

GAO

Report to the Chairman, Committee on
Government Reform, House of
Representatives

June 2006

DOE CONTRACTING

Better Performance Measures and Management Needed to Address Delays in Awarding Contracts





Highlights of [GAO-06-722](#), a report to the Chairman, Committee on Government Reform, House of Representatives

DOE CONTRACTING

Better Performance Measures and Management Needed to Address Delays in Awarding Contracts

Why GAO Did This Study

The Department of Energy (DOE), the largest civilian contracting agency in the federal government, spends over 90 percent of its annual budget on contracts to operate its facilities and carry out its diverse missions. Federal law and regulations outline the steps DOE must follow in planning and carrying out the contract award process and emphasize the importance of awarding contracts in a timely manner. Several of DOE's recent contracts have taken much longer than anticipated to award. GAO was asked to determine (1) the extent to which DOE has experienced delays in awarding contracts and factors contributing to delays, (2) the impacts of any such delays, and (3) the extent to which DOE has taken steps to address the delays.

What GAO Recommends

GAO recommends that DOE (1) develop more accurate and comprehensive performance measures for the timeliness of its contract awards and (2) establish a consistent system for identifying and sharing lessons learned and best practices on contract awards. In commenting on the report, DOE generally agreed with the recommendations but raised concerns about GAO's sampling methodology, as well as GAO's characterization of late contract awards as delayed and DOE's performance measures as incomplete. GAO believes that the methodology and conclusions are correct.

www.gao.gov/cgi-bin/getrpt?GAO-06-722.

To view the full product, including the scope and methodology, click on the link above. For more information, contact Gene Aloise, 202-512-3841, aloisee@gao.gov.

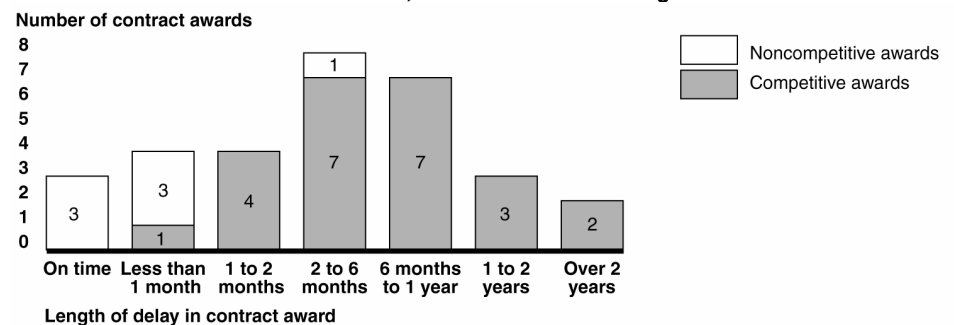
What GAO Found

Delays in awarding DOE contracts occurred in most of the 31 contracts that GAO reviewed. In fiscal years 2002 through 2005, DOE awarded 131 contracts valued at \$5 million or greater; the 31 of these contracts GAO reviewed were affiliated with DOE's three largest component organizations and represented about 73 percent of the dollars awarded. None of the 24 contracts awarded competitively was awarded by the date planned in DOE's schedule, with 23 of the contracts awarded between several weeks and 4-1/2 years later than the planned date. Of the 7 contracts awarded without competition, 6 were awarded on time or nearly so, with the remaining contract awarded 2 months late. Delays in awarding contracts occurred, in part, because DOE had to modify its approach after beginning the contract award process. At least some of the delays were avoidable, such as when DOE reworked contract awards to correct errors.

Delays in awarding contracts could increase costs both to DOE and companies competing for DOE work. Because the department does not track its costs for awarding contracts, it was not feasible to quantify the impact of these delays. Companies competing for DOE's work may also face increased costs when contract awards are delayed, such as the costs associated with ensuring that key personnel identified in proposals continue to be available. Increased costs and delays may affect the willingness of companies to compete for future DOE work, although the actual impact is unknown.

Until recently, DOE had not been addressing delays in awarding contracts because incomplete performance data indicated that most of the contracts were awarded in a timely manner. In late 2005, DOE began several efforts to improve its contract award process, including implementing improved measures of contract award timeliness and restructuring the Office of Environmental Management to strengthen management of the contracting process. However, two concerns could limit the effectiveness of these efforts: (1) the efforts do not encompass all of DOE's contract awards and (2) DOE does not have a systematic method of identifying and disseminating lessons learned and best practices from past or current contract awards.

Timeliness of 31 DOE Contract Awards, Fiscal Years 2002 through 2005



Source: GAO analysis of DOE contract files.

Contents

Letter		1
	Results in Brief	4
	Background	7
	Delays Occurred in Most of the Contract Awards We Reviewed	9
	Delays in Awarding Contracts Could Increase Costs to the Government and Industry and Affect Future Competition	15
	Efforts to Address the Causes of Delays Are in Early Stages, but Concerns Remain about the Potential Effectiveness of DOE's Planned Actions	17
	Conclusions	25
	Recommendations for Executive Action	26
	Agency Comments and Our Evaluation	26

Appendixes

Appendix I: Scope and Methodology	29
Appendix II: Comments from the Department of Energy	35
Appendix III: GAO Contact and Staff Acknowledgments	39

Table	Table 1: Value of DOE Contracts Selected in the Nonprobability Sample, by Location	30
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Figure	Figure 1: DOE's Timeliness in Awarding 31 Contracts from Fiscal Years 2002 through 2005	10
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Abbreviations

DOE	Department of Energy
EM	Environmental Management
NNSA	National Nuclear Security Administration

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United States Government Accountability Office
Washington, D.C. 20548

June 30, 2006

The Honorable Tom Davis
Chairman
Committee on Government Reform
House of Representatives

Dear Mr. Chairman:

The Department of Energy (DOE), the largest civilian contracting agency in the federal government, spends over 90 percent of its annual budget on contracts to operate its laboratories, production facilities, and environmental restoration sites. In fiscal year 2005, DOE spent approximately \$22.9 billion on contracts for mission-related activities such as maintaining the nation's nuclear weapons stockpile, cleaning up radioactive and hazardous wastes, and conducting complex scientific research; and for mission-support activities such as purchase of computer equipment and maintenance and repair of buildings. Almost 90 percent of these fiscal year 2005 contracting dollars—or about 80 percent of DOE's entire budget—were directed to DOE's "facility management contractors" that carry out most of the department's mission-related activities.

For over a decade, GAO, DOE's Office of Inspector General, and others have criticized DOE's contracting practices, particularly for inadequate management and oversight, and for failure to hold its contractors accountable for results. The poor performance of DOE's contractors has led to schedule delays and cost increases on many of the department's major projects. Since 1990, such problems have led us to designate DOE contract management—defined broadly to include both contract administration and management of major projects—as a high-risk area for fraud, waste, abuse, and mismanagement.

DOE's contracting activities are governed by federal law and regulations, including the Federal Acquisition Regulation and the Department of Energy Acquisition Regulation. These regulations and related DOE guidance outline the steps that should be followed in planning and carrying out the process of awarding its contracts. Furthermore, federal law generally requires that federal agencies use full and open competition in selecting a contractor, as part of the process for ensuring the best value to the government. However, there are certain exceptions to this requirement, such as an urgent need to obtain the goods or services, when DOE may award a contract without full and open competition.

Awarding competitive contracts includes a series of required steps that generally involve planning the contract award process, soliciting proposals from private companies and/or public organizations, and evaluating those proposals to select the company that will provide the goods or services at the best value to the government. Planning the contract award process generally involves identifying needed goods or services and the best approach for obtaining them. DOE guidance generally requires a formal written plan for carrying out this process for contracts valued at \$5 million or greater. The plan must describe the overall strategy for obtaining the goods or services, including the planned approach for soliciting and evaluating proposals. Key decisions outlined in the plan include whether to target the solicitation to small businesses and what factors to consider in evaluating proposals submitted by companies.

Although federal regulations do not specify how long the contract award process should take, the regulations state that the purpose of planning the contract award process is to ensure that the government obtains the needed goods or services in the most effective, economical, and timely manner. Therefore, written plans for carrying out the award process must include milestones for completing the steps in the process, such as when the agency plans to solicit and evaluate proposals and make the award. Developing and adhering to these schedules can help ensure that the department conducts the process efficiently and can help companies make informed business decisions regarding the allocation of their resources and whether to compete for a contract.

In addition to specifying how the contract award process should be carried out, the laws and regulations that govern contracting with the federal government are designed to ensure that federal contracts are awarded fairly. On occasion, companies that bid on government contracts may believe that a contract has been or is about to be awarded improperly. These companies may attempt to informally resolve concerns with the contracting officer, file a protest with the federal agency awarding the contract, or file a formal bid protest with the U.S. Court of Federal Claims

or GAO.¹ In deciding bid protests, the essential issue is whether the agency making the award has complied with federal laws and regulations that govern contracting.

Several of DOE's recent contract awards have taken much longer than anticipated and have been subject to bid protests. In this context, you asked us to review how DOE plans for and carries out its contract awards. This report discusses (1) the extent to which DOE adhered to its planned dates for awarding contracts and the factors contributing to any delays, (2) the impacts of any delays in awarding contracts, and (3) the extent to which DOE has taken steps to address delays in its contract award process.

To determine DOE's timeliness in awarding its contracts and the factors contributing to delays, we analyzed file documents from a nonprobability sample of contracts valued at \$5 million or greater that DOE awarded during fiscal years 2002 through 2005. To obtain this sample, we selected contracts for goods and services that were awarded by DOE's three largest component organizations—the Offices of Environmental Management and Science and the National Nuclear Security Administration (NNSA)—and from field locations with high levels of contracting activity. The contracts sampled from these field locations comprised about 73 percent of total contracting dollars for new awards of \$5 million or greater during fiscal years 2002 through 2005. To determine whether the contract awards had been delayed, we compared the planned award date specified in DOE's schedule for awarding the contract with the date the contract was actually awarded. Federal regulations stress the importance of timeliness in awarding contracts, but do not establish specific timeliness standards or measures. Therefore, we used adherence to the milestones established in the written plan as a consistent measure of timeliness and one indicator of how well the contract award process was being managed. To determine the overall length of time for a contract award, we generally compared the date the written plan for the contract award was approved with the date that the contract was awarded. For the contracts included in our sample for review, we also obtained and analyzed information on bid protests filed with GAO.

