DEPARTMENT OF DEFENSE

AUDIT REPORT

DOD HOTLINE ALLEGATION OF IRREGULARITIES
IN DOD CONTRACTUAL ARRANGEMENTS
WITH THE DEPARTMENT OF ENERGY

No. 90-085

June 19, 1990

Office of the
Inspector General

INSPECTOR GENERAL
DEPARTMENT OF DEFENSE
400 ARMY NAVY DRIVE
ARLINGTON, VIRGINIA 22202-2884

June 19, 1990

MEMORANDUM FOR UNDER SECRETARY OF DEFENSE FOR ACQUISITION

SUBJECT: Report on the Audit of DoD Hotline Allegation of Irregularities in DoD Contractual Arrangements with the Department of Energy (Report No. 90-085)

This is our final report on the Audit of DoD Hotline Allegation of Irregularities in DoD Contractual Arrangements with the Department of Energy. We made the audit from November 1988 through August 1989. The audit was made to determine the validity of a Hotline allegation that DoD activities were wasting Government funds by circumventing procurement regulations to acquire services and supplies through Department of Energy sponsored national laboratories. These services and supplies were obtained through the Department of Energy's Work for Others Program. The services and supplies that the Department of Energy has provided through its Work for Others Program to outside organizations have grown rapidly from about $725 million in FY 1980 to about $2.6 billion in FY 1988. We estimate that approximately 80 percent of this work has been performed for DoD activities.

We did not audit the records of the Department of Energy or of its management and operating contractors. Therefore, we have qualified the "effects" statements in our report. Furthermore, because we are issuing a qualified report, we are not making a direct response to the allegation. However, the risk indicators identified by the General Accounting Office (GAO) in its audit Report No. RCED-89-21, "Energy Management: DOE Should Improve Its Controls Over Work for Other Federal Agencies," February 9, 1989, combined with the results of our audit of DoD records relating to Department of Energy's Work for Others Program lead us to the conclusion that the allegation was accurate.

Our audit showed that DoD activities did not comply with Federal Acquisition Regulation (FAR) and Defense Federal Acquisition Regulation Supplement (DFARS) requirements regarding monitoring and controlling interagency acquisitions. We assessed internal controls that addressed the authority to approve interagency acquisitions, the appropriateness of the services or supplies being obtained, and the procedures for ensuring that contracts awarded under interagency acquisitions were effectively administered. In its Report No. RCED-89-21, GAO concluded that the Department of Energy lacked the resources to effectively administer contracts in its Work for Others Program. Absence of effective contract administration creates susceptibility to excessive prices, mismanagement, abuse, and fraud. We also identified material internal control weaknesses in DoD's

operations that further increased these risks. The results of the audit are summarized in the following paragraphs, and the details and audit recommendations are in Part II of this report.

DoD program officials circumvented established policy and exceeded their authority by not obtaining required approvals from DoD procurement officials or designated senior DoD officials in placing orders for interagency acquisitions through the Department of Energy. Contractor services and supplies were obtained that did not require the technical expertise of the Department of Energy's laboratories, and from information available within DoD, neither we nor the cognizant DoD officials could determine if contracts awarded on DoD's behalf by the Department of Energy were effectively administered. As a result, DoD program officials did not obtain the expertise available from DoD procurement professionals in determining whether an interagency acquisition through the Department of Energy was the most economical and efficient method to obtain the requested services or supplies. This may have resulted in excessive contract prices. The lack of adequate internal controls also increased the susceptibility of these procurements to mismanagement, abuse, and fraud. We recommended that the Under Secretary of Defense for Acquisition direct the heads of the appropriate DoD Components to establish internal controls to minimize the risk of orders for interagency acquisitions being placed by unauthorized DoD officials, to provide training for officials who exceeded their authority, and to take disciplinary action against those officials who flagrantly exceeded their authority. The Under Secretary should reemphasize that acquisitions of services and supplies should only be obtained through an interagency acquisition with another Federal agency when that agency has unique expertise not available within DoD, can routinely and reasonably obtain the services or supplies within the scope of its functional responsibilities, is able to obtain the services or supplies more economically and efficiently than through direct DoD contracting, and is able to comply with all Defense and Federal Acquisition Regulations' requirements in the award and administration of contracts awarded on DoD's behalf. We also recommended that the Under Secretary ensure that the material weaknesses identified are reported and tracked, as required by DoD Directive 5010.38, "Internal Management Control Program." Because the material weaknesses identified were widespread throughout DoD and involved another executive branch agency, the material weaknesses should be included in the Secretary of Defense's annual internal control report to the President and Congress (page 5).

