and Geotechnical Services. Although insufficient cost control and overruns were given as the reason for terminating the subcontract, the subcontract experienced continual performance problems and performance of work after the contracted period of performance. For example, performance problems included products that were late, did not meet contractual requirements, and were of poor

quality. Also, Westinghouse Environmental and Geotechnical Services' lack of oversight contributed to a serious power accident which occurred while it supervised one of two drilling subcontractors during soil investigations at SRS' K-reactor. Twice in a matter of hours, the subcontractors drilled into buried power cables. Westinghouse Environmental and Geotechnical Services supervised the first subcontractor that drilled into a cable. If the Westinghouse supervisor had ensured that all drilling was stopped after the subcontractor under his supervision hit the first cable, costs may have been substantially reduced—the estimated cost to repair that cable was \$29,000. Although the cost to repair both cables was originally estimated at \$210,000, that cost subsequently increased, according to a DOE reactor official at SRS, to about \$815,000 because WSRC did not prevent moisture intrusion, which caused more damage.

A third example involves 100 canisters manufactured by a WSRC affiliate to hold vitrified high-level radioactive waste. WSRC managed the procurement, including inspecting the canisters received at SRS, and Bechtel National participated in developing specifications for the canisters and performed the inspections at the affiliate's plant. In August 1988, just before the transition of the M&O contract from the former M&O contractor to WSRC, the former contractor made a split award to a Westinghouse Electric Corporation affiliate and a non-Westinghouse Electric Corporation affiliate to manufacture 100 canisters each for SRS' Defense Waste Processing Facility. During the transition period, deficiencies were identified in specifications for the canisters developed by the former M&O contractor that necessitated the revision of the specifications. The revision, made by Bechtel National, Inc., in December 1988, contributed to the scrapping of 23 manufactured canisters, plus the materials for manufacturing the remaining canisters, and increased the cost of the two contracts from \$1,661,018 to \$2,288,140. The Westinghouse Electric Corporation's affiliate delivered its 100 canisters by the end of 1990, and the other contractor delivered 10, but none of the 110 canisters was acceptable. WSRC subsequently released Bechtel National from the effort to resolve the canister problems and terminated the nonaffiliated contractor's contract due to changing requirements. WSRC plans to use all of the canisters, except one damaged by a fall from a truck, for testing; however, some of the testing includes a radioactive substance, and none of the canisters has been approved for tests involving radioactive substances. WSRC paid its affiliate \$1,276,708—the full contract amount plus a fee, and WSRC paid the nonaffiliated contractor \$565,765 for terminating the contract after receiving the first 10 canisters.

Unallowable and Other
Questionable Costs

This example involves WSRC's and DOE's monitoring of several of BSRI's noncompetitive intercompany transfers. Before fiscal year 1992, BSRI acquired about \$35 million in services directly from its parent company, Bechtel National, Inc., without purchase orders and did not document that the services were received or that they were acceptable. A WSRC internal review in 1992 reported that adequate control procedures and management oversight had not been established to properly plan for, procure, monitor, and pay for BSRI's acquisitions from Bechtel National.

A subsequent review by WSRC's Subcontract Accounting Branch of selected fiscal year 1992 Bechtel National invoices totaling \$3,469,000 identified \$291,592 in unallowable costs, \$51,900 in charges from prior years that may have already been paid, and about \$500,000 in charges for subcontracting and consulting services that were prohibited by the BSRI contract. Additionally, WSRC's Subcontract Accounting Branch withheld payment on a \$67,024 cost overrun and questioned \$945,930 of charges in excess of the amounts authorized for reactor restart geotechnical services. Furthermore, our limited review of selected intercompany transfers included one transfer that had subcontracting costs of about \$426,000 that WSRC viewed as being prohibited by the BSRI contract.

As a result of the problems with BSRI's intercompany transfers, WSRC and DOE have initiated various corrective actions. (These are discussed in greater detail in app. I.) For example, in August 1993 DOE established that all of BSRI's intercompany transfers, regardless of dollar value, are to be submitted to DOE at SRS for approval.

Inappropriate Contract
Approval and Contract
Payments

This example involves two of WSRC's intercompany transfers—the first for \$336,000 and a second follow-on intercompany transfer for \$625,000—to carry out legislative monitoring and liaison activities at DOE headquarters over a period of several years. On the basis of our review of WSRC's and DOE's records and discussions with various officials, we found the following:

- Extensions of the first intercompany transfer, which overlapped the second intercompany transfer for 17 months, were authorized by the Westinghouse Electric Corporation and were not approved by either WSRC or DOE.
- DOE's and WSRC's procurement officials did not have knowledge of payments made under the overlapping extensions approved by Westinghouse Electric Corporation and charged to the WSRC contract.

- WSRC did not have detailed cost estimates to support the \$625,000 requested for the second intercompany transfer; yet DOE retroactively approved it, on a conditional basis, in August 1992 back to February 1990, without obtaining information on the costs incurred before August 1992. DOE did not know that only about \$104,000 had been incurred as of August 1992, or that about \$80,000 of this amount had been billed and paid under the overlapping extensions of the first intercompany transfer that had not been approved by DOE or WSRC.

As a result of the various problems we identified in this example, WSRC and DOE have initiated a number of corrective actions. (These are discussed in greater detail in app.I.)

Several Factors Contributed to Monitoring Problems

A number of factors have contributed to the monitoring deficiencies and procurement problems facing DOE at SRS. They include weaknesses in WSRC's management systems and internal reviews and limitations in DOE's internal controls. In addition, some DOE officials at SRS view staffing constraints as limiting monitoring efforts.

WSRC's Management Systems and Internal Reviews

We noted several problem areas related to WSRC's management systems and internal reviews. For example, WSRC's system for monitoring procurements does not provide some data needed by DOE, such as a list of procurements, broken out by dollar threshold, that required DOE's review and approval. Also, some data within the WSRC procurement system are missing or inaccurate. According to DOE, improvements to the procurement data base are being made, but the system may have to be replaced.

WSRC also has not implemented systems for monitoring contracts under its subcontractor technical representative program or its finance office's audits of invoices for improper payments. For example, the technical representative program was implemented in 1991 to provide for adequate administration, technical follow-up, and financial control of subcontracts. As of June 1993, 744 program representatives were monitoring 1,793 subcontracts. However, WSRC does not generate a program monitoring report that provides such data as administrative difficulties due to heavy workloads; contract weaknesses; contractors' responsiveness to the program representatives' requests; or problems with costs, schedules, and performance. WSRC's March 1993 internal review of the program indicated a high level of deficiencies in program compliance that, in part, was attributed to a significant lack of management overview and involvement

as well as to deficient organizational controls. The review concluded that the program's objectives were not being adequately achieved and that adequate levels of management knowledge of and support for the program did not exist.

Also, some of WSRC's internal reviews may not receive timely attention from either WSRC or DOE. For example, WSRC's February 1992 review of two affiliates' contracts for services performed by the same expert reported the following about the two contracts:

- Although both had almost identical scopes of work, one was fee-bearing while the other was non-fee-bearing.
- The periods of performance overlapped for 11 months.
- Both had broad scopes of work, vague deliverables, and no milestones.
- The subcontractors' time and performance had not been adequately monitored.

At the time we received the report in November 1992, WSRC had not received an adequate response to the report from WSRC's Procurement Department or provided a copy of the report to DOE, even though it had been issued in February 1992. On July 30, 1993, a WSRC official provided us with a summary of WSRC's conclusions subsequent to reviewing responses to the February 1992 report. One major conclusion was that more specific scopes of work were provided in response to the report as well as a list of the deliverables for each contract.