¹During fiscal year 2005, there were more than 1,356 bid protests filed with GAO, compared with less than 70 with the U.S. Court of Federal Claims. According to a DOE Associate General Counsel, DOE also has significantly fewer bid protests filed in the U.S. Court of Federal Claims than with GAO. The DOE official added that there had been less than 10 of these protests filed over the last decade. Furthermore, DOE neither lost any bid protest cases in this court during fiscal years 2002 through 2005, nor did the department take corrective action in response to any cases filed with the court.

To determine the extent to which DOE has taken steps to address any delays, we interviewed officials at DOE headquarters and six of the field locations that were involved in contract awards. In addition, we reviewed agency policies and guidance on its contract award process, as well as documentation on any efforts to improve the process. A more detailed description of our scope and methodology is presented in appendix I. We performed our work between July 2005 and June 2006 in accordance with generally accepted government auditing standards.

Results in Brief

DOE awarded most of the contracts we reviewed months to years later than the planned award dates. In fiscal years 2002 through 2005, DOE awarded 131 contracts valued at \$5 million or greater; the 31 of these contracts we reviewed were affiliated with DOE's three largest component organizations and represented about 73 percent of the dollars awarded. Specifically, none of the 24 competitive contracts was awarded by the planned date specified in DOE's schedule for carrying out the contract award process. DOE awarded one of these contracts less than 1 month after the planned award date but awarded the remaining 23 contracts between several weeks and 4-1/2 years after the planned award date. In contrast, of the 7 contracts DOE awarded without competition, 6 contracts were awarded on time or nearly so, with the remaining contract awarded 2 months late. DOE encountered delays throughout the contract award process for various reasons. For example:

- DOE took over 4 years to successfully award a \$1.6 billion contract for nuclear waste cleanup services at DOE's Hanford site in Washington after revising and reissuing a solicitation in response to a bid protest.
- DOE was 4 months behind its scheduled award date for two contracts for the conceptual design of a waste processing facility at the Savannah River site. The delay occurred because the department decided to enter into discussions with companies after proposals were submitted, even though DOE had not allowed any time for this activity in its schedule for carrying out the contract award.
- DOE was 4 months late in awarding a contract to manage and operate the Berkeley National Laboratory because it took longer than expected to obtain approval of the draft solicitation from DOE headquarters officials.

It is unclear the extent to which delays in the contracts that we reviewed could have been avoided, or were due to factors beyond DOE's control. However, some delays were clearly avoidable, such as when DOE took corrective action in response to bid protests because the department failed to follow its contract award process.

Delays in awarding contracts could increase costs to both DOE and the companies that are competing for the work and could also affect the willingness of companies to compete for future DOE contracts. Because the department does not track its costs for awarding individual contracts, it was not feasible for us to quantify the impact of delays on DOE's costs. However, DOE headquarters procurement and program officials acknowledge that there may be additional costs associated with contract awards that experience delays and added that companies competing for these contracts could face increased costs as the process takes longer than expected. Specifically, in addition to investing time and resources in developing proposals, once a company submits a proposal to DOE, the company is generally required to ensure that the key personnel identified in the proposal continue to be available until the decision is made and the contract awarded. For example, according to file documents for a contract to provide infrastructure services at DOE's Paducah, Kentucky, site, several of the companies competing for that contract told DOE that—in addition to the high costs of preparing a proposal—there were costs associated with retaining key personnel during the year-long delay that occurred before DOE awarded the contract. Increased costs and the length of time it takes DOE to award a contract also have the potential to affect competition for future DOE work. Although DOE officials who oversee the contracting process told us that they have not yet seen a decline in the number of companies competing for contracts, they agree that this is a potential concern.

In July 2005, when we began our work, officials overseeing DOE's contract award process generally were not taking steps to address delays in awarding those contracts. One of the main reasons that DOE was not addressing the delays was that DOE's performance data measured only the final steps in the contract award process and indicated that most of the contracts were being awarded in a timely manner. In late 2005, partly in response to criticisms from GAO and others, DOE began to take steps to improve its contract award process. These efforts involved (1) an initiative with the Office of Management and Budget to address the GAO determination since 1990 that DOE's contract management has been at high risk for fraud, waste, abuse, and mismanagement; (2) a restructuring of

DOE's Office of Environmental Management to increase the focus on planning and management of contract awards; and (3) specific steps by NNSA and DOE's Office of Procurement and Assistance Management to implement improved measures of the timeliness of the contract award process. Although these efforts are constructive and helpful, we have two main concerns that could limit DOE's effectiveness in improving the timeliness of contract awards. First, the efforts do not reflect a comprehensive approach within the department to improve the timeliness of contract awards. Various programs and organizations within DOE are initiating these efforts, and we found that some of DOE's contracts were excluded from the improvements. Second, as DOE implements more comprehensive measures of timeliness and analyzes the resulting performance data to identify the causes of delays, DOE currently does not have a systematic way to develop and disseminate best practices or lessons learned, despite the fact that federal regulations require agencies to implement knowledge-sharing procedures. Instead, department officials who oversee contracting efforts said that best practices and lessons learned are sometimes shared informally during the contract award process or at conferences. However, officials who plan and carry out contract awards said that the information was sometimes not available to them or may have come too late in the award process to be beneficial.

To help ensure that DOE's contract award process is efficient and effective and that DOE is obtaining the best value for the government, we are recommending that DOE take steps to (1) develop more accurate and comprehensive performance measures for the timeliness of its contract awards and (2) establish a consistent system for identifying and sharing lessons learned and best practices on contract awards.

DOE generally agreed with our recommendations and outlined steps that the department has taken or will take in response. However, DOE raised concerns about (1) using a nonprobability sample to draw conclusions about DOE's contracting practices, (2) our description of contracts awarded later than planned as delayed, and (3) our statement that DOE's performance measures for timeliness were incomplete. We believe our sampling methodology was appropriate because the 31 contracts in our nonprobability sample represented about 73 percent of the total dollars DOE awarded during the 4-year period for contracts valued at \$5 million or greater. Furthermore, our report does not use the sample results to make overall statements about DOE's contracting practices. Regarding our description of contracts awarded later than planned as delayed, federal regulations emphasize the importance of timeliness in awarding contracts,

and we believe that awarding contracts later than planned is accurately characterized as a delay. Regarding the completeness of DOE's performance measures for timeliness in awarding contracts, we continue to believe that DOE's performance measures could be improved by being applied to all contracts for which a written plan and schedule are required.

Background

DOE has numerous sites and facilities around the country where the department carries out its missions, including developing, maintaining, and securing the nation's nuclear weapons capability; cleaning up the nuclear and hazardous wastes resulting from more than 50 years of weapons production; and conducting basic energy and scientific research, such as mapping the human genome. DOE relies on contractors to operate its facilities and accomplish its missions. This mission work is carried out under the direction of NNSA and DOE's program offices, including the Offices of Environmental Management and Science.

The Federal Acquisition Regulation provides the basic guidelines that all federal agencies must follow in planning for and carrying out the process for awarding contracts. DOE, like most federal agencies, has supplemental regulations that it has set forth in the Department of Energy Acquisition Regulation to recognize requirements unique to the department, such as maintaining nuclear safety and security. Furthermore, in the mid-1990s, DOE's Office of Procurement and Assistance Management developed the DOE Acquisition Guide that provides further information on contract award planning activities, including meeting federal requirements for competition, establishing evaluation criteria, and selecting the appropriate contract type.

In planning and carrying out competition and award of contracts, there are three main phases, and each phase generally includes several steps.

- *Planning.* This phase involves identifying the mission need for the contract, alternatives for obtaining the goods or services, estimated costs, and any program or technical risks. Federal regulations state that the agency should use an integrated team approach—involving all personnel responsible for significant aspects of the contract award process—to developing the plan and associated milestone schedule. The plan should also identify the appropriate contract type for the work, considering the alternatives and risks. In addition, a selection official is designated, and an evaluation board is formed to carry out the contract award process.

-
- *Developing the solicitation.* Generally, the evaluation board, with input from technical and other advisors, develops a statement of work for the contract and criteria that will be used to evaluate proposals submitted by companies. During this phase, DOE may also do market research to determine if sources capable of meeting the agency's needs exist. Finally, DOE issues the request for proposals that describes the work to be done, provides instructions to companies on how and when to submit their proposals, and describes the criteria that will be used to evaluate the proposals and select a contractor.
 - *Evaluating proposals and awarding the contract.* Once proposals are received, the evaluation board evaluates the proposals against the established criteria. Evaluation criteria may differ for each contract, but generally include factors such as a company's proposed technical approach; past performance on DOE, other federal agency, and commercial contracts; the proposed cost; and the qualifications of the key personnel identified in the proposal. During this phase, DOE may determine that it is necessary to hold discussions with individual companies about issues raised during the evaluation of their proposals. Based on a written report of the evaluation board that outlines the strengths and weaknesses of each proposal, the selection official should select a proposal that represents the best value for the government. The DOE contracting officer, who has generally provided contracting support to the evaluation team, then awards the contract.²

The Competition in Contracting Act of 1984 provides statutory authority for GAO to decide cases involving bid protests. GAO's bid protest decisions address specific allegations raised by unsuccessful companies claiming that particular contracting actions were contrary to federal laws and regulations. A bid protest may be filed by an "interested party," defined as an actual or prospective bidder or offeror with a direct economic interest in the contract. Unless the protest is dismissed at the outset because it is procedurally or substantively defective, such as if the protest was not filed in a timely manner, the contracting agency is required to file a report with GAO responding to the protest. GAO will consider the facts and legal issues raised and is required to resolve the protest not later than 100 days from the date the protest was filed, either by sustaining the protest and

²After the contract has been awarded, DOE notifies both the successful and unsuccessful companies and, upon request, conducts "debriefings" on how their proposals were evaluated.

recommending that the agency take corrective action, or by denying or dismissing the protest.³

DOE's Office of Procurement and Assistance Management and NNSA's Office of Acquisition and Supply Management establish policies and guidance for awarding contracts according to federal and departmental regulations. Officials from DOE's programs, such as NNSA and the Offices of Environmental Management and Science, usually manage the contract planning and award process since they are most knowledgeable about the work needed and are ultimately responsible for managing the work and overseeing the contracts. Other organizations within DOE work with the program officials to plan and carry out the contract award process by providing contracting, legal, and technical advice and assistance. DOE's Offices of General Counsel and Procurement and Assistance Management review, evaluate, and approve key documents during the entire process, such as the initial plan for the contract award process and the request for proposals.