The audit identified material internal control weaknesses as defined by Public Law 97-255, Office of Management and Budget Circular A-123, and DoD Directive 5010.38. Controls were not established or effective to preclude unauthorized DoD officials from approving interagency acquisitions. Recommendations 1. and 2., if implemented, can substantially correct the weaknesses. We could not determine the monetary benefits to be

derived from implementing the recommendations (see Appendix C). The senior officials responsible for internal controls within the Military Departments and the Defense Logistics Agency are being provided a copy of this report.

A draft of this report was provided on March 15, 1990, to the Under Secretary of Defense for Acquisition. In response we received comments from the Principal Deputy Assistant Secretary of Defense (Production and Logistics) (Appendix E). He concurred with the finding and recommendations and has initiated corrective actions.

Comments received from the Department of Energy have also been considered in the preparation of this report. These comments were primarily directed to the Department of Energy's internal operations of the Work for Others Program, which was outside the scope of this audit. No independent audit verification was performed of the information provided in these comments.

The management responses to a draft of this report conformed to the provisions of DoD Directive 7650.3. No unresolved issues existed on the audit recommendations or internal control deficiencies. Accordingly, additional comments on the final report are not required.

We appreciate the courtesies and cooperation extended to the audit staff. Audit team members are listed in Appendix F. Please contact Mr. Richard Jolliffe, Program Director, at (202) 694-6260 (AUTOVON 224-6260), or Mr. Dennis E. Payne, Project Manager, at (202) 694-6259 (AUTOVON 224-6259), if you have any questions concerning this report. The distribution of this final report is shown in Appendix G.

Edward R. Jones
Deputy Assistant Inspector General
for Auditing

cc:
Secretary of the Army
Secretary of the Navy
Secretary of the Air Force

REPORT ON THE AUDIT OF DOD HOTLINE ALLEGATION OF IRREGULARITIES IN DOD CONTRACTUAL ARRANGEMENTS WITH THE DEPARTMENT OF ENERGY

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Prepared by:
Contract Management Directorate
Project No. 9CC-8001

REPORT ON THE AUDIT OF DOD HOTLINE ALLEGATION OF IRREGULARITIES IN DOD CONTRACTUAL ARRANGEMENTS WITH THE DEPARTMENT OF ENERGY

PART I - INTRODUCTION

Background

The Department of Energy performs work for other organizations, such as the Department of Defense, through its Work for Others Program. The Economy Act of 1932 (U.S.C., Title 31, Section 1535) is the principal authority for the Work for Others Program. The objective of this Program is to permit other organizations to take advantage of the special research capabilities and resources of the Department of Energy's national laboratories. This outside work is performed primarily by the management and operating contractors who operate the Department of Energy's national laboratories and weapon production facilities and by their subcontractors. The services and supplies that the Department of Energy has provided through its Work for Others Program have grown rapidly from about $725 million in FY 1980 to about $2.6 billion in FY 1988. We estimate that approximately 80 percent of this work has been performed for DoD activities.

Objectives and Scope

On August 4, 1988, the Office of the Inspector General received a Hotline allegation that DoD activities were wasting Government funds by circumventing procurement regulations to acquire services and supplies through Department of Energy sponsored national laboratories. This audit was made in response to that allegation. Our overall audit objective was to determine the validity of the allegation. Our specific objectives were to evaluate:

- whether orders placed through the Department of Energy could be placed through other procurement channels at lower costs,

- whether orders placed through the Department of Energy complied with Federal Acquisition Regulation requirements, and

- the adequacy of internal control procedures over DoD ordering arrangements with the Department of Energy.

Appendix A summarizes the Federal Acquisition Regulation (FAR) and the Defense Federal Acquisition Supplement (DFARS) criteria used to conduct the audit. These criteria included FAR and DFARS, subpart 17.5, "Interagency Acquisition Under the Economy Act," and subpart 1.6, "Contracting Authority and Responsibilities."