DOE's Internal Controls

In addition to problems associated with WSRC's management systems and internal reviews, DOE has not implemented other needed internal controls to ensure that M&O contractors identify acquisitions from their affiliates and submit them to DOE for approval. For example, DOE does not verify that WSRC submits such acquisitions for approval, as required. Instead, DOE relies on WSRC to comply with the requirement. As a result, in fiscal year 1992 DOE did not review 26 of WSRC's acquisitions from affiliates that required DOE approval; these acquisitions cost \$514,240.

Moreover, DOE does not require the identification of all acquisitions from affiliates. WSRC identifies acquisitions from only those affiliates in its first tier of subcontractors. WSRC does not monitor its second or lower-tier acquisitions, and DOE does not require its M&O contractors to monitor those lower-tier acquisitions to identify acquisitions from affiliates.

Lower-tier acquisitions not monitored total millions of dollars. For example, we reviewed WSRC's small business subcontracting plans and reports of subcontracted amounts for 15 subcontracts awarded to large businesses in fiscal year 1992. The 15 subcontracts totaled \$47,532,250; of that amount, \$3,666,978 was reportedly subcontracted to large businesses and \$1,197,744 to small businesses. WSRC did not identify who received the subcontracts. Also, additional lower-tier acquisitions awarded under the 15 monitored subcontracts, as well as those under the other subcontracts awarded by WSRC, are not identified or tabulated. As a result, neither the volume of lower-tier acquisitions nor of lower-tier acquisitions from affiliates, if any, is known. According to DOE's contracting officials at SRS, no such information is required, and they did not believe a requirement was needed because they said about 80 percent of WSRC's acquisitions are competitive.

DOE's Staffing Issues

According to some DOE officials at SRS, staffing constraints have also limited DOE's monitoring of M&O contractors' acquisitions from affiliates. DOE adjusted dollar thresholds to reduce the number of acquisitions requiring DOE's review and approval so that the staff could perform surveillance reviews. The number of procurement actions reviewed at SRS decreased from 396 in 1991 to 267 in 1992. Furthermore, DOE completed only one of the nine surveillance reviews scheduled for 1992. In addition, in February 1993 DOE at SRS reported that (1) 27 of 33 recommendations contained in a June 1992 DOE headquarters-conducted review of program management assistance had not been closed out because of staffing constraints and (2) the remaining recommendations would be prioritized to focus limited resources on the most important issues. Similarly, as of June 1993 DOE still had not closed out 20 of the 30 recommendations made in its April 1991 review of WSRC's procurement system.

DOE's Contracting Division at SRS includes an M&O Contractor Oversight Branch that is responsible for overseeing the three M&O contractors at SRS. At the end of June 1993, this branch was staffed with a branch chief, three contract specialists, a procurement specialist, and a secretarial co-op. According to the Branch Chief, oversight of the M&O contractors has been essentially limited to review and approval of acquisitions exceeding dollar thresholds requiring DOE approval.

DOE's Director of Contractor Management and Administration informed us in December 1993 that in his view the staffing issue at SRS stemmed more from the staff's not having the needed level of expertise than from insufficient staffing.

Recent DOE Evaluation Found Similar Affiliate Problems at SRS

In April 1993, DOE's Financial Management Review and Evaluation Division at SRS issued the results of its first review of WSRC's and BSRI's related-party transactions. This review highlighted many of the same problems we found. For example, according to the report, (1) WSRC did not obtain DOE's approval for all changes in the statement of work for contracts and orders placed with the Westinghouse Electric Corporation and its affiliates, (2) DOE's procedures for review and approval of WSRC's procurement actions with Westinghouse Electric Corporation required strengthening, and (3) noncompetitive intercompany transfers with Bechtel National, Inc.—the parent company of BSRI—were not submitted to DOE for approval.

Although several recommendations were made to correct the problems identified, DOE did not ensure timely implementation of the recommendations. Actions on the recommendations have not been tracked, and no plans exist for following up on the recommendations until the next regularly scheduled related-party transaction review, which is currently planned for August 1994.

Problems With Acquisitions From Affiliates Exist at Other DOE Locations

On the basis of DOE reports prepared on other DOE field locations, the problems with acquisitions from affiliates that we identified at SRS do not appear to be unique. For example, during a December 1993 meeting at DOE headquarters, DOE officials, including the Director of the Office of Contractor Management and Administration, were not surprised by the intercompany transfer problems we found at SRS. These officials stated that DOE, through its reviews of contractors' purchasing systems over the last 18 months, has recognized the need to ensure that adequate procedures are developed for determining whether awards to interorganizational entities are in the best interests of the government; that effective cost analyses, technical evaluations, and negotiations are conducted and documented; and that payment procedures are structured to ensure that interorganizational entities do not receive unreasonable interim payments. To illustrate the types of problems DOE has found during its reviews, these officials provided us with an excerpt from DOE's October 1993 Contractor Purchasing System Review and Contractor Personal Property System Review Annual Observations Report and Statistical Summary—October 1992-September 1993 that echoed many of the problems we identified at SRS. According to the report:

- If contractor-controlled sources had the capabilities to perform the work, they were selected, without satisfying the requirement to maximize the government's best interests.
- Requisitions for intercompany transfer authorizations generally contained broad scopes of work that did not permit analyses of the factors of quality, cost, and time.
- Proposals provided no justification for the hours proposed and did not relate the proposed hours to the specifics of the scope of work.
- Proposed costs were not effectively evaluated. Technical evaluations of cost proposals took no exceptions to any of the proposed efforts.

These officials also stated that the problems we identified at SRS demonstrate that acquisitions from affiliates need increased attention.

In addition, DOE sites that issued related-party transaction reports in fiscal year 1992 reported various problems, including questionable support for invoices, lack of cost analyses to determine price reasonableness, and inappropriate temporary duty travel assignments and costs. For example, the review of Raytheon Services Nevada found that as of February 1992, 14 employees were on extended temporary duty travel; 8 of them had been in this status at Yucca Mountain since 1987 and 2 at Lawrence Livermore National Laboratory since 1988. According to the report, these employees were inappropriately receiving per diem at Yucca Mountain, even though they had in fact relocated to Yucca Mountain. Their actual status was evidenced by such actions as purchasing homes and relocating their families.

A separate review of the Pacific Northwest Laboratory identified problems with the adequacy of documentation of expenses and support for invoiced costs. According to the report, few receipts or cost break downs were available, and it was not possible to determine what the laboratory "is being charged for, if the amounts being charged are at the negotiated rates, if the charges include fee or other unallowable costs, or if travel is within the Federal Travel Regulation." A review of Kaiser Engineers Hanford Company concluded that the company relies on affiliates to perform work without making them aware of applicable contract terms and conditions, selects affiliates without providing source justification, allows the affiliates to set prices and rates without obtaining documentation to support the reasonableness of those rates, and does not review invoices for unallowable costs before making payment.

DOE's Implementation of Regulations Weakens Oversight at SRS

The manner in which DOE, at SRS, has chosen to implement its regulations on acquisitions from affiliates has also adversely affected DOE's ability to adequately ensure that the government's interests are protected. DOE has not required acquisitions from affiliates to comply with the DEAR's requirement regarding competition. Furthermore, WSRC and BSRI have been able to obtain support from affiliates without undergoing the same level of DOE scrutiny that would apply if the purchase were made from a nonaffiliated third party. Even where DOE, at SRS, recognized that its affiliate acquisition regulations were applicable, DOE did not fully implement the requirements.

DOE's Interpretation of Regulations Causes Difficulties

The DEAR allows M&O contractors to make noncompetitive acquisitions from their affiliates in limited circumstances. Competition must be obtained, except for the purchases of technical services from affiliates that have special expertise and that expertise is documented. Under DOE's contract with WSRC and WSRC's contract with BSRI, each contractor may obtain services for "necessary or desirable support" from affiliates. DOE officials at SRS have interpreted this provision as allowing contractors to obtain noncompetitively a broad range of services. For example, services such as training and legislative monitoring were obtained without documentation that the affiliates had special expertise. This interpretation, which has effectively eliminated the DEAR's restrictions¹ on acquisitions from affiliates at SRS, appears to be contrary to the regulation's stated purpose of strictly controlling such acquisitions.