Delays Occurred in Most of the Contract Awards We Reviewed

Most of DOE's 31 contract awards that we reviewed experienced delays when comparing the planned and actual award dates for the contracts. The 24 contracts awarded with competition faced delays of months to years; of the 7 contracts awarded without competition, 6 were awarded on time or nearly so. Delays occurred throughout the contract award process due to factors such as time spent repeating steps of the process to resolve a company's formal protest, or because of unanticipated complications that affected DOE's ability to adhere to the planned schedule.

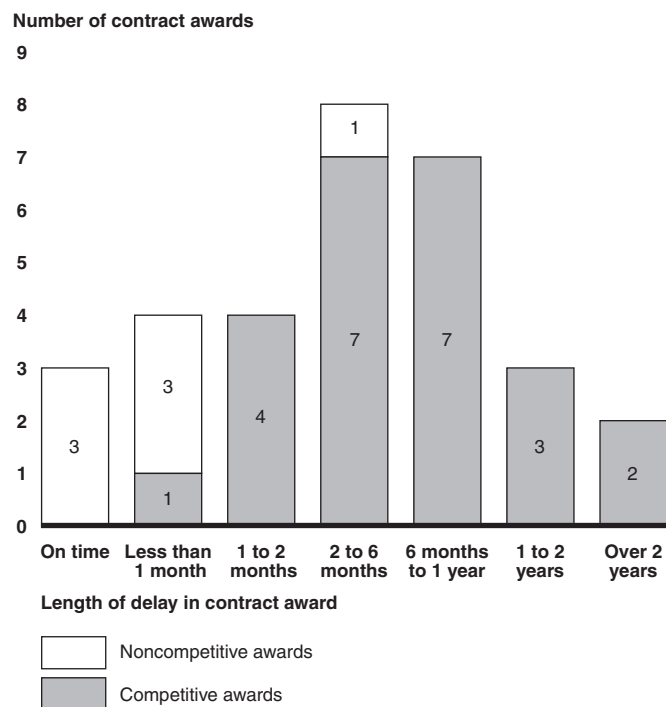
DOE Experienced Delays of Months to Years in Awarding Its Contracts

For the 31 contracts we reviewed, most were awarded months to years after the planned award date. To determine whether contract awards were delayed, we compared the planned award date with the date DOE actually made the award. None of the 24 competitive contracts we reviewed was awarded according to DOE's planned schedule, and nearly all were delayed by months or years. Only 1 of these competitive contract awards was made within 1 month of the planned award date. The remaining awards

³Between fiscal years 2002 and 2005, a total of 5,397 bid protests were filed with GAO, or an average of about 1,300 per year. Of the cases resolved by a GAO decision on the merits, about 20 percent resulted in a sustained decision.

experienced more lengthy delays of from 2 months to over 2 years. In contrast, delays were less prevalent among the noncompetitive contract awards included in our sample. Six of these 7 contracts were awarded on time or within 1 month of the planned award date. The other contract was awarded 2 months late.⁴ (See fig. 1.)

Figure 1: DOE's Timeliness in Awarding 31 Contracts from Fiscal Years 2002 through 2005



Source: GAO analysis of DOE contract files.

Noncompetitive contracts were awarded in a more timely manner, in part, because the federal regulations for noncompetitive contract awards are different and involve fewer steps. Thus, DOE officials could shorten or

⁴While the sample of contract awards reviewed did not allow us to generalize to all of DOE's contract awards, they represent about 73 percent of the department's total contracting dollars for awards of \$5 million or greater during fiscal years 2002 through 2005. Further information on our scope and methodology is presented in appendix I.

eliminate parts of the process in which delays typically occurred on the competitively awarded contracts we reviewed. For example, for a noncompetitively awarded contract, DOE would not need to evaluate multiple proposals because it had already identified a company with the qualifications and experience necessary to perform the work. DOE generally awarded the seven contracts we reviewed without competition because of an urgent need to obtain the goods and services and to ensure that the contractors could start work quickly. This is consistent with one of the exceptions to the requirement for full and open competition allowed by federal regulations. Nevertheless, since federal regulations generally require that agencies use full and open competition, the contracts awarded competitively better reflect the timeliness of DOE's overall contract award process.

The schedules for the contract awards we reviewed showed that DOE planned to take from about 1 month to up to 2 years to award its contracts. Variation in the length of the planned schedule may depend on several characteristics of the contract award process, such as whether or not the contract was awarded competitively or noncompetitively, the dollar value of the award, or the complexity of the work. DOE officials indicated that facility management contracts tend to be more complex and, therefore, can take longer and could be more prone to delay, but we found some facility management contract awards were less delayed than some smaller dollar value, more straightforward contract awards. For example, the \$4.8 billion facility management contract to operate the Idaho National Laboratory took just over 1 year to award and was delayed about 4 months, while a \$5 million administrative support services contract at the Savannah River site took almost 2 years to award and was awarded 1-1/2 years later than the planned award date.

Delays Occurred Because DOE Had to Modify Its Approach after Beginning the Contract Award Process

Delays in awarding contracts occurred when DOE modified its approach after the start of the contract award process. DOE frequently had to modify its approach to take corrective action in response to bid protests, or because DOE took more time than planned to evaluate proposals, hold discussions with companies that had submitted proposals, or obtain headquarters approval for key documents.

Taking corrective action due to bid protests. One cause of delay for DOE's contract awards was the time the department spent reworking portions of

the process in response to companies that filed bid protests with GAO.⁵ Companies generally filed protests because they believed that DOE had violated federal acquisition regulations in carrying out the contract award process, most typically in evaluating or soliciting proposals. Rework in response to a bid protest was initiated in one of two ways: (1) GAO found fundamental flaws in the contract award process, sustained the company's protest, and recommended that DOE take corrective action or (2) DOE initiated corrective action after conducting an assessment of the validity of the company's protest, without waiting for a formal GAO decision. In either case, rework can include canceling or revising the solicitation, reevaluating proposals, or accepting proposals from firms that were previously excluded from the competition.

Rework resulting from corrective action can significantly delay the contract award. For the 31 contracts we reviewed, 10 resulted in bid protests filed with GAO. Protests on 8 of these were denied or dismissed by GAO, or withdrawn by the protestor.⁶ DOE agreed to take corrective action on the remaining 2, once as a result of a protest being sustained by GAO, and once before GAO issued a decision. Delays due to such corrective action added up to 2 years to the contract award process. For example, a contract worth \$1.6 billion to clean up the River Corridor area at DOE's Hanford, Washington, site was delayed more than 1-1/2 years while DOE took corrective action in response to a bid protest. GAO sustained a bid protest on the initial award because DOE failed to properly apply its criteria for evaluating the cost proposals. In response, DOE revised and reissued the solicitation, evaluated new proposals, and selected a new contractor about 2-1/2 years after the initial planned award date.⁷ In another example, a NNSA contract award for administrative support services was delayed almost 2 years when NNSA took corrective action in

⁵During fiscal years 2002 through 2005, of DOE's more than 5,000 contract awards, 39 were subject to bid protests filed with GAO. Of these, 24—or about 60 percent—were denied or dismissed by GAO or withdrawn by the company that filed the protest before GAO reached a decision. For the remaining 15 bid protests, DOE took corrective action, in response to a sustained decision in two cases and before GAO reached a decision in the other 13 cases.

⁶For the 8 bid protests that did not result in corrective action, the bid protest process did not cause a delay in the date of the contract award. However, starting the work under the new contract may have been deferred until the bid protest was resolved.

⁷As part of taking corrective action on this bid protest, DOE had to revise the statement of work and issue a new solicitation. This was necessary because the incumbent contractor had continued to perform cleanup work under the existing contract, leaving less work to be accomplished under the new contract.

response to a bid protest. Corrective action involved revising and reissuing the solicitation. However, the NNSA evaluation board then had difficulties completing cost evaluations of the revised proposals, adding more time to the process, and finally awarded contracts to all three companies almost 2 years later than the planned award date.

