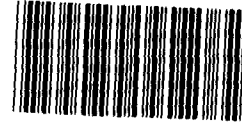




Resources, Community, and  
Economic Development Division

B-251400

December 28, 1992



148243

The Honorable Brock Adams  
United States Senate

Dear Senator Adams:

In October 1992, we met with your office to discuss your concern about the U.S. Coast Guard's oversight of oil spill response products used by Coast Guard contractors to fight spills. Numerous producers of oil spill clean-up products have complained to your office that they have been unable to supply Coast Guard contractors with their products because certain Coast Guard contractors have "exclusive-use" contracts with suppliers--contracts restricting the procurement of certain products to one supplier. Consequently, we agreed to provide you with information on

- the procedures that the Coast Guard uses to acquire oil spill clean-up services from contractors,
- the requirements contractors are to follow in purchasing oil spill clean-up supplies and materials and the steps taken by the Coast Guard to ensure compliance with these requirements, and
- the extent to which contractors use exclusive-use subcontracts with individual suppliers of oil spill clean-up supplies and materials and the length of such subcontracts.

In summary, Coast Guard Acquisition Procedures describe how the Coast Guard acquires oil spill cleanup services. The Coast Guard uses Basic Ordering Agreements (BOAs) to expedite the contracting process for cleaning up oil spills. BOAs are written instruments of understanding negotiated between the Coast Guard and oil spill clean up companies (contractors). Federal Acquisition Regulations allow these contractors to purchase oil spill clean-up materials through subcontracts with suppliers without prior government approval. The Federal Acquisition Regulations, however, require that the government review the contractors' purchasing system if the total amount of nonsealed bid sales to the government by the given

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contractor is expected to exceed \$10 million during the next 12 months. Coast Guard officials said that no such reviews are being done because none of its contractors' sales exceed \$10 million. Finally, although we were able to determine that exclusive-use subcontracts exist, we could not determine their extent because the Coast Guard does not maintain information on such subcontracts. Until the Coast Guard does an inventory of and monitors such subcontracts, it will not be in a position to determine the degree of price competition considered by its contractors nor to assure that these subcontracts represent the most cost effective application of Federal funds.

#### COAST GUARD CONTRACTING PROCEDURES

The Coast Guard Acquisition Procedures, Subpart 1217.92, Contracting for Containment and Clean-Up of Oil and Hazardous Substances Spills, describe the Coast Guard's procedures for contracting with oil spill clean-up contractors. The Coast Guard must also follow governmentwide Federal Acquisition Regulations. In order to expedite the processing of contracts for containing and cleaning up spills, the Coast Guard uses BOAs. Currently, according to Coast Guard Procurement Management Division officials, the Coast Guard has 95 BOAs covering hundreds of contractors throughout the nation.

The BOA specifies the terms and conditions that will apply to future orders issued against it, including ordering procedures, pricing methods, and payment terms. A BOA, however, is not a contract. A contractual relationship is established when an authorization to proceed document or a delivery order is issued under the agreement and the contractor either expressly accepts the order or commences work. Under BOAs, the Coast Guard is under no obligation to issue delivery orders and the contractor is under no obligation to accept them.

No expiration date is given in the BOAs. Termination may be effected by either the contractor or the Coast Guard with no cause in a 30-day written notice for termination. The Coast Guard is to conduct market surveys at least annually for additional contractors to include in the BOAs by using the Commerce Business Daily and other appropriate sources. According to Coast Guard officials, new contractors are to be added to the BOAs if the Coast Guard determines that the contractor is technically qualified to clean up spills and its prices are reasonable. Updates

also include incorporating revised wage and price rates and equipment lists.

The Coast Guard is responsible for determining that the use of a particular contractor is most advantageous to the government, price and other factors having been considered. When making this determination, the Coast Guard considers the location, nature, and size of the spill; the prevailing weather and availability of personnel; and the material and equipment capabilities of the contractor. The contractor is encouraged to draw upon its expertise to suggest to the Coast Guard the use of personnel, material, equipment, and procedures that the contractor believes may improve the containment, mitigation, or cleanup operations. The decision to use such suggestions, however, rests solely with the Coast Guard.