In general, DOE's regulations permit an M&O contractor to purchase from an affiliate so long as (1) the M&O contractor's purchasing function is independent of the proposed contractor-affiliated source, (2) the same terms and conditions would apply if the purchase were from a third party, (3) the award is made in accordance with DOE-approved policies and procedures designed to permit effective competition, and (4) the award is legally enforceable. In purchasing technical services, when the affiliate has special expertise and that expertise is documented, the DEAR does not require competition. These regulations are made specifically applicable to WSRC by provisions in its contract with DOE.

In promulgating its rules governing M&O contractors' activities, DOE recognized the importance of purchases from affiliates. However, the June 27, 1988, preamble to DOE's final rulemaking on purchasing

¹Nothing in these restrictions, however, precludes WSRC from obtaining goods and/or services from affiliates on the basis of a sole-source justification.

regulations for M&O contractors also states that purchases from affiliates must be controlled. The preamble states that

These types of purchases, because of the opportunity for favoritism, must be no less regulated than a normal competitive transaction. In fact, we believe that such purchases must be more strictly regulated.²

DOE's contract with WSRC and WSRC's contract with BSRI do not distinguish between purchases from affiliates or intercompany transfers. The contracts state that WSRC and BSRI may obtain necessary or desirable support from affiliates. This language has been interpreted by DOE officials at SRS to mean that intercompany transfers need not be competitive, nor meet the same terms and conditions that would apply if the same goods or services were obtained from a third party. According to these officials, transfers at cost are not purchases and should be referred to as "intercompany transfers," but these officials believed that the DEAR does not clearly differentiate between those situations in which purchase criteria do and do not apply for acquisitions at cost. As a result, these officials at SRS asked DOE headquarters for clarification of the rules on noncompetitive acquisitions from affiliates. These officials added that DOE headquarters was considering clarifying these points.

During a December 1993 meeting with DOE headquarters officials, including the Director of the Office of Contractor Management and Administration, we were informed that DOE headquarters does not see the same type of clarification problem expressed by the SRS officials. These DOE headquarters officials again cited DOE's October 1993 Contractor Purchasing System Review and Contractor Personal Property System Review Annual Observations Report and Statistical Summary—October 1992-September 1993 as showing that contractors should conduct make-or-buy decisions to ensure that both interorganizational entities and potential vendors receive fair treatment during such decisions and that the government's interests are protected for both quality of product and reasonableness of price. Furthermore, purchasing activities should also have an effective management system to ensure that intercompany transfers are operating in a cost-effective manner and provide satisfactory performance in accordance with the terms of the contract.

The interpretation of existing regulations by DOE officials at SRS effectively eliminates the DEAR's requirements for affiliate purchases and seems

²53 Fed. Reg. 24, 224 at 24229-24230 (1988).

contrary to the stated purpose of the regulation to strictly control intercompany transfers. As a result, WSRC and BSRI have been able to obtain support from affiliates without the same level of DOE documentation that would apply if the purchase were made from a third party. The noncompetitive transfers have covered a wide range of services, such as training, public relations, legal services, legislative monitoring, development and implementation of systems, total quality management, flow analysis of a cafeteria, and soil investigations. Justifications for the noncompetitive intercompany transfers included the following reasons: (1) the use of affiliates enhances efficiency and productivity; (2) the need to work with proprietary information; and (3) the need to maintain corporate consistency with or knowledge of affiliates' policies, procedures, and practices. Had these transfers been made pursuant to the DEAR's provisions related to purchases, they would have been subject to a greater level of DOE documentation, including requirements for sole-source justifications as well as organizational conflict-of-interest disclosure statements.

To the extent that WSRC and BSRI use intercompany transfers to obtain services and property that could have been procured competitively, these transfers have all the appearance of sole-source procurements without any of the usual procurement protections. Indeed, a March 1993 WSRC internal audit report stated that WSRC's "interparty transfers at cost" represented sole-source contracts.

DOE Applies Less Scrutiny to Acquisitions From Affiliates

The nonstandard clause requires WSRC to submit to DOE for approval an estimate of the kind and amount of affiliate support anticipated for the coming fiscal year. Similarly, BSRI submits such an estimate to WSRC for approval. DOE does not have to review and approve intercompany transfers awarded for WSRC and BSRI support approved in the annual estimates. Except for the BSRI estimates before fiscal year 1992, the estimates contained scope and justification statements for anticipated support. The BSRI estimates before fiscal year 1992 were only listings of anticipated support. An example of support listed in BSRI's fiscal year 1991 estimate was \$8.26 million for reactor restart and the startup of the Defense Waste Processing Facility; there was no supporting documentation for either effort.

DOE reviewed and approved WSRC's estimates in fiscal years 1990 and 1991, with some exceptions. DOE did not approve WSRC's fiscal year 1992 and 1993 estimates, thereby requiring WSRC to submit each intercompany

transfer to DOE for review and approval. However, DOE's documentation requirements for intercompany transfers are less stringent than for purchases. For example, DOE does not require WSRC to obtain organizational conflict-of-interest disclosure statements, certified cost and pricing data,³ detailed cost estimates, and sole-source justifications for intercompany transfers. Instead, DOE is relying on WSRC and BSRI to make determinations that their acquisitions from affiliates are in the best interests of the government. As illustrated by the problems described earlier in this chapter, these acquisitions may not always be in the best interests of the government.

In addition, acquisitions from affiliated M&O contractors at other DOE sites are made through memorandum purchase orders that authorize transfers of funds between M&O contractors. Like intercompany transfers, the memorandum purchase orders are transfers at cost that undergo less stringent review than purchases. For example, WSRC purchased the services of eight employees of the Westinghouse Hanford Company—the M&O contractor for DOE's Hanford, Washington, site—for 1 year at a cost of \$1.4 million. WSRC's procurement file indicates that using the memorandum purchase order allowed WSRC to exceed its authorized staffing because its budget did not include the eight positions for new hires.

In December 1993, DOE's Director of the Office of Contractor Management and Administration informed us that memorandum purchase orders are nontraditional acquisitions that are not covered under procurement regulations or visible at the Department level. The memorandum purchase orders are acquisitions between DOE's integrated contractors⁴ that are paid via financial transfers between the integrated contractors. The memorandum purchase orders were only covered in DOE's accounting handbook. As the result of a report by DOE's Office of Inspector General in December 1993, the Director stated that DOE was proposing new initiatives in December 1993 to control and limit such memorandum purchase orders. For example, DOE is proposing that before the execution of any

³A 1992 legal opinion by Westinghouse Electric Corporation, based on activities carried out by another Westinghouse M&O contractor, states that certified cost and pricing data are not required because these acquisitions are not negotiated subcontracts within the meaning of the DEAR and the Federal Acquisition Regulation. The opinion also notes that under a long-standing practice between Westinghouse and its government-owned, contractor-operated facilities, Westinghouse has not been required to furnish cost and pricing data under such circumstances. A subsequent 1992 WSRC legal opinion concurred that neither certified cost and pricing data nor organizational conflict-of-interest representations and certification statements are required.

⁴Integrated contractors are those required by contract provisions to maintain a separate set of accounts and records for recording and reporting all business transactions under the contract, in accordance with DOE's accounting practices and procedures, and whose books of account are integrated with those of DOE through the use of reciprocal accounts.

memorandum purchase order, a senior official at the procuring contractor will determine in writing whether the proposed order is primarily for funding. The written determination must provide sufficient supporting rationale documenting the basis for the determination and be signed by a senior official at the procuring contractor. The memorandum purchase orders shall be determined to be funding transfers when the order entails work which involves unique expertise or facilities that are not available from private commercial sources.