Evaluating proposals. DOE generally estimated between 1 and 6 months to review and evaluate proposals for its competitive contract awards. However, for the 24 competitively awarded contracts we reviewed, it took on average 5 months longer than planned for this part of the process, accounting for over half of the overall delay in carrying out the process. For example, DOE was planning to award multiple contracts to provide environmental remediation and deactivation of facilities across the DOE complex. DOE estimated that it would receive about 20 proposals and allowed about 3 months for evaluating the proposals and selecting the contractors. The department actually received more than 100 proposals and was delayed over 9 months, in part, due to the amount of additional time required to review the larger than expected number of proposals. In another example, the Savannah River Operations Office allowed about 8 weeks to evaluate proposals for an administrative support services contract at the site. However, the evaluation board encountered several difficulties during the evaluation process, including concerns about the wide range of the cost estimates in the proposals. These concerns necessitated a more detailed cost evaluation, resulting in the evaluation taking 5 months longer than planned.⁸

Holding discussions with companies submitting proposals. For eight of the contracts we reviewed, DOE had to modify its approach to holding discussions. In some cases, the planned schedule did not include any time for discussions and, in other cases, the time DOE took to discuss proposals with the companies submitting them exceeded the time estimated in the plan. For these contracts, actual time to discuss proposals exceeded the planned time by an average of 3 months. For example, two contracts for conceptual design of a waste processing facility at the Savannah River site were awarded 4 months late because DOE initially intended to make the contract awards without discussions and, therefore, did not plan time in the original schedule for this part of the process. However, after the

⁸In addition, there were three bid protests filed with GAO during this contract award process, with DOE taking corrective action based on the first two protests. Overall, the final contract award was delayed 1-1/2 years.

contracting process was under way, the department decided it was necessary to conduct discussions on the proposals because none of the companies had provided all of the cost and pricing data necessary to fully evaluate the proposals. Similarly, a contract for medical services for the Hanford site was delayed more than 5 months, in part because the department held discussions with companies concerning their cost proposals and technical approach but did not plan for this activity in the schedule.

Obtaining headquarters approval of key documents. Awarding of DOE contracts was also delayed due to obtaining headquarters approval of key documents. In five contract awards we reviewed,⁹ delays in obtaining the required review and approval from DOE headquarters officials caused an average 5-month delay in contract award. For example, for a contract to manage and operate DOE's Berkeley National Laboratory, DOE allowed 1 month for headquarters review and approval of the draft solicitation. However, headquarters review and approval took 5 months, partly due to the complexities of competing a contract that had been in place for decades. As a result, the contract award was 4 months late. In another example, the Oak Ridge Operations Office allowed 1 month for headquarters review and approval of a solicitation for a contract for medical isotope production. However, headquarters review and concurrence took about 1 year longer than anticipated because of additional requests for information from the Congress on DOE's strategy for going forward with the work under this contract. Overall, the contract award was delayed nearly 2 years due to this lengthy review and the need for extensive discussions during the evaluation phase with companies that had submitted proposals.

It is unclear the extent to which these delays in awarding contracts were avoidable. At times, delays in the process appeared to be outside DOE's control and, therefore, more difficult to anticipate and manage, such as difficulty obtaining funding or to address concerns raised by the Congress or other stakeholders. For example, a \$562 million contract for facilities and services to stabilize the department's depleted uranium hexafluoride inventory at Portsmouth and Paducah was delayed after the Office of Management and Budget, late in the process, raised concerns about the need to build facilities at both locations. Dealing with this issue contributed

⁹Lack of consistent file documentation on headquarters review and approval dates made it difficult to determine exactly how many contract awards were delayed for this reason.

to the delay of the contract award.¹⁰ While external factors such as this can impact the planned schedule, some delays are clearly avoidable, such as when DOE had to take corrective action in response to bid protests because the department failed to follow its contract award process. In such cases, better management and oversight of the contract award process would provide opportunities for improvement. According to the Director of DOE's Office of Procurement and Assistance Management, DOE cannot plan for all possible events when developing a schedule for a contract award process and must respond to changing circumstances and incorporate additional steps into the award process when necessary.

Delays in Awarding Contracts Could Increase Costs to the Government and Industry and Affect Future Competition

Delays in awarding contracts could increase costs both to DOE and the companies that are competing for the potential contracts and could also affect whether companies are willing to compete for DOE contracts in the future. Specifically, awarding a contract months or years after the date anticipated in the contract award schedule could increase the overall costs to the government. DOE staff involved in a contract award may include officials from the program offices, such as the Offices of Environmental Management or Science; contracting and legal specialists; and nuclear safety and regulatory experts. Both salary and travel costs associated with keeping these integrated teams together for the duration of the contract award process can be significant. However, these costs cannot be readily quantified since the department does not accumulate or track the costs associated with individual contract awards. Nevertheless, DOE officials acknowledge that there may be additional costs associated with contract awards that are delayed. The added time and resources spent on delayed contract awards may impact the department's ability to meet its management and oversight responsibilities, including planning for and carrying out other contract awards.

According to DOE officials, prolonged delays in awarding contracts could also increase costs for companies that are submitting proposals. Companies competing for DOE contracts invest considerable time and resources in developing their proposals. However, since companies generally consider their proposal costs to be proprietary information, we could not quantify those costs. For DOE's contracts, once companies

¹⁰Congress eventually passed legislation that became effective on August 2, 2002, requiring DOE to award the contract for facilities at both locations within 30 days. See Pub. L. No. 107-206, 116 Stat. 820, § 502 (2002). The contract was awarded on August 29, 2002.

submit proposals, DOE generally requires the companies to ensure that key personnel identified in the proposals continue to be available until the award decision has been made. If a contract award is delayed, companies may have to keep key personnel available for months or even years, which could increase their costs and/or represent a possible lost opportunity to the companies since those key personnel may not be available for other work. For example, our review of file documents found that several small businesses competing for a contract to provide infrastructure services at DOE's Paducah, Kentucky, site expressed frustration over the costs of keeping key personnel available while DOE took nearly 1 year after the planned award date to complete the process and award the contract.

The length of time and increased costs to carry out a contract award may also discourage some companies from competing for DOE work, thus potentially affecting the extent of competition in the future. Ensuring adequate competition for contracts can help obtain the best value for the government. According to DOE officials who oversee the contracting process, they have not seen a decline in the number of companies willing to compete for DOE's contracts, but the officials agree that this is a potential concern, and it has been a concern in the past. For example, a January 2001 report that analyzed the contractor base for DOE's environmental cleanup work stated that the number of companies that were both willing and able to compete for major remediation contracts had declined over the past several years.¹¹ The report concluded, among other things, that promoting competition among a large number of qualified companies was crucial to getting the best value for the government and accomplishing the environmental cleanup mission. Therefore, anything that could reduce the pool of potential companies competing for DOE's work, such as an inefficient contract award process, would not be in the department's best interest of fostering full and open competition for its work.

¹¹U.S. Department of Energy, Contract Reform and Privatization Project Office, *Analysis of the DOE Contractor Base: Readiness, Willingness, Profitability and Trends—A Focus on the Environmental Management Program* (Washington, D.C.: January 2001).

Efforts to Address the Causes of Delays Are in Early Stages, but Concerns Remain about the Potential Effectiveness of DOE's Planned Actions

When we began our review in July 2005, DOE officials generally were not addressing delays in awarding contracts because DOE's data was showing that its contracts were being awarded in a timely manner. However, since late 2005, DOE has been implementing three main efforts to improve its contracting, partly in response to criticism by GAO and others. These efforts include (1) an initiative to address the DOE contracting weaknesses that led GAO to designate the area as high risk for fraud, waste, abuse, or mismanagement; (2) a plan to restructure DOE's Office of Environmental Management to focus more attention on the contract award process; and (3) steps by NNSA and DOE's Office of Procurement and Assistance Management to improve performance measures on the timeliness of contract awards. While these improvement efforts appear to be constructive and may also help to address delays in awarding contracts, we have two remaining concerns related to the timeliness of DOE's contract awards. First, the efforts do not reflect a comprehensive approach within the department to improve the timeliness of contract awards. Second, even if DOE uses improved performance data to identify the causes of delays in awarding its contracts, the department does not have a systematic method to develop and disseminate best practices and lessons learned.

DOE Was Not Addressing Delays Because Incomplete Performance Data Indicated Contracts Were Awarded in a Timely Manner

When we began our work in July 2005, DOE officials generally were not taking steps to address the causes of delays in awarding contracts. One of the main reasons for this was that DOE's performance data was generally showing its contracts were being awarded in a timely manner. Although our analysis uncovered delays in most of the 31 contract awards valued at \$5 million or greater from fiscal years 2002 through 2005 that we reviewed, DOE's performance data for the same period showed that most of its contract awards were timely. For example, the data for fiscal years 2003 and 2004 showed that, respectively, 88 and 86 percent of the contract awards were timely. According to DOE's performance measures, a timely award meant that DOE had awarded the contracts within 150 days after receiving proposals from companies. An official from the Office of Procurement and Assistance Management who manages the performance

data said that the department used 150 days as a timeliness standard because it represented a realistic yet challenging time frame for awarding the contracts.¹²

However, DOE's performance data did not provide a complete picture of the department's timeliness in awarding its contracts for two reasons. First, the data for those years did not include all of the contract award process. Instead, the performance data DOE used measured only the timeliness in carrying out the final stage of the process (the evaluation phase), from the point at which DOE received the proposals through contract award. Consequently, the performance data excluded the earlier steps of the process, from planning the contract award through the process of soliciting proposals from interested companies. For the 24 competitively awarded contracts valued at \$5 million or greater we reviewed, the excluded steps accounted for over half of the total time that DOE typically spent awarding its contracts. As a result, some of DOE's contract awards may appear timely, when, in fact, DOE awarded the contracts weeks or months after the planned award date. For example, in fiscal year 2003, DOE awarded a contract for laundry services at the Hanford site in Washington about 2 months after its planned award date. However, DOE considered the contract award to have been timely because the department was able to award the contract within 150 days of receiving proposals.