The scope of the audit included 97 judgmentally selected agreements for interagency acquisitions valued at $235.1 million that 25 DoD activities had entered into since FY 1985 with the Department of Energy under its Work for Others Program (see Appendix B). The review evaluated DoD records relating to these interagency acquisitions. We did not evaluate the records of the Department of the Energy or of its contractors and subcontractors. We did, however, rely on the results of the General Accounting Office's (GAO) review of the Department of Energy's operation of the Work for Others Program contained in GAO's February 9, 1989, Audit Report No. RCED-89-21, "Energy Management: DOE Should Improve Its Controls Over Work for Other Federal Agencies," in reaching our conclusions. Statistical sampling procedures were not used because there were no centralized sources of information within the Military Departments or the Defense Agencies on interagency acquisitions placed with the Department of Energy. We designed our judgmental sample to provide a balanced coverage of Army, Navy, Air Force, and other Defense activities.

This performance audit was made from November 1988 through August 1989 in accordance with auditing standards issued by the Comptroller General of the United States as implemented by the Inspector General, DoD, and accordingly, included such tests of the internal controls as were considered necessary. The activities visited or contacted during the audit are listed in Appendix D.

Internal Controls

Our internal control review determined whether the DoD activities audited had complied with Defense and Federal Acquisition Regulations' requirements, which limited the authority to approve interagency acquisitions to DoD contracting officers and certain designated senior DoD officials. We also assessed the adequacy of DoD internal control procedures for ensuring that interagency acquisitions between the Department of Energy and DoD activities were effectively administered. We found material internal control weaknesses, which are addressed in Part II of this report. Recommendations 1. and 2., if implemented, can substantially correct the weaknesses.

Prior Audit Coverage

We identified the following audit reports issued during the past 5 years that related to this subject area.

GAO Audit Report No. RCED-89-21, "Energy Management: DOE Should Improve Its Controls Over Work for Other Federal Agencies," February 9, 1989, addressed the effectiveness of the Department of Energy's management of its Work for Others Program. The scope of the audit covered 10 judgmentally selected projects initiated since December 18, 1986. GAO concluded that:

> While DOE's existing policies concerning non-DOE work generally conform to pertinent legislation, effective control may not be assured because of inconsistent implementation. . . . Implementation varies significantly because there are no established standards for overseeing non-DOE work. . . . As a result, DOE does not have . . . assurance in all cases that the actual work is consistent with legislation or its own acceptance criteria.

GAO also concluded that the Department of Energy had inadequate resources to effectively administer the Work for Others Program. GAO recommended that the Department of Energy strengthen its internal controls by establishing standards to ensure that adequate information is received and reviewed prior to approving requests for interagency acquisitions. GAO also recommended that the Department of Energy devote adequate resources to monitoring contractor performance. Department of Energy officials generally agreed with facts presented in the report; however, official agency comments were not obtained.

Air Force Audit Agency Project No. 6195421, "Selected Aspects of Planning for the Centralized Civilian Pay System," June 2, 1988, addressed the effectiveness of an interagency agreement between the Air Force Accounting and Finance Center and the Department of Energy for the development of a centralized civilian pay system. The audit concluded that the interagency agreement did not have sufficient controls to effectively manage the system's development. The audit reported that the lack of adequate controls may result in significant cost increases if disagreements occur either with the Department of Energy or with the Department of Energy contractor and subcontractor performing the work. The audit report recommended that the Air Force Accounting and Finance Center take action to correct the deficiencies in its agreement with the Department of Energy. Air Force management took actions to correct the deficiencies cited.

DoD Inspector General Audit Report No. 90-020, "Audit of Defense Nuclear Agency Activities at Johnston Atoll," December 15, 1989, evaluated a cost-plus-award-fee contract awarded by the Department of Energy on behalf of the Defense Nuclear Agency (DNA) to procure base operating services and support for DNA and other DoD tenant activities on Johnston Atoll. The audit concluded that the Department of Energy inappropriately used a sole-source procurement method instead of a full and open competitive procurement method. The audit also concluded that these deficiencies increased the cost of the contract. The report recommended that DNA rescind its memorandum of agreement with the Department of Energy and procure base operating services and support directly through DoD procurement channels. The Director of DNA concurred with the finding and recommendations.