Existing Regulations Are Less Than Fully Implemented

DOE, at SRS, had not fully implemented some regulatory requirements applicable to acquisitions from affiliates. These requirements were in two areas—organizational conflicts-of-interest and payment of fees to an affiliate.

Organizational Conflict-Of-Interest Requirements

DOE has been inconsistent in applying its organizational conflict-of-interest requirements to determine whether a potential contractor has interests that (1) may diminish the potential contractor's capacity to give impartial, technically sound, objective assistance and advice or (2) may result in the contractor's having an unfair competitive advantage over others competing for the contract. DOE does not apply the requirements to WSRC's intercompany transfers, but it does apply them to WSRC's subcontracting activities, including subcontracts to affiliates. DOE has not been performing the required determinations and does not have statistics on the number of WSRC subcontracts made in prior years that required such determinations. However, in December 1992 WSRC estimated that 850 of its open purchase requisitions at that time could require organizational conflict-of-interest determinations. It also estimated that performing the determinations could (1) add 1 week to 1 month to the procurement cycle, (2) increase WSRC's processing cost by \$595,000 to \$1,190,000, and (3) require WSRC to obtain the services of 9 to 18 additional people. In August 1993, DOE directed WSRC to comply with organizational conflict-of-interest requirements and submit all subcontracts that require organizational conflict-of-interest determinations to DOE.

Although DOE is requiring performance of the organizational conflict-of-interest determinations, it still has not issued formal instructions for carrying out its order on conflict-of-interest processing procedures. The lack of instructions was a finding in DOE's reviews of program management assistance, performed by DOE headquarters in February 1990 and June 1992, that examined conflict-of-interest determinations for DOE's prime contracts. In response to DOE's August 1993

request, WSRC submitted to DOE in late 1993 its revised procurement procedures for organizational conflict-of-interest determinations. As of December 30, 1993, DOE was still in the process of reviewing WSRC's submission.

Payment of Fees to an Affiliate

We identified an example that illustrates some of the difficulties caused when DOE does not fully implement its regulations. In this case, DOE did not follow standard procedures leading to the payment of \$1.2 million in fees to WSRC's affiliates for noncompetitive support. Within WSRC's M&O contract, clause I.103—Reactor Restart Program Support—was added specifically for the Westinghouse Electric Corporation to provide support in restarting SRS' production reactors after the Secretary of Energy informed Westinghouse that DOE expected Westinghouse to bring its corporate resources to bear on the startup of the reactors. This contract clause established the ground rules for acquiring the needed support. Work performed under the clause had to meet the following criteria: (1) The nature or extent of the services to be provided are beyond the capabilities of the WSRC staff and (2) the services are in response to (i) a critical and urgent need that precludes a competitive procurement or (ii) source direction from the Contracting Officer. Also, the clause provided for the payment of a fee in addition to direct and indirect costs. It limited the fee to 75 percent of the fee objective established pursuant to the DEAR's requirements. Because the clause did not meet the DEAR's requirements for the payment of fees, the DOE Procurement Executive had to authorize a deviation from those requirements.

According to DOE officials at SRS, the SRS office obtained informal approval to deviate from the DEAR's requirements on the basis of a handwritten note. The note stated that the approach for the modification had been discussed with DOE's Procurement Executive. The DEAR requires that the Procurement Executive authorize the deviation by a written justification that clearly states the special circumstances involved. The note stated that the clause was discussed and there was agreement with the approach. It did not state that the clause had been reviewed and approved nor provide any information about the special circumstances involved. DOE paid about \$1.2 million in fees to WSRC's affiliates for reactor restart services required under this clause. Given the nature of this clause, we question the policy of permitting a deviation on the basis of information contained in the handwritten note. In December 1993, the Director of DOE's Office of Contractor Management and Administration informed us that deviations from the DEAR have to be well documented. He added that in his view the handling of this deviation represented a rather unique situation that

resulted from the priority that the Secretary of Energy had placed on restarting the SRS' reactors. The clause for payment of fees is still in effect, even though the need for reactor restart services is no longer urgent because the reactors have been placed in cold standby. According to DOE officials, some of the procurements still have not been closed out, and the fee clause may be deleted from WSRC's contract when it is renewed in 1995.

Conclusions

DOE needs better and more complete information on acquisitions from affiliates at SRS in order to be in a position to effectively monitor the proper use of such acquisitions. In the past, DOE has placed too much reliance on WSRC and BSRI to carry out these activities. As a result, DOE officials at SRS do not know the full extent of acquisitions from affiliates being made and are not taking advantage of any possible opportunities to maximize cost savings and competition.

The examples highlighted in this chapter demonstrate the types of financial impact and other problems that can occur when DOE does not exercise appropriate monitoring of acquisitions from affiliates. Many of the same problem areas were independently identified in April 1993 during DOE's first review of WSRC's and BSRI's related-party transactions. Furthermore, other DOE studies and reports have demonstrated a heightened need for improved monitoring of acquisitions from affiliates throughout DOE. Without such improvements, DOE will not know whether (1) any of the affiliates obtained an unfair competitive advantage under the existing contracting process and (2) fair and reasonable prices were paid for acquisitions from affiliates. In fact, in December 1993 DOE headquarters officials emphasized to us that DOE has recognized the need to ensure that adequate procedures are developed for determining whether acquisitions from affiliates are in the best interests of the government. These officials also agreed, however, that the information presented in our report demonstrates that acquisitions from affiliates need increased attention.

At SRS, DOE has not required acquisitions from affiliates to comply with the DEAR's requirement that competition must be obtained, except for purchases of technical services from affiliates that have special expertise and that expertise is documented. This practice appears to be contrary to the existing DEAR requirement's stated purpose of strictly controlling acquisitions from affiliates. Furthermore, WSRC and BSRI have been able to obtain support from affiliates without undergoing the same level of DOE scrutiny that would apply if the purchase were made from a nonaffiliated third party. We believe that these acquisitions, such as intercompany

transfers, have all the appearance of sole-source procurements and should be treated in the same way as any other purchase. Nothing in the contract precludes DOE's ability to require that necessary and desirable transfers also meet the DEAR's purchase requirements.

Recommendations

To ensure that acquisitions made from affiliated entities of WSRC and BSRI at SRS are in the best interests of the federal government, we recommend that the Secretary of Energy (1) provide for increased monitoring of the contractors' acquisitions from affiliated entities and (2) except for the purchases of technical services where the affiliate has special expertise and that expertise is documented, require that affiliate acquisitions comply with the DEAR's requirement that competition must be obtained and subject such acquisitions to the same standards that apply to nonaffiliated third-party transactions.

We also recommend that the Secretary of Energy require the SRS Manager to

- develop and implement, on the basis of data from reliable management information systems, internal controls that can enhance DOE's ability to use its limited resources to ensure that monitoring activities involving acquisitions from affiliates are effectively carried out and
- review the appropriateness of the charges that have been made and/or paid in the specific examples we highlighted in this report to ensure that the costs incurred have been and still are proper and, in any instances in which costs have been improperly charged and/or paid, obtain reimbursement from the appropriate parties.

Examples of Problems Involving Acquisitions From Affiliates

On the basis of our review at the Savannah River Site (SRS), we identified several problem areas involving a number of the affiliate acquisitions made by Westinghouse Savannah River Company (WSRC) and Bechtel Savannah River, Inc. (BSRI). To provide further information on the types of problems we uncovered and the complex issues involved, this appendix provides a detailed discussion of six examples of WSRC's and BSRI's acquisitions from affiliates.