Officials from the Office of Procurement and Assistance Management said DOE's timeliness data are intended to measure the performance of contracting staff. Therefore, the officials said that the timeliness measure includes only the evaluation phase of the contract award process because that is the aspect of the process that would more likely be under the direct control of the contracting staff. Prior to the evaluation phase, officials said that contracting staff generally rely on program staff to develop key information, such as a description of the work to be carried out under the contract. Furthermore, according to DOE's guidance, program office staff are generally responsible for planning the contract award process. However, we found that DOE's contracting staff were generally involved throughout the entire contract award process as part of an integrated team

¹²DOE's performance data for fiscal years 2003 through 2005 included contracts valued at \$100,000 or greater that DOE had awarded through a competitive process. The fiscal year 2002 data included competitive contracts with values between \$1 million and \$25 million. The data from the 4-year period did not include the department's facility management contracts.

approach. Furthermore, it is unclear to what extent contracting staff have direct control over any phase of the process.

Second, DOE's performance data were incomplete because data on DOE's facility management contracts were excluded. For example, in fiscal year 2005, DOE competitively awarded seven facility management contracts valued at a total of about \$10.4 billion. However, DOE excluded the data on these facility management contracts from its performance measures for timeliness. DOE officials from the Office of Procurement and Assistance Management said they excluded the facility management contracts from the department's performance data because those contracts are particularly complicated to award. Unlike the contracts included in the performance measures for timeliness, the department could not determine an appropriate timeliness standard for the facility management contracts. As a result of excluding the facility management contracts, the performance data for fiscal year 2005 did not reflect the department's timeliness in awarding about 97 percent of the nearly \$11 billion in contracts that the department awarded that year.

In contrast to DOE's approach, we measured the department's timeliness in awarding its contracts by comparing the planned award dates with the dates DOE actually awarded the contracts. We used the planned award date as the standard for determining whether contracts were awarded in a timely manner, rather than comparing the time it took DOE to award the contract after proposals were received with a fixed standard, such as 150 days. A fixed standard is arbitrary because the actual time needed to carry out a contract award process can differ greatly for legitimate reasons, depending on the circumstances of each individual contract award. Furthermore, in doing so, we included the facility management contracts because those contracts can represent a significant portion of the total value of DOE's contract awards.

DOE Recently Began Three Main Efforts to Improve Its Process for Awarding Contracts

Since late 2005, DOE has initiated three new efforts to improve its contracting processes. DOE is implementing these actions as part of its continuing efforts to improve its contracting processes and, in part, because of long-standing criticisms by GAO and others. Since 1990, GAO has designated DOE's contract management, including project management, as an area at high risk for fraud, waste, abuse, and mismanagement. Our reviews have uncovered weaknesses in DOE's management and oversight of its contracts which, in some cases, have undermined DOE's ability to carry out its missions or dramatically

increased its costs.¹³ More recently, criticisms have included the frequency of delays in awarding contracts and the need for reforms. For example, in congressional testimony in November 2005 and March 2006, the Assistant Secretary for Environmental Management cited the need for improvements in the department's contract award practices. Furthermore, conferences on DOE environmental cleanup issues held in February and October 2005 and attended by DOE and contractor officials included presentations calling for a reevaluation of DOE's contract award process.

DOE's recent efforts to improve its contracting include the following:

- *Initiative to address DOE's high-risk contracting practices.* In November 2005, DOE drafted a plan aimed at improving the department's contract and project management, including management of the contract award process. DOE developed the plan in response to an effort by the Office of Management and Budget that requires agencies to address areas identified by GAO as high risk for fraud, waste, abuse, or mismanagement. Actions included in the plan to improve the contract award process include conducting better oversight of the planning process, maximizing competition for contracts, and ensuring that contracts allow DOE to properly hold contractors accountable for their performance. To date, DOE has developed performance measures and targets for the focus areas in its action plan, as well as target dates for implementing the plan. As part of this initiative, in February 2006, DOE began to increase the frequency of training for new evaluation boards and selection officials and to provide this training at the beginning of the planning process. Although this plan does not specifically address the timeliness of contract awards, the overall effort to improve contracting and project management could help identify and address underlying causes for delays in awarding contracts.
- *Initiative to restructure DOE's Office of Environmental Management.* Also in late 2005, the Assistant Secretary for Environmental

¹³For additional information see GAO, *Contract Reform: DOE Has Made Progress, but Actions Needed to Ensure Initiatives Have Improved Results*, [GAO-02-798](#) (Washington, D.C.: Sept. 13, 2002); GAO, *Department of Energy: Further Actions Are Needed to Strengthen Contract Management for Major Projects*, [GAO-05-123](#) (Washington, D.C.: Mar. 18, 2005); GAO, *Nuclear Waste: Absence of Key Management Reforms on Hanford's Cleanup Project Adds to Challenges of Achieving Cost and Schedule Goals*, [GAO-04-611](#) (Washington, D.C.: June 9, 2004); and GAO, *Hanford Waste Treatment Plant: Contractor and DOE Management Problems Have Led to Higher Costs, Construction Delays, and Safety Concerns*, [GAO-06-602T](#) (Washington, D.C.: Apr. 6, 2006).

Management announced plans to restructure the headquarters-based administrative functions within his program office. According to officials in the Office of Environmental Management, the reorganization is aimed, in part, at improving contract and project management by bringing these functions together under a new Deputy Assistant Secretary for Acquisition and Project Management. As the reorganization is implemented, the Office of Environmental Management, at the request of a congressional subcommittee, has also commissioned the National Academy of Public Administration to undertake a general management review of the program, including reviewing the program office's policies and processes for awarding contracts and providing advice on improving their effectiveness. As the study progresses, DOE will receive interim reports and recommendations on how to implement the reorganization and increase its effectiveness, which may also result in improving the timeliness of contract awards.

- *Initiative to improve performance data on contract timeliness.* NNSA and DOE are implementing separate efforts to help them track contract awards against the planned dates for carrying out the process. NNSA's effort is focused on a recently implemented data system that will help its contracting staff track ongoing contract awards against a detailed schedule of milestones. The requirement to input a detailed milestone schedule at the beginning of the contract award process applies to all of NNSA's contracts, regardless of their dollar value. As staff carry out the process, the system will record the dates on which key steps were completed and document any delays from the schedule. The system also allows the contracting officials to generate reports on the status of ongoing contract awards, as well as analyze data on existing contract awards for evidence of systemic delays or other problems. As of April 2006, the data system was operational, and NNSA contracting officials have started using this milestone information to manage ongoing contract awards.

Similarly, in March 2006, DOE's Office of Procurement and Assistance Management began implementing plans to track the timeliness of DOE's facility management or other high-visibility contracts against a detailed milestone schedule. According to the Director of the Office of Procurement and Assistance Management, representatives from his office, as well as other department officials responsible for awarding facility management contracts, will work to develop a realistic, but challenging, milestone schedule for carrying out the award process.

According to the Director, revised DOE guidance will recommend that planning for a new facility management contract should begin no later than 2 years prior to the expiration of an existing contract. Once the milestone schedule has been established, his office will then track the contract award process to compare planned and actual key dates and provide monthly updates to the Deputy Secretary. As of April 2006, DOE had established schedules for the current and upcoming facility management contract awards, began monitoring the progress against those schedules, and began submitting monthly status reports to the Deputy Secretary.

DOE's efforts to improve its contracting are generally in the early stages of being planned or implemented, and not all of the efforts specifically address the timeliness of contract awards. Nevertheless, we believe these initiatives are a constructive step towards addressing long-standing weaknesses in the department's contracting and improving its contract awards. As the department addresses the weaknesses and takes steps to improve its contracting, improved efficiency and effectiveness could also result in fewer delays in awarding contracts. However, as discussed below, we are concerned that the efforts may fall short in two main respects, which could limit the department's effectiveness in improving the timeliness of contract awards.

Lack of a Comprehensive Approach to Improvement Efforts and Inconsistent Practices for Communicating Lessons Learned May Limit the Effectiveness of DOE's Efforts

Standards for a well-functioning contract award process come from federal acquisition regulations and GAO's framework for assessing the process at federal agencies. The framework integrates the views of federal government and industry experts on the characteristics and practices of a well-functioning contract award and management process, and it draws upon decades of experience within GAO in analyzing contracts and contracting organizations.¹⁴ Among the standards for a well-functioning contract award process set forth by the framework and regulations are that federal agencies should use knowledge from prior contract awards to assess the effectiveness of the contracting process and, in the interest of continuous improvement, have a systematic means for instituting best practices and lessons learned. DOE's improvement initiatives, as they apply to the timeliness of contract awards, appear to fall short in both respects.

¹⁴GAO, *Framework for Assessing the Acquisition Function at Federal Agencies*, [GAO-05-218G](#) (Washington, D.C.: Sept. 2005).

First, DOE has not ensured that the efforts to develop better data on the timeliness of contract awards will include all of the department's contract awards that require a written plan and schedule. While DOE and NNSA's efforts to develop better timeliness data will include all of the department's facility management contracts, as well as NNSA's other contract awards, the rest of DOE's contracts may not be included. This could be a considerable portion of DOE's contracts valued at \$5 million or greater. For example, of the contracts that the department awarded in fiscal years 2002 through 2005, nearly one-quarter of the total contract value, or \$3.9 billion, may not have been included in DOE's improvement efforts. These contracts may be excluded because they were neither facility management contracts, other DOE high-visibility contracts, nor contracts awarded by NNSA. The Director of DOE's Office of Procurement and Assistance Management said that the tracking against milestone schedules includes only contracts that represent significant risk or are critical to carrying out DOE's programs or missions. For example, the contracts that are currently being tracked include facility management contracts, other large cleanup contracts, and contracts that may also be of particular interest to headquarters, such as those for guard services. The Director added that it is not the intent of this effort to monitor the progress of all ongoing contract awards of \$5 million or greater, and that he would expect contracting officers in the field locations to be accountable for contracts within their approval authority. Nevertheless, we believe that efforts to develop better timeliness data should include all contracts valued at \$5 million or greater because DOE guidance generally requires written plans and schedules for these contracts.