REQUIREMENTS FOR CONTRACTORS' PROCUREMENT OF CLEAN-UP SUPPLIES

According to Coast Guard officials, many of the Coast Guard's contractors subcontract for various assistance or materials to aid them in their clean-up work. Under Federal Acquisition Regulation 44.201-3, the contractor must obtain the Coast Guard's written consent before placing any subcontract, except for the purchase of raw materials or commercially stocked items. The Coast Guard considers oil spill cleanup products, such as absorbents, to be raw materials or commercially stocked items. Therefore, the Coast Guard does not question contractors about subcontracts for them.

We agree with the Coast Guard that commercially stocked materials such as absorbents are covered by the Federal Acquisition Regulation exemption clause. However, Section 52.244-3 of the Federal Acquisition Regulations gives the government the right to review a contractor's purchasing system as set forth under subpart 44.3. Under Subpart 44.3, the government is required to conduct contractor's purchasing system reviews for those contractors whose sales to the government, using other than sealed bid procedures, are expected to exceed \$10 million during the next 12 months.

Subpart 44.3 states that the objective of a contractor purchasing review is to evaluate the efficiency and effectiveness with which contractors spend government funds and provides a basis for granting, withholding, or

withdrawing approval of the contractor's purchasing system. The regulations further state that such reviews should give consideration to the degree of price competition and, in general, the appropriateness of the contract. If major weaknesses are found in the contractor's purchasing system, the government can withdraw approval of the contractor's purchasing system. We believe that these Coast Guard reviews under subpart 44.3 could include evaluating subcontracts for oil spill clean-up materials.

Coast Guard officials told us, however, that none of their oil spill contractors are expected to meet the \$10 million criteria set out in subpart 44.3 and that, consequently, they have not conducted any purchasing system reviews of their oil spill contractors. Coast Guard officials acknowledge, however, that the Federal Acquisition Regulations do not prevent them from ordering a review of a contractor's purchasing system even when the \$10 million criteria is not met. The officials added that they generally would not conduct such reviews because of the small dollar amounts. Until the Coast Guard does an inventory of and monitors such subcontracts, it will not be in a position to determine the degree of price competition considered by its contractors nor to assure that these subcontracts represent the most cost effective application of Federal funds.

#### EXTENT OF EXCLUSIVE-USE SUBCONTRACTS

According to Coast Guard Procurement Management Division officials, the Coast Guard does not know how many of its BOA contractors have exclusive-use subcontracts for purchasing cleanup supplies and materials. The officials said that, since subcontracts for commercial stock items such as absorbents are exempted from Federal Acquisition Regulations, the Coast Guard has not required contractors to submit such subcontracts for its approval and, therefore, does not know how many exist. The officials indicated, however, that they believe such subcontracts could exist. The officials further indicated that it would be logical for such subcontracts to be for a year, since BOAs are updated annually. They explained, however, that they do not know with certainty the length of time of such subcontracts.

We could not determine the overall number of Coast Guard contractors that have exclusive-use subcontracts for cleanup materials because, as indicated above, the Coast

Guard does not maintain any information on these subcontracts. However, we did call two major contractors under Coast Guard BOAs. Both contractors said that they have exclusive-use subcontracts for supplies and materials. Both also said that their subcontracts could be canceled by either party at any time.

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The information included in this correspondence was obtained directly from either the Coast Guard's headquarters in Washington, D.C., or its Maintenance and Logistics Commands in Alameda, California, and Governors Island, New York. In addition, we called three suppliers of oil spill cleanup materials to obtain information on how they contract for materials used to clean up spills. We did not evaluate the adequacy of the Coast Guard's policies and procedures regarding contracting for oil spill cleanups, its oversight of such contracts, or the impact that the Coast Guard's policies and procedures have had on the adequacy of oil spill cleanups.

We discussed the information in this correspondence with the Assistant Chief, Procurement Management Division, and other Coast Guard officials, who generally agreed with its accuracy. We did not, however, obtain the Coast Guard's written comments on a draft of this correspondence. As agreed with your office, unless you publicly announce its contents earlier, we plan no further distribution of this letter until 7 days after its date. At that time, we will send copies to the appropriate congressional committees; the Secretary of Transportation; the Commandant of the Coast Guard; the Director, Office of Management and Budget; and other interested parties. We will make copies available to others on request. Please contact me at (202) 275-1000 if you or your staff have further questions.

Sincerely yours,



Kenneth M. Mead  
Director, Transportation Issues

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