Example A. This example involves two WSRC noncompetitive cost-plus-fixed-fee subcontracts that totaled about \$12.1 million when initially awarded for reactor restart support from the Westinghouse Nuclear Services Division. WSRC's contract files showed that employees continued to work on one of the cost-plus-fixed-fee subcontracts after it expired, resulting in an unauthorized cost overrun of \$1.3 million. Without obtaining the required Department of Energy (DOE) approval, WSRC transferred the cost overrun to another Westinghouse Nuclear Services Division cost-plus-fixed-fee subcontract that had sufficient funds obligated to cover the cost overrun.

Also, WSRC's documentation states that most of the work under these contracts was performed during the hectic days of reactor restart, when there was a lack of control over and documentation of contracting activities. Furthermore, according to the documentation, it appears that some of the same people worked under both contracts, although no clear record exists of how this was handled in accounting for the costs charged to both contracts. The documentation noted that these control problems were common to other reactor restart subcontracts. Additionally, even though these acquisitions were made under a nonstandard contract clause in WSRC's management and operating (M&O) contract with DOE at SRS—a clause that was added to the contract to permit payment of fees to affiliates for support in restarting the reactors—most of the employees used under the subcontracts were independent job shoppers rather than Westinghouse employees. An underlying reason for adding the clause to pay fees to affiliates was to compensate the affiliates for personnel taken from profit-making activities to support reactor restart efforts.

Initial approval of one of the subcontracts for \$2.5 million included a plan for the Westinghouse Nuclear Services Division to subcontract out about \$1.7 million. According to DOE officials, the subcontracting was permissible because Westinghouse was better able to obtain needed services. Additionally, both noncompetitive subcontracts ran for more than a year, were extended, and had cost overruns. One, which ran for

about 3-1/4 years, increased from \$9.8 million to \$12.7 million and included a fee of \$628,927. The other one ran for about 2-1/2 years and increased from \$2.3 million to \$4.6 million; it included the transferred \$1.3 million cost overrun and a fee of \$158,821.

The issue of the transfer of the unauthorized cost overrun of \$1.3 million to another contract was reported in a DOE review dated April 7, 1993. That review stated the issue had been discussed with Contracts Division officials and that they were going to review the appropriateness of the \$1.3-million charge and the related contract fees. As of September 30, 1993, DOE contract officials at SRS had not addressed the cost overrun and related fees with WSRC.

Example B. This example involves a cost-plus-fixed-fee subcontract and five intercompany transfers for support to WSRC from Westinghouse Environmental and Geotechnical Services. The cost-plus-fixed-fee subcontract, the first of the six acquisitions, began as a \$100,000 letter contract in May 1987 and ran for about 4 years. It was definitized after its termination in June 1991 for \$2,883,295. The subcontract was awarded by DuPont¹ to Soil and Material Engineers, Inc., and converted to a WSRC cost-plus-fixed-fee subcontract for reactor restart work after Westinghouse Electric Corporation purchased Soil and Material Engineers, Inc., for its Westinghouse Environmental and Geotechnical Services in 1989. At that time of the purchase, the subcontract was for \$1.6 million. The subcontract subsequently increased to \$2,883,295, including a fee of \$208,000.

According to the Subcontract Technical Representative's subcontract closeout report, WSRC terminated the subcontract due to continual problems with insufficient cost control (inadequate cost and invoice supporting documentation) and cost overruns by Westinghouse Environmental and Geotechnical Services. Although insufficient cost control and overruns were given as the reasons for terminating the subcontract, the subcontract experienced continual performance problems. Also, work was continued after the contracted period of performance. For example, performance problems included products that were late, did not meet contractual requirements, and were of poor quality. Also, Westinghouse Environmental and Geotechnical Services' lack of oversight contributed to a serious power accident that occurred while the affiliate supervised one of two drilling subcontractors during soil

¹E.I. du Pont de Nemours (DuPont) managed and operated SRS for DOE from the 1950s until April 1, 1989, when WSRC became the new SRS M&O contractor.

investigations at SRS' K-reactor. Twice in a matter of hours, the subcontractors drilled into buried power cables. Westinghouse Environmental and Geotechnical Services supervised the first subcontractor that drilled into a cable. If the Westinghouse supervisor had ensured that all drilling was stopped after the subcontractor under his supervision hit the first cable, the costs may have been substantially reduced—the estimated cost to repair that cable was \$29,000. Although the cost to repair both cables was originally estimated at \$210,000, that cost subsequently increased, according to a DOE reactor official at SRS, to about \$815,000 because WSRC did not prevent moisture intrusion which caused more damage.

As for the five intercompany transfers from Westinghouse Environmental and Geotechnical Services, one was completed after the contractual period of performance, two were terminated before all the required tasks were completed due to performance and invoicing problems, and two were terminated due to the sale of Westinghouse Environmental and Geotechnical Services (the remaining work was handled in-house).

Example C. This example involves 100 canisters manufactured by an affiliate to hold vitrified high-level radioactive waste. WSRC managed the procurement, including inspecting the canisters received at SRS, and Bechtel National participated in developing specifications for the canisters and performed the inspections at the affiliate's plant. In August 1988, just before the transition of the M&O contract from DuPont to WSRC, DuPont made a split award to a Westinghouse Electric Corporation affiliate and a non-Westinghouse Electric Corporation affiliate to manufacture 100 canisters each for SRS' Defense Waste Processing Facility. During the transition period, deficiencies were identified in specifications for the canisters developed by DuPont that necessitated revising the specifications. The revision, made by Bechtel National, Inc., in December 1988, contributed to the scrapping of 23 manufactured canisters, plus the materials for manufacturing the remaining canisters, and increased the cost of the two contracts from \$1,661,018 to \$2,288,140. The Westinghouse Electric Corporation's affiliate delivered its 100 canisters by the end of 1990, and the other contractor delivered 10, but none of the 110 canisters was acceptable. WSRC subsequently released Bechtel National from the effort to resolve the canister problems and terminated the nonaffiliated contractor's contract due to changing requirements. WSRC plans to use all of the canisters, except one damaged by a fall from a truck, for testing; however, some of the testing includes a radioactive substance, and none of the canisters has been approved for

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tests involving radioactive substances. WSRC paid its affiliate \$1,276,708—the full contract amount plus a fee, and WSRC paid the nonaffiliated contractor \$565,765 for terminating the contract after receiving the first 10 canisters.

Additionally, the failure of the affiliate's 100 canisters to meet specifications for holding high-level radioactive waste is due in part to the lack of attention given to WSRC's October 1989 nonconformance report on the first 10 canisters manufactured to meet the revised specifications. After Bechtel National's satisfactory inspection of the first 10 canisters manufactured by the WSRC affiliate and their delivery to SRS, WSRC did not inform Bechtel National that it had issued a nonconformance report on all 10 canisters. Unaware of the nonconformance report, Bechtel National directed the affiliate to proceed with the manufacture of the remaining 90 canisters. Bechtel National subsequently learned of the report in 1991 after all the canisters were delivered to SRS. WSRC received the report in October 1989 but did not close it out until October 1991.

Example D. This example involves WSRC's and DOE's monitoring of several of BSRI's noncompetitive intercompany transfers. Before fiscal year 1992, BSRI acquired about \$35 million in services directly from Bechtel National, Inc., without purchase orders or sole-source justifications showing that Bechtel National was the only source that could provide the services. Moreover, BSRI did not document that the services were received or that they were acceptable. In 1992, a WSRC internal review reported that adequate control procedures and management oversight had not been established to properly plan for, procure, monitor, and pay for BSRI's acquisitions from Bechtel National. The WSRC General Counsel's office had sole responsibility for authorizing, reviewing, and approving payments for these acquisitions. BSRI was processing authorizations for Bechtel National's services through a contract administration branch within the WSRC General Counsel's office on the basis of signature approvals instead of through the WSRC Procurement Department. The review reported that there was an improper separation of duties in acquiring Bechtel National's services and approving payment of the invoices for those services. The review also reported adequate reviews of supporting invoice documentation were not performed before or on an after-the-fact basis, and the invoices were paid using a payment method for acquisitions without purchase orders that did not involve the Procurement Department or minimize the possibility of duplicate payments. The review stated that all Bechtel National invoices should utilize the traditional purchase order-based disbursement approach to ensure that invoiced costs are

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properly monitored and tracked. Several examples illustrate various problems involving BSRI's acquisitions.