Second, the department has neither had a systematic approach for instituting best practices or lessons learned in its contract award process, nor is it clear that the department's efforts will result in a more systematic approach in the future. As DOE develops better data on the timeliness of its contract awards and analyzes the data to identify and address systemic problems or underlying causes of delays, the department will be developing useful information that could help ensure that future contract awards benefit from the best practices or lessons learned. Moreover, federal regulations require agencies to have a process for ensuring that lessons learned are developed and used in planning future contract awards.¹⁵

¹⁵FAR Part 7.103(r) requires agency heads to implement processes for ensuring that knowledge gained from prior acquisitions is used to further refine requirements and acquisition strategies for future contract awards.

Based on federal regulations and GAO's framework, standards for a well-functioning contract award process would include a systematic approach for identifying and communicating lessons learned and best practices. Such an approach would include activities such as routinely evaluating performance data across a broad range of contracts to identify the extent to which the contract award process went well or encountered problems. In doing so, DOE would then look for trends or systemic problems and investigate the underlying causes. A systematic approach would also include a mechanism to ensure this information is readily available, in order to help officials who plan and carry out contract awards do so more efficiently.

We did find some examples in which best practices and lessons learned were identified and in some cases shared within the department, but we did not find a systematic approach for doing so. For example, in a recent DOE evaluation of the problems that occurred in awarding contracts for environmental cleanup and infrastructure services at its facilities in Portsmouth, Ohio, and Paducah, Kentucky, DOE's review confirmed that poor planning and management of the process caused delays of 6 months to 1 year in awarding the contracts. Some of the factors mentioned were lack of timely management direction in key areas, a lengthy headquarters review and approval process, and unrealistic schedules for the awards. However, DOE concluded that the factors leading to the delays were not typical for DOE's contracts and did not represent a systemic problem. Therefore, DOE did not communicate the information as a systemic problem. In contrast, our analysis of 31 contracts valued at \$5 million or greater indicated that these types of causes for delays were commonplace.

In addition, best practices or lessons learned have been communicated at training sessions and presentations to staff carrying out contract awards, such as those offered by DOE's Office of General Counsel. According to the DOE attorney who has led a number of them, the sessions are generally aimed at helping staff carry out the contract award process effectively and in accordance with federal regulations and DOE guidance. This may increase the department's ability to avoid successful bid protests. Best practices or lessons learned have also been shared at annual procurement directors' conferences held for officials who oversee the contract award process, with the most recent conference in October 2005 covering topics such as proper documentation of decisions made during the contract award process.

However, several DOE officials that were responsible for contract awards said that these best practices or lessons learned were not consistently available or may have come too late in the planning for the contract award to be very beneficial. The officials added that there was no centralized source within DOE for best practices, but they could obtain lessons learned by contacting others within the department who had recently awarded contracts. For example, an official from the Office of Environmental Management said that, in planning the contract award process for DOE's Savannah River site near Aiken, South Carolina, she traveled to DOE's offices in Idaho Falls to meet with officials there who had just awarded contracts for environmental cleanup at the site, and management and operation of the Idaho National Laboratory. While she said the meetings were beneficial and she obtained lessons learned documents, she saw this process as the only way to obtain best practices or lessons learned from those contract awards. As another example, this same DOE official conducted a recent contract award process, and said she would have benefited from early training on how to properly document decisions made while evaluating the proposals that were submitted. She added that the training was not made readily available, and it was not mandatory. After submitting draft documents for headquarters review, she eventually received helpful information on how to improve the documentation, but this would have been more beneficial earlier in the process.

Conclusions

DOE relies on contractors to carry out its environmental cleanup, scientific research, nuclear weapons management, and other missions vital to national health, safety, and security. Our analysis of the contracts we reviewed showed that DOE experienced delays in awarding many of these contracts to carry out its critical missions. It is unclear the extent to which these delays may have been avoidable with better oversight or management, but at least some of the delays were avoidable, such as when DOE had to rework parts of the contract award process to correct errors. While DOE eventually awarded these contracts, a contract award process that takes too long runs the risk of undermining the department's efforts to obtain needed goods or services at the best value for the government. As DOE goes forward with its efforts to improve its contract award process, it will be important to ensure that performance measures address the timeliness of all of the department's contract awards that require written plans and schedules, and that lessons learned and best practices are consistently shared with DOE staff that will plan for and carry out future contract awards. Improving the department's performance in awarding

contracts is an important part of ensuring that DOE's contracts provide the best value to the government.

Recommendations for Executive Action

To help ensure that DOE's contract award process for contracts that require a written plan and schedule is efficient and effective and that DOE is obtaining the best value for the government, we recommend that the Secretary of Energy take the following two actions:

- Ensure that performance measures for the timeliness of the department's contract awards include the entire contract award process from planning to contract award and include all of the department's contracts that require a written plan and schedule.
- Establish a more systematic way of identifying lessons learned from past and current contract awards and sharing those lessons and best practices with the staff involved in planning and managing the department's efforts to award its contracts.

Agency Comments and Our Evaluation

We provided a draft of the report to DOE for review and comment. In written comments, the Director of the Office of Management generally agreed with our recommendations, but questioned whether we intended the recommendations to apply to all of the department's contracts. We modified the wording to clarify that our recommendations apply only to those contracts that require a written plan and schedule. In addition, DOE raised concerns about our nonprobability sample, our characterization of contract awards as delayed, and our view that DOE's existing performance measures were incomplete.

Regarding our sampling methodology, DOE said that the results of our nonprobability sample should not be used to reach overall conclusions about DOE's contracting practices because the 31 contracts we reviewed represented less than 1 percent of the 5,000 contracts DOE awarded during fiscal years 2002 through 2005 and were not representative of the entire group of contracts. However, we believe DOE has mischaracterized our scope and methodology. First, we did not derive the sample of 31 contracts from the 5,000 total contracts that DOE awarded during the period. Instead, we focused our efforts on the 131 contracts awarded by DOE that were valued at \$5 million or greater because such contracts generally required a written plan, including estimated dates. The 31 contracts we reviewed

represented about 73 percent of the total dollar value of those 131 contract awards valued at \$5 million or greater during the period and about 24 percent of the total number of these larger contract awards. Furthermore, our report clearly states that the results of a nonprobability sample cannot be used to make inferences about a population, and we did not draw conclusions about DOE's overall contracting processes based on the sample results.

DOE also took exception to our characterization of contract awards as delayed and our use of the department's originally planned award date as an indication of timeliness. DOE said that the milestone schedule developed in the written plan is an internal planning tool that may change over time, and the department cannot factor in a schedule contingency for every possible event. However, as we reported, federal regulations state that the purpose of planning the contract award process is to ensure that the government obtains the needed goods and services in the most effective, economical, and timely manner. The regulations stress the importance of timeliness in awarding contracts and require that written plans for carrying out the contract award process include milestones for completing the steps in the process. Adherence to the milestones established in the written plan provides a consistent measure of timeliness and is one indicator of how well the contract award process is being managed. In addition, our report clearly states that some of the contracts DOE awarded later than planned were subject to external events and complications beyond DOE's immediate control and recognizes that DOE's milestone schedule cannot anticipate all possible events. Even so, we continue to believe that better management and oversight of the contract award process, including tracking actual against planned dates in the milestone schedule, could have prevented lengthy delays in awarding some of the contracts we reviewed.

In an attachment to its letter, DOE also disagreed with our conclusions that the department's performance measures for timeliness in awarding contracts were incomplete and, as a result, the department was not addressing delays in awarding contracts. As we reported, DOE has stated that its timeliness measures were intended to evaluate the performance of contracting staff and thus included only the parts of the contract award process under their direct control. DOE also said the department had been addressing delays in awarding contracts through its lessons learned process. We continue to believe that DOE's performance measures for timeliness in awarding contracts could be improved by being more comprehensive. DOE's performance measures included only the evaluation

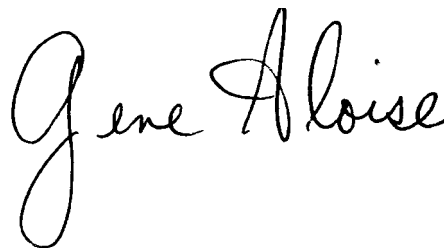
phase of the contract award process and excluded the facility management contracts, which represent a significant percentage of DOE's overall contracting dollars. We also believe that DOE was generally not addressing these delays before our review began. The three initiatives DOE started in late 2005—to address GAO's high-risk designation for DOE's contract management, to restructure the Office of Environmental Management, and to improve performance data on contract timeliness—were the main efforts the department identified as steps to address delays in awarding contracts.

DOE also provided technical comments in an attachment to the letter, which we have incorporated and summarized as appropriate. DOE's comments on our draft report are included in appendix II.

As agreed with your office, unless you publicly announce the contents of this report earlier, we plan no further distribution until 30 days from the report date. At that time, we will send copies of this report to the Secretary of Energy. We will also make copies available to others on request. In addition, the report will be available at no charge on the GAO Web site at <http://www.gao.gov>.

If you or your staff have any questions on this report, please contact me at (202) 512-3841 or aloisee@gao.gov. Contact points for our Offices of Congressional Relations and Public Affairs may be found on the last page of this report. GAO staff who made major contributions to this report are listed in appendix III.

Sincerely yours,

A handwritten signature in black ink that reads "Gene Aloise". The signature is written in a cursive, flowing style.

Gene Aloise
Director, Natural Resources and Environment

Scope and Methodology

In response to a congressional request, we determined (1) the extent to which the Department of Energy (DOE) adhered to its planned dates for awarding contracts and the factors contributing to any delays, (2) the impacts of any delays in awarding contracts, and (3) the extent to which DOE has taken steps to address delays in its contract award process. To conduct our work, we analyzed contracts valued at \$5 million or greater from multiple DOE locations and interviewed contracting and program officials at DOE headquarters and field locations. We also reviewed federal laws and regulations on contracting, agency policies and guidance, GAO guidance on bid protests, and standards for assessing DOE's management and oversight of its contract award process.