Reviews of cost invoices since fiscal year 1991 disclosed substantial amounts of improper costs. A review by WSRC's Subcontract Accounting Branch of \$3,469,000 invoiced by Bechtel National in fiscal year 1992 identified \$291,592 in unallowable costs, \$51,900 in charges from prior years that may have already been paid, and about \$500,000 in charges for subcontracting and consulting services prohibited by the BSRI contract. Additionally, WSRC's Subcontract Accounting Branch withheld payment on a \$67,024 cost overrun and questioned \$945,930 of charges in excess of the amount authorized for K-reactor restart geotechnical services. The excess charges include about \$375,000 of the prohibited subcontract costs identified in the above review. However, as of September 30, 1993, WSRC had not made a decision on whether to recover the questioned costs.

Additionally, our limited review of selected BSRI intercompany transfers found similar problems. For example, subcontract costs in the BSRI contract included \$426,238 for an accounting firm's services provided in fiscal year 1991. Due to a hiring freeze, WSRC first obtained consulting services from this firm through an engineering work request issued by its design contractor at SRS. The consulting services, obtained to support the implementation of a consolidated labor system, were provided through the contractor's engineering work request from March 1990 to April 1991 at a cost of \$1,083,007. Subsequently, after the design contractor's contract expired at the end of March 1991, WSRC submitted a requisition to continue the accounting firm's consulting services under a new subcontract. Later, WSRC dropped the subcontract because of the timing required for executing it. However, because of the need to maintain the accounting firm's employees in an active role of analyzing, training, and administering the new consolidated labor system, WSRC had BSRI authorize Bechtel National to provide the accounting firm's services, since Bechtel National already had an existing agreement with the accounting firm. Hourly rates of the assigned accounting firm's staff were \$243 (\$1,944 per day) for one partner and one manager; \$168 (\$1,344 per day) for five associates; and \$68 for one associate. All of the staff, except the one with the \$68 hourly rate, had equivalent daily rates exceeding DOE's review threshold for WSRC consultants. According to a BSRI official, the hourly rate was \$68 for one associate because the associate was (1) new and (2) lived in the area, which further reduced expenses included in the hourly rate.

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In 1992, WSRC implemented procedures to improve control of BSRI's intercompany transfers from Bechtel National. However, problems with controlling these transfers have continued, as evidenced by cost growth and deviations from procurement policy and procedures. The cost growth is due to a number of factors, such as inadequate task definitions and changes in requirements. For example, BSRI acquired design services for repairs to SRS' Par Pond dam from Bechtel National in November 1992 at a cost of \$157,072. The cost subsequently increased to \$200,520 in February 1993 because Bechtel National had (1) charged \$74.50 per hour for technical services from the very start instead of the \$54 called for in the \$157,072 contract, (2) increased the hourly rate for technical services to \$85 per hour in early February 1993, and (3) received an increase of 136 hours in the number of hours of technical services. The cost increase was contained at \$200,520 by reducing the number of Bechtel National trips to SRS, transferring some of the remaining nontechnical work back to BSRI, and reducing computer hours. The increase in the hourly cost of technical services was attributed to the need to use more senior and experienced engineers.

DOE had not reviewed and approved any of BSRI's intercompany transfers as of September 30, 1993. WSRC's procurement procedures did not provide for DOE review before fiscal year 1993. WSRC's revision of its procurement procedures in April 1993 required that DOE review BSRI's intercompany transfers exceeding \$500,000. WSRC officials informed us that none of the subsequent intercompany transfers had exceeded the \$500,000 threshold as of June 1993. In the past, some intercompany transfers between BSRI and Bechtel National that did not exceed \$500,000 experienced cost growth well in excess of the threshold. For example, a \$200,000 intercompany transfer approved in August 1992 for geotechnical investigations at SRS' new Replacement Tritium Facility had increased to about \$800,000 in December 1992. Furthermore, this intercompany transfer included costs for subcontracting and consulting services. The consultant's daily rate of \$1,080 also exceeded DOE's review threshold of \$1,000 for WSRC consultants at that time. Subsequently, in December 1992 WSRC disapproved the costs invoiced for consulting services, but it did not address Bechtel National's invoiced subcontracting costs. Since then, WSRC has also disallowed some subcontracting costs charged in 1993. For example, \$61,446 of \$80,838 (about 76 percent) that BSRI invoiced WSRC for labor relations and safety support was disallowed because the cost was for subcontracting and consulting services.

As a result of increased scrutiny of BSRI's intercompany transfers, WSRC has implemented new procedures to improve its control over them. This action resulted in WSRC's (1) not approving BSRI's fiscal year 1993 estimate of about \$7.7 million in planned intercompany transfers from Bechtel National and (2) providing only interim funding of \$678,577 for 16 selected Bechtel National intercompany transfers. In addition, in an August 18, 1993, letter to WSRC, DOE established that all of BSRI's intercompany transfers, regardless of dollar value, are to be submitted to DOE at SRS for approval.

Example E. This example involves two of WSRC's intercompany transfers for legislative monitoring and DOE headquarters liaison activities in Washington, D.C. The two intercompany transfers, the first for \$336,000 and the second for \$625,000, provided the services of the Westinghouse Government Business Development Office on a continuous basis from January 1989 through September 30, 1993. The first intercompany transfer for these services, issued under the Westinghouse Electric Corporation's transition contract, ran from January 1989 through June 30, 1991, although DOE had approved this intercompany transfer only through December 31, 1989. Westinghouse Electric Corporation approved extensions of this intercompany transfer through June 1991 without going through WSRC's and DOE's approval processes. Furthermore, Westinghouse Electric Corporation approved the extensions of the first intercompany transfer at the same time that DOE was reviewing and disapproving the second intercompany transfer. Unaware of the Westinghouse Electric Corporation's extensions of the first intercompany transfer, WSRC's Procurement Department submitted the second intercompany transfer to DOE for approval in January 1990, and DOE disapproved it in October 1990 and again in September 1991. DOE based its September 1991 disapproval on the contention that the services being requested represented general and administrative costs that should not be allowable under the M&O contract.

In August 1992, DOE conditionally approved the second intercompany transfer, not to exceed \$625,000, for the period from February 1, 1990, through September 30, 1993, pending a function review by the Defense Contract Management Command's Corporate Administrative Contracting Officer for Westinghouse Electric Corporation in Pittsburgh, Pennsylvania. On September 29, 1993—more than 1 year after the conditional approval was granted—DOE verbally requested the review during a visit to SRS by the

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Defense Corporate Executive² for the Westinghouse Electric Corporation. Also, in approving the \$625,000, DOE did not obtain a detailed cost estimate or actual costs for the period February 1, 1990, through June 30, 1992—29 months of retroactively approved services. In its August 1992 approval letter, DOE requested information on costs charged from February 1, 1990, through June 30, 1992, and stipulated that a separate request for reauthorization of costs would be required for fiscal year 1994. As of September 30, 1993, DOE had not received any information on prior costs. On the basis of our review of WSRC's payment records, costs for the period from February 1990 through August 1992 totaled \$104,447. Of this amount, about \$80,000 had been billed and paid under the overlapping extensions of the first intercompany transfer that had not been approved by DOE or WSRC.