To determine the extent to which DOE adhered to its planned dates for awarding contracts, we analyzed 31 contracts from seven DOE locations that (1) were affiliated with the department's three largest component organizations—the Office of Environmental Management, Office of Science, and the National Nuclear Security Administration—and (2) had awarded a large share of the department's contracts valued at \$5 million or greater in fiscal years 2002 through 2005, including facility management contracts.¹ We focused on the three largest component organizations because they comprised over 80 percent of DOE's annual budget and because they were affiliated with about two-thirds of the locations departmentwide that had awarded contracts in the four fiscal years we reviewed. We considered the four most recent fiscal years, 2002 through 2005, in the scope of our study to help ensure that the results reflected DOE's recent activity, while increasing the number of contracts that could potentially be selected for analysis.

In fiscal years 2002 through 2005, the department awarded over 130 contracts valued at \$5 million or greater, for a total value of about \$16.3

¹Because our study focused on DOE's process for awarding contracts, we only looked at new contracts awarded during the four fiscal years through a competitive or noncompetitive process. Our study did not include contracts awarded prior to fiscal year 2002 that the department renewed or extended in fiscal years 2002 through 2005 beyond the initial period of performance. We did not include such contracts because extending an existing contract eliminates the opportunity for a competitive or noncompetitive award process to occur.

In addition, 3 of the 31 contracts in our sample actually represent multiple contract awards resulting from a single contract award process. For example, a contract award process carried out by DOE's Savannah River location resulted in simultaneous award of 22 contracts for environmental cleanup services. In defining our sample, we represented such awards as a single contract in order to avoid potentially overstating the extent to which the contracts we reviewed had experienced delays.

billion. From seven DOE locations, we selected a nonprobability sample of 31 of these contracts, accounting for about \$11.9 billion, or 73 percent, of the \$16.3 billion (see table 1).² Contracts in our sample ranged in value from about \$5.5 million to \$4.8 billion, and they included 7 of the 8 facility management contracts that the department competitively awarded during the four fiscal years we studied.³ In selecting our sample, we analyzed DOE contract award data to identify locations that had awarded a large share of the department's contracts in fiscal years 2002 through 2005. To verify the completeness and accuracy of contract award data, we interviewed knowledgeable DOE officials at the locations we visited (six of the seven field locations from which we selected contracts). On the basis of our checks, we determined that these data were sufficiently reliable for identifying DOE locations with a large share of contracts.

Table 1: Value of DOE Contracts Selected in the Nonprobability Sample, by Location

Location providing contract information	Affiliation	Value of contracts, \$5 million or greater	Value of contracts, as a percentage of the total value for all of the department's contracts, \$5 million or greater
Albuquerque Service Center, N. Mex.	NNSA	\$282,094,471	1.7
Chicago Service Center, Ill.	Science	826,878,347	5.1
Idaho Operations Office, Idaho	EM and Nuclear Energy	7,798,881,546	48.0
Oak Ridge Operations Office, Tenn.	EM, NNSA, Science	121,239,623	0.7

²Results from nonprobability samples cannot be used to make inferences about a population. This is because, in a nonprobability sample, some elements in the population being studied have no chance or an unknown chance of being selected in the sample.

³For certain types of contracts, in which the exact quantity of goods or services needed during the period of performance is unknown at the time of award, DOE may establish a maximum value for the contract. We included six such contracts in our nonprobability sample that had a maximum value of \$5 million or greater. However, in determining the total value of the contracts in our nonprobability sample, we calculated the value of these six contracts as \$0. We did so because DOE reports the value of such contracts as \$0, rather than reporting the maximum value established at the time of the award. Accordingly, the value of these contracts would also be \$0 in DOE's calculation of the total value of its contracts in fiscal years 2002 through 2005. We relied on DOE's calculation in order to determine the percentage of the total value of DOE's contracts that was represented by our nonprobability sample. As a result, we remained consistent with DOE's methodology, rather than potentially overstating the value of the contracts in our sample by including the maximum value.

**Appendix I
Scope and Methodology**

(Continued From Previous Page)

Location providing contract information	Affiliation	Value of contracts, \$5 million or greater	Value of contracts, as a percentage of the total value for all of the department's contracts, \$5 million or greater
Portsmouth & Paducah Project Office, Lexington, Ky.	EM	792,227,652	4.9
Richland Operations Office, Wash.	EM	1,606,499,515	9.9
Savannah River Operations Office, S.C.	EM and NNSA	460,033,679	2.8
Total for contracts selected in the nonprobability sample		\$11,887,854,833	73.1
Total for contracts not selected in the nonprobability sample		\$4,371,971,440	26.9
Total for all of the department's contracts		\$16,259,826,273	100.0

Source: GAO analysis of DOE data.

Notes: Affiliation refers to the department's component organizations—such as the Office of Environmental Management (EM), the Office of Science, or the National Nuclear Security Administration (NNSA)—overseeing work at the locations we contacted.

Contracting data in the table reflects contracts that were awarded in fiscal years 2002 through 2005 through a competitive or noncompetitive process. It does not include contracts awarded prior to fiscal year 2002 that the department took action to renew or extend in fiscal years 2002 through 2005, beyond the initial period of performance, because extending an existing contract eliminates the opportunity for such a process to occur.

To determine whether DOE adhered to its planned dates for awarding the contracts in our nonprobability sample, we used contract file documents, obtained from the seven locations, to identify and then compare the planned and actual contract award dates. We considered contracts to be delayed if the actual award date was later than the planned award date. In most cases, we identified the planned award date in DOE's schedule for completing key steps of the contract award process that DOE included in its formal written plan for awarding the contract. Because DOE guidance generally requires a plan and schedule when awarding contracts valued at \$5 million or greater, the schedules in the written plan generally provided a consistent source for the planned award date. However, for 9 of the 31 contracts in our sample, we had to obtain the planned award date from another source because the associated plan and/or schedule was missing from the contract file. In these cases, we obtained the planned award date from references in other required file documents, such as the document used to justify noncompetitive awards or presentations by officials involved in awarding the contract. Similarly, for nearly all of the 31

contracts in our sample, we identified the actual award date from the award date written on the signed contract.⁴ However, for 2 of the 31 contracts, the signed contract was not available in the contract file, and we instead obtained the award date from the data system DOE uses to track its contract awards.

In addition to determining whether the 31 contracts in our nonprobability sample were awarded by the planned date, we used contract file documents to calculate how long it took DOE to make the awards. We did so by calculating the elapsed time from the date DOE initiated the contract award process to the date it awarded the contract. For 23 contracts, we used the date of the formal written plan for carrying out the contract award process as the date DOE initiated the process.⁵ Although some planning steps typically preceded the preparation of the written plan, documentation of the steps was generally not consistently available in the contract files we reviewed. In contrast, the formal written plan was a required and more consistently available source. However, for 8 of the 31 contracts in our sample, we had to obtain the initiation date of the contract award process from a source other than the date of the written plan because the plan was undated or missing from the contract file. In these cases, we used contract file documents prepared during the early steps of the contract award process, such as correspondence from DOE officials approving the start of the process.

⁴For 4 of the 31 contracts in our sample, the department initially awarded an interim contract, known as a letter contract, until issuing a finalized contract at a later date. In these cases, we used the letter contract date as the date of the award. According to officials from DOE's Office of Procurement and Assistance Management and NNSA's Office of Acquisition and Supply Management, letter contracts were seldom used, but sometimes necessary, for awarding contracts and starting the work more quickly. The officials also said that most of the contents of the letter contracts are final except, most typically, contract price, which is determined in the finalized version.

⁵DOE guidance from 2004 on preparing the required plans for carrying out the remaining steps of the contract award process suggests that the plan include a publication date for the plan, as well as approval signatures and dates. For 19 of the 31 contracts in our sample, we used the plans' publication date as the date DOE initiated the contract award process. In four cases, in which the publication date was not available, we used the date of the earliest approval signature. In the remaining cases, in which neither of these dates were available, we used the plan approval date listed in the plan's schedule of dates for the process, or other sources. In addition, where only a month and year were referenced, and we could not determine the full date of a plan through any contract file documents reviewed in our study, we assumed the action to be completed on the fifteenth day of the month.

Furthermore, we identified some of the reasons for delays DOE experienced in awarding contracts in our sample, in part, by contacting DOE officials involved in awarding the contract. We also reviewed contract file documents, such as meeting records and the descriptions of the contract award process included in key documents generated during the contract award process. When contract file documents were used to determine the causes of delays, two analysts involved in this study independently reviewed the documents to verify that the causes were reasonably identified.

To further identify causes for delays, we analyzed documentation from bid protests filed with GAO in fiscal years 2002 through 2005, in addition to the bid protest guidance issued by GAO's Office of General Counsel. We analyzed this documentation because it could potentially describe problems encountered by DOE during the contract award process. In correcting any problems, DOE may have repeated steps in the process, eventually delaying the contract award. When bid protest documents were used to determine whether (1) the contract award being protested was also in our sample of contracts that we analyzed for delays or (2) corrective action was agreed to by DOE or recommended by GAO as a result of the protest, two analysts involved in this study independently reviewed the documents to verify that the causes were reasonably identified.

To determine overall impacts of any delays in awarding DOE's contracts, as well as the extent to which the department has taken steps to address the delays, we interviewed headquarters contracting officials from the Office of Procurement and Assistance Management, as well as contracting and program officials from the department's three largest DOE component organizations, and officials from the Office of Engineering and Construction Management, who oversee planning and management of capital projects. Also, we interviewed contracting and program officials at six of the seven field locations from which we selected contracts for our nonprobability sample as follows:⁶

- Albuquerque Service Center (NNSA), New Mexico;

⁶Although we obtained file documentation for one of the 31 contracts in our nonprobability sample from DOE's Chicago Service Center, we did not contact officials at that location because we spoke instead with a headquarters Office of Science official involved with the contract award process.

- Idaho Operations Office (EM and Nuclear Energy), Idaho;
- Oak Ridge Operations Office (EM, Science, NNSA), Tennessee;
- Portsmouth and Paducah Project Office (EM), Lexington, Kentucky;
- Richland Operations Office (EM), Washington; and
- Savannah River Operations Office (EM and NNSA), South Carolina.

Furthermore, for contracts in our sample, we analyzed file documents for evidence of adverse impacts upon companies competing for the work resulting from any delays in carrying out the contract award process. We examined transcripts from some debriefing sessions that DOE held with companies after awarding the contract, as well as other documents, such as correspondence from companies or their representatives. To further understand the impacts of delays, we also examined documents related to DOE's contract award for environmental cleanup of its Paducah, Kentucky, site, even though this contract was not part of our sample. DOE's Office of Procurement and Assistance Management provided us with its analysis of lessons learned and the factors that delayed this contract award. We reviewed the contract file documents to better understand the context of this analysis. However, we excluded the contract from our sample because DOE awarded it in fiscal year 2006 and, therefore, it did not fit our selection criteria. As a result, we did not include the contract in calculations or figures showing the extent of delays in awarding DOE contracts.

In addition, we reviewed federal and DOE regulations that govern contracting, DOE policy and guidance on contracting, and documents on the department's assessment of its performance in carrying out its contract awards. We also reviewed GAO's *Framework for Assessing the Acquisition Function at Federal Agencies* for determining the effectiveness of DOE's management and oversight of the contract award process.

We conducted our work from July 2005 to June 2006 in accordance with generally accepted government auditing standards.

Comments from the Department of Energy



Department of Energy
Washington, DC 20585

JUN 23 2006

Mr. Gene Aloise
Director, Natural Resources and Environment
U.S. Government Accountability Office
441 G Street, NW
Washington, DC 20548

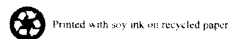
Dear Mr. Aloise:

We have reviewed the draft Government Accountability Office (GAO) report entitled "DOE Contracting -- Better Performance Measures and Management Needed to Address Delays in Awarding Contracts" (GAO-06-722). We appreciate that the report recognizes the Department of Energy's (DOE) improvements in areas related to improving contract and project management.

The draft GAO report specifically recognizes improvements in DOE's management of contracts. For example, it notes: (1) an initiative with the Office of Management and Budget to address the GAO's identification of DOE's contract management as a "high risk" area; (2) a restructuring of DOE's Office of Environmental Management to increase the focus on planning and management of contract awards; and (3) specific steps by the National Nuclear Security Administration's and DOE's Office of Procurement and Assistance Management to implement improved measures of the timeliness of the contract award process. One of the Department's recent improvements is tailored source evaluation board training that includes the latest guidance, policy and lessons-learned for the conduct of the Department's major competitive procurements.

The draft GAO report states that the GAO analyzed contracts "from a non-probability sample of contracts valued at \$5 million or greater, that DOE awarded during fiscal years 2002 through 2005." The draft report acknowledges that a non-probability sample is one from which no inference can be made from the sample to the general population (DOE contracting). However, the report then draws conclusions from this sample regarding the timeliness of the Department's procurements and the factors contributing to a perceived lack of timeliness. Additionally, the GAO reviewed only 31 contracts out of over 5,000 contract awards for the period of fiscal years 2002 through 2005. This represents less than 0.62% of the Department's procurement awards. Considering the fact that (1) the sample contained a number of contracts which did not meet projected award dates because of factors well beyond the control of the Department, (2) the sample size was insignificant, and (3) accurate inferences from a non-probability sample are not possible, DOE believes that the draft report's conclusions, about the health of the Department's contracting based on this sample, are unsupported.

The draft report characterizes certain of the Department's procurements inappropriately as "delayed" and overly focuses on schedule timelines rather than on the resulting quality of the procurements. The Department believes that the GAO's use of the originally planned award date



Appendix II
Comments from the Department of Energy

2

to determine timeliness does not, in and of itself, provide a meaningful measure of timeliness because it does not consider the external forces on the procurement, and the assumptions and conditions which changed over time. Lack of compliance with a procurement's originally planned timelines is not necessarily an indicator of a poorly run procurement. The original schedule is an internal planning tool which may change over time as conditions and reality change.

The GAO's characterization that DOE is remiss because certain of its contracts were not awarded by the originally projected award dates is not accurate. Those originally planned award dates were reasonable projections based on the best information and assumptions at the time but did not include all possible contingencies which might affect the eventual award date. A number of the contract awards characterized by the GAO as "delayed" occurred after the projected award date because of circumstances beyond the direct control of the Department. Such circumstances were Congressional intervention, redirection by the Office of Management and Budget, the necessity to conduct discussions with offerors, protests, changes in requirements, lack of funding, changing site conditions, significantly higher number of proposals than could be reasonably expected, etc.

For instance, the report suggests that the Department erred by not including discussions in the planned schedule or in taking longer to hold discussions than anticipated in its planning documents. The Department, as do other Federal agencies, frequently reserves the right to award a competition without discussions if the situation permits consistent with Federal regulations and GAO case law. FAR 15.306(d)(2) states that "The primary objective of discussions is to maximize the Government's ability to obtain best value, based on the requirement and the evaluation factors set forth in the solicitation." Often, it is impossible to determine if discussions will be required or the extent of the discussions until the proposals are evaluated. If the competitive situation provides that discussions are not required, i.e., the Department has determined that it can obtain the best value without discussions, then discussions will not be held. However, it is frequently impossible to determine at the planning stage of a procurement if it will be necessary to hold discussions.

DOE believes that rigorous, but realistic, acquisition schedules best serve the program mission needs and are the most effective tool to manage the acquisition cycle. Including contingencies for all possible procurement activities would result in a less disciplined approach in meeting acquisition objectives. The unintended consequence of GAO's conclusions would be overly protracted and less rigorous schedules.

The report provides two recommendations to the Secretary of Energy to help ensure that the Department's contract award process is efficient and effective and that DOE obtains the best value for the Government to: (1) ensure that performance measures for the timeliness of the Department's contract awards include the entire contract award process from planning to contract award and include all of the Department's contracts; and (2) establish a more systematic way of identifying lessons learned from past and current contract awards and sharing those lessons and

best practices with the staff involved in planning and managing the Department's efforts to award its contracts.

Because of the importance of the subject matter, the beneficial nature of the GAO's suggestions, and the Department's commitment to continuous improvement in this area, DOE generally agrees with the draft report's recommendations. The Department concurs with the report's recommendations with the following comments:

1. **GAO Recommendation:** Ensure that performance measures for the timeliness of the department's contract awards include the entire contract award process from planning to contract award and include all of the department's contracts.

DOE Comment: The Department already measures timeliness on the significant majority of its contracts for those aspects of the award process over which acquisition officials have substantial control. Furthermore, the Department measures timeliness from planning through award for those major contracts which, because of dollar amount, complexity or visibility, merit closer scrutiny. Nonetheless, the DOE will:

- a. continue to track and monitor its management and operating and other critical contracts from planning through award in order to identify challenges under these procurements wherever possible;
- b. review DOE's Balanced Scorecard (BSC) to determine if it would be appropriate to: (1) expand the Procurement Action Lead Time (PALT) measure to include earlier stages in the procurement cycle, and (2) extend the BSC PALT measure to compass a greater population of the Department's contracts; and
- c. review and benchmark other agencies' PALT measures for possible application to DOE.

The Department is not aware of any Federal agencies that measure and track the timeliness of the "entire contract award process" (from planning through award) for 100% of its contracts. The Department would greatly appreciate it if the GAO would advise DOE of such an agency so that the Department can review and evaluate that agency's approach.

2. **GAO Recommendation:** Establish a more systematic way of identifying lessons learned from past and current contract awards and sharing those lessons and best practices with the staff involved in planning and managing the department's efforts to award its contracts.

DOE Comment: The Department continuously identifies lessons-learned and shares them with DOE staff. Such lessons-learned and best practices are regularly disseminated in the form of Procurement Directors teleconferences, Procurement Policy Advisory Group meetings, various training sessions, the DOE Acquisition Guide, DOE Acquisition Letters,

Appendix II
Comments from the Department of Energy

4

the DOE Professionals Homepage, procurement action reviews and myriad other forums. Recent on-going Source Evaluation Board training conducted in the field provided procurement and technical staff with current policy, the latest guidance and lessons-learned from analysis of past DOE competitive procurements. Although the Department believes that it has aggressively communicated lessons-learned as they have been identified, DOE will:

- a. continue reporting to senior management on the status of the Department's major procurements,
- b. continue training source evaluation boards on the proper conduct of competitive procurements,
- c. examine opportunities internally to better identify and disseminate lessons-learned and best practices, and
- d. benchmark other agencies to ascertain better ways to identify and disseminate lessons-learned and best practices.

Additional comments and corrections on the draft report are attached for your consideration. The Department appreciates the GAO's recommendations and will consider them in our future improvement efforts. The Department requests that its full comments including the enclosure be included in the GAO's final report.

Sincerely,



Ingrid Kolb
Director
Office of Management

Enclosure

cc:

A. Scott Geary, Contract Administration Division

GAO Contact and Staff Acknowledgments

GAO Contact

Gene Aloise (202) 512-3841 or aloisee@gao.gov

Staff Acknowledgments

In addition to the individual named above, Bill Swick, Assistant Director; Carole Blackwell, Nora Boretti, Kevin Jackson, Greg Marchand, Alison O'Neill, Jeff Rueckhaus, and Gretchen Snoey made key contributions to this report.

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