As of September 30, 1993, WSRC's payment records showed that WSRC had paid Westinghouse Government Business Development \$182,745 (\$150,611 paid from August 1989 to December 1991 under the first intercompany transfer and \$32,134 paid as of September 30, 1993, for services provided under the intercompany transfer approved in 1992). Additionally, invoices totaling \$11,514 for 1991 services and \$39,158 for 1992 services submitted in January 1993 had not been paid as of September 30, 1993, because of insufficient support. According to the Westinghouse Government Business Development Director, the invoices for 1991 and 1992 were not submitted until 1993 because of confusion caused by a reorganization of the office, which included the individual who should have submitted the invoices.

On the basis of our review of WSRC's and DOE's records and discussions with various officials, we found the following:

- Legislative monitoring services provided for WSRC by the Government Business Development Director in the Westinghouse Government Affairs Office are paid by WSRC's intercompany transfer. According to the Westinghouse official within the Government Affairs Office providing the services, similar legislative monitoring services provided for other Westinghouse M&O contractors, such as for the Hanford and Idaho facilities, are paid from Westinghouse's corporate account, not from any government contract.

²In 1992, the Defense Logistics Agency implemented the Defense Corporate Executive Program to provide a corporate-wide perspective on all government work performed by designated corporations. The Corporate Administrative Contracting Officers' and Defense Corporate Executives' functions and responsibilities were consolidated under this program, and the assigned Administrative Contracting Officers filled the new Defense Corporate Executives' positions.

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- Extensions of the first intercompany transfer from January 1, 1990, through June 1991 were not approved by either WSRC or DOE. The first intercompany transfer, dated February 13, 1989, was issued under the Westinghouse Electric Corporation's transition contract dated September 26, 1988, and completed April 13, 1989. At the end of the transition contract, DOE approved an extension of the intercompany transfer through December 31, 1989. Subsequently, in 1990 Westinghouse Electric Corporation approved two more extensions of the intercompany transfer under its expired transition contract that extended the intercompany transfer through June 1991. WSRC and Westinghouse Electric Corporation personnel could not explain the approval of the extensions. According to the WSRC Procurement Manager, the person approving the extensions was an employee in Westinghouse Electric Corporation's Pittsburgh Office who is no longer with Westinghouse.
- DOE and WSRC procurement officials did not have knowledge of payments made under the extensions approved by Westinghouse Electric Corporation. WSRC's Procurement Department did not assign the intercompany transfer a WSRC purchase order number when WSRC became the M&O contractor in April 1989, even though DOE had approved its extension through December 31, 1989. Since WSRC's Finance Department could not make payments under the expired Westinghouse Electric Corporation transition contract, it used a payment method for invoices without a purchase order to make payments under the WSRC contract. WSRC's Finance Department continued to use this payment method to pay the invoices received under the Westinghouse Electric Corporation extensions, including four invoices after the end of the extensions. Copies of the invoices referencing the applicable extension went to WSRC's Administrative Services Manager, but not to WSRC's Procurement Department. The WSRC Finance Department official responsible for approving the invoices said he knew the invoices were going to the WSRC Administrative Services Manager and continued to approve the invoices for payment, anticipating that the purchase order would be extended. He stopped approving the invoices only when he stopped receiving them.
- WSRC did not have detailed estimates to support funding requested for the second intercompany transfer. Initially, in January 1990 WSRC requested \$1.2 million for the period from February 1, 1990, through January 31, 1995. Then, in March 1991 after DOE's disapproval of the initial request, WSRC requested \$836,000 for the period from February 1, 1990, through January 31, 1995. DOE subsequently approved the intercompany transfer for the period from February 1, 1990, through September 30, 1993, and proportionally reduced the \$836,000 to \$625,000 for the reduction in the requested and approved period. WSRC's Administrative Services Manager

said that he requested the amounts based on "covering something big if it happens instead of detailed estimates."

- WSRC paid invoices for office rent without obtaining documentation supporting the basis for the charges. The files of Westinghouse's Government Business Development Director showed that the monthly office rent of \$2,543 charged to WSRC in 1990 and 1991 was not for the purpose of providing office space for personnel employed in Washington, D.C. Rather, the payment was for space that could be used by WSRC visitors if they came to Washington, D.C. The \$2,543 included \$1,258 for space rent and \$1,285 for secretarial salary and benefits, office maintenance, office supplies, postage and mailing, furniture/fixtures, office rental equipment, and taxes. According to Westinghouse's Government Business Development Director, no documentation was available on actual usage of the space.
- Even after DOE conditionally approved the intercompany transfer, the Director's 1993 invoices included \$3,613 for a legal opinion by a law firm in South Carolina on whether the legislative monitoring intercompany transfer may have constituted unallowable lobbying costs. The opinion, dated March 5, 1993, stated that costs may be allowable contingent on a number of factors, including the satisfactory conduct of the pending function review required by DOE's August 24, 1992, letter of conditional approval. According to Westinghouse's Government Business Development Director, his superior, who is a registered lobbyist, instructed him to have the law firm review the acquisition. Neither DOE nor WSRC had requested the function review until September 29, 1993.
- The intercompany transfers' scopes of work did not specify the number, length, or destinations of trips to be authorized annually to perform the services to be provided. On the basis of the files we reviewed, Westinghouse's Government Business Development Director charged 12 trips to the intercompany transfers during a 4-year period, asserting that each trip was necessary for business purposes. However, WSRC officials did not request all of the trips and did not authorize them. In addition, the Director incorrectly charged per diem to the intercompany transfers by filing inaccurate travel vouchers. When we brought the incorrect charges to his attention, he said he was not familiar with the Federal Travel Regulations governing per diem charges. Furthermore, he said that on at least four separate occasions, he combined personal travel with business travel. However, the vouchers the Director submitted to WSRC did not clearly indicate any separation between personal and business travel. As a result of the problems we brought to his attention, he resubmitted invoices for his travel costs in calendar years 1992 and 1993. However, WSRC was still questioning the resubmitted invoices as of September 30, 1993.

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- The intercompany transfers' scopes of work did not clearly state the services to be provided. For example, WSRC's Administrative Services Manager said that the following types of support cited in the scope of work in the second intercompany transfer were not clearly stated: (1) represent Savannah River top management, as appropriate, with DOE, the Office of Management and Budget, and the Congress on key program/project issues; (2) represent Savannah River program/project management, as appropriate, before Washington-based committees, groups, etc.; and (3) provide technical and business advice to Savannah River managers on program/project development and operational matters.

Before 1993, actual services provided to WSRC could not be determined from document files. WSRC did not maintain a file on services provided before March 1993, and the activity files of Westinghouse's Government Business Development Director generally did not identify the services that he provided to WSRC. According to the WSRC's Administrative Services Manager and Westinghouse's Government Business Development Director, various services were provided to WSRC on a continuous basis.

- The intercompany transfers did not require any specific deliverables, but the Director started submitting reports to WSRC in 1993 under the second intercompany transfer. At the time of our review, DOE had not reviewed any of the reports submitted to WSRC. We obtained some examples of reports prepared under this intercompany transfer and sent to WSRC officials. Several were "Washington Update" memorandums. For instance, the May 18, 1993, memorandum briefly discussed the following six topics: (1) the weapons cleanup issue in both houses; (2) the House Science, Space, and Technology Committee's hearing on DOE's reorganization bill; (3) the Senate Energy Committee's markup of fusion bill; (4) the Senate Energy Committee's markup of S. 473; (5) the Environmental Protection Agency's announcement of new hazardous waste reduction requirements; and (6) the identification of President Clinton's science team.

As a result of various identified problems, WSRC has initiated a number of actions. For example, in a July 29, 1993, letter, WSRC requested that the Director provide additional information on the \$3,150 invoiced for the South Carolina law firm's services. In addition, this letter requested not only that future invoices comply with the Federal Travel Regulations, but that the following information be submitted with each invoice:

- Specific activity/function performed.
- Date of activity/function performed.

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- WSRC's primary contact for each activity.
- Details of fees (for example, hours and rates).
- Copies of travel expense reports, purpose of trip, who authorized it, etc.

In addition, due to the problems associated with the intercompany transfer approved in August 1992, WSRC billed back to Westinghouse Electric Corporation all \$32,134 paid under the intercompany transfer as of September 30, 1993. Also, the WSRC Subcontract Technical Representative assigned to this intercompany transfer has recommended that \$150,000 of the \$625,000 obligated for this intercompany transfer be retained as a contingency to cover any 1991 and 1992 costs and the remaining \$475,000 be deobligated. According to the Subcontract Technical Representative, no discussions have been held on billing back payments made under the first intercompany transfer, but he concurred that a similar case might be made for billing back some of those payments.

WSRC has also taken actions to ensure better oversight through reduced funding of the Westinghouse Government Business Development Director's services. WSRC submitted a third intercompany transfer to DOE for approval with a 1-year period of performance from October 1, 1993, through September 30, 1994, in the amount of \$53,611. WSRC limited funding of the intercompany transfer by basing it on a cost-price analysis and giving it a Section B classification that disallowed the payment of indirect costs, rather than the Section A classification that had been given to the previous intercompany transfer. The Section A classification allows the payment of indirect costs.

Also, on September 30, 1993, DOE stipulated conditions that WSRC must meet before DOE will approve the third intercompany transfer as requested by WSRC. DOE informed WSRC that it was limiting approval to \$4,500 for October 1993 and that further extension past October was conditional on WSRC's providing a full accounting of expenditures, specifics on deliverables, and controls in place to ensure that only proper charges are paid. In stipulating the conditions, DOE stated that WSRC still had not provided the accounting of expenditures requested in DOE's August 24, 1992, letter approving the second intercompany transfer and that the General Accounting Office had raised many questions, including questions about deliverables and payments.

Example F. This example involves a WSRC intercompany transfer for support from Westinghouse Electric Corporation's Environmental Health and Safety Services Group. Westinghouse established the Environmental

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Health and Safety Services Group to provide services, including legislative monitoring services, to its DOE contractors. The Environmental Health and Safety Services Group proportionately allocates its budget between DOE contractors on the basis of their contract amount. For example, the Environmental Health and Safety Services Group allocated its fiscal year 1991 budget of \$903,891 between six DOE contractors; \$159,000—20 percent—was allocated to WSRC. The Group spent \$772,638, of which WSRC paid \$146,890, or about 19 percent of the total expenditures.

The Environmental Health and Safety Services Group has continually been nonresponsive to WSRC's requests for support for invoices and other information. For example, as late as March 1993 WSRC was still meeting with the Group in an effort to reach an agreement on providing support for invoices. Earlier, when WSRC requested certified cost and pricing data for an extension of the intercompany transfer, the Group obtained a legal opinion that did not require its compliance with the request, and it did not provide the data. Furthermore, the Group has not always provided details on its actual services. For about an 18-month period (from July 1989 to December 1990), the Group provided no reports to WSRC on its services. Since January 1991, the Group has provided the contractors with various information, including a periodic consolidated report giving a general overview of issues, along with general statements on visits, meetings, and assistance applicable to each DOE site.

Additionally, the intercompany transfer has been continually extended, and the funds obligated for the intercompany transfer substantially exceed actual costs. This intercompany transfer, which started in July 1989, has been extended to March 31, 1994, and currently totals \$941,852. As of September 30, 1993, WSRC had paid \$477,264 for 47 months of services invoiced through May 1993, leaving a total of \$464,588 obligated for the remaining 11 months.

Major Contributors to This Report

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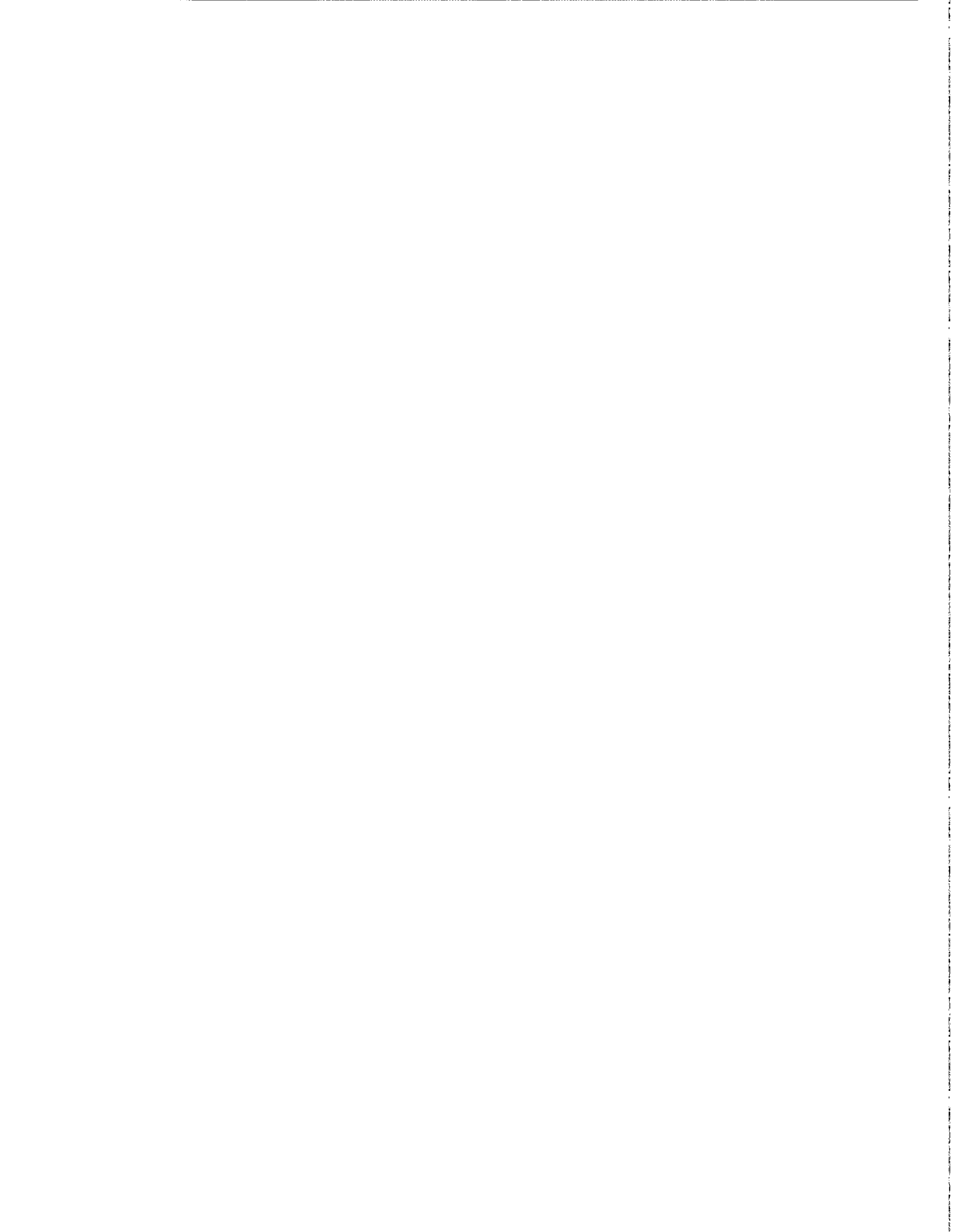
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