DoD Inspector General Audit Report No. 90-034, "Audit of Contracting Through Interagency Agreements With the Library of Congress," February 9, 1990, was in response to information provided by the General Counsel and Inspector General of the Library of Congress concerning possible improprieties relating to the practice by several DoD activities of providing funding to the Library of Congress for the purpose of contracting for services and supplies through the Library's Federal Library and Information Network (FEDLINK) procurement program. The audit reported that DoD program officials circumvented established policy and exceeded their authority by not obtaining required approvals from DoD procurement officials or designated senior DoD officials in placing orders for interagency acquisitions through the Library of Congress. Contractor services and supplies were obtained that were beyond those routinely and reasonably provided by the Library of Congress, and contracts awarded on DoD's behalf by the Library of Congress were not effectively administered. As a result, DoD program officials did not obtain the expertise available from DoD procurement professionals in determining whether an interagency agreement was the most economical and efficient method to obtain the requested services and supplies. These material weaknesses increased the risks of contract overpricing and increased the susceptibility of these procurements to mismanagement, abuse, and fraud. The report recommended that the Under Secretary of Defense for Acquisition improve DoD internal control procedures for placing and ensuring the proper administration of interagency acquisitions made through the Library of Congress. The report also recommended that appropriate training be provided to DoD program officials and that disciplinary actions be considered against those DoD program officials who exceeded their authority. The Office of the Under Secretary of Defense for Acquisition concurred with these recommendations.

PART II - FINDING AND RECOMMENDATIONS

DoD Procurement Channels Bypassed

FINDING

DoD program officials circumvented established policy and exceeded their authority by not obtaining required approval from DoD procurement officials or designated senior DoD officials in placing orders for interagency acquisitions through the Department of Energy. Program officials obtained contractor services and supplies that did not require the technical expertise of the Department of Energy's laboratories, and from information available within DoD, neither we nor the cognizant DoD officials could determine if contracts awarded on DoD's behalf by the Department of Energy were effectively administered. These conditions occurred primarily because DoD's internal controls were not adequate to ensure compliance with the Federal Acquisition Regulation (FAR) and Defense Federal Acquisition Regulation Supplement (DFARS), and because of the perceived simplicity of procurement procedures at the Department of Energy and at its management and operating contractors. As a result, DoD program officials did not obtain the expertise available from DoD procurement professionals in determining whether an interagency acquisition through the Department of Energy was the most economical and efficient authorized method to obtain the requested services or supplies. This may have resulted in excessive contract prices. The lack of adequate internal controls in DoD also increased the susceptibility of these procurements to mismanagement, abuse, and fraud.

DISCUSSION OF DETAILS

Background. FAR and DFARS, subpart 17.5, "Interagency Acquisitions Under the Economy Act," prescribe policies and procedures applicable to interagency acquisitions under the Economy Act (U.S.C., Title 31, Section 1535). FAR 17.502 states that:

> Under the Economy Act, an agency may place orders with any other agency for supplies or services that the servicing agency may be in a position or equipped to supply, render, or obtain by contract if it is determined by the head of the requesting agency, or designee, that it is in the Government's interest to do so.

DFARS 2.101 defines "head of the agency" as being limited to:

> . . . the Secretary of Defense, the Assistant Secretary of Defense (Production and Logistics), the

> Secretary, Under Secretary, and any Assistant Secretary of the Army, Navy, and Air Force, and the Director and Deputy Director of Defense agencies, except to the extent that any law or executive order limits the exercise of authority to specific individuals at the Secretarial level.

DFARS 17.502 defines the head of the requesting agency's designee as being limited to the contracting officer. Except for the designated senior DoD officials and DoD contracting officers, no other DoD employee has the authority to approve orders for interagency acquisitions under the Economy Act.

These regulations were designed to ensure that the expert knowledge of DoD procurement professionals is used in determining whether it is in the DoD's best interest to obtain services or supplies through an interagency acquisition rather than through direct contracting by DoD. DoD procurement experts are in the best position to ascertain compliance with the various provisions of the FAR and DFARS. These regulations were designed to ensure that all DoD procurements are made at fair and reasonable prices, and to ensure that contracts are adequately and effectively administered.

Decisions that it is in DoD's best interest to obtain services and supplies through contracts awarded by other agencies, such as the Department of Energy, require close scrutiny. Such agencies may lack the resources and skills required to effectively award and administer contracts on DoD's behalf. One cannot assume that such agencies can effectively adhere to requirements of the FAR and DFARS and obtain the best price available for DoD. DoD procurement professionals have the expert skills needed to search the marketplace and determine whether the contract price offered by the other agency, including applicable fees and other expenses charged by the other agency, is the best price available for the requested services and supplies. They also have the skills to help determine whether the proposed agency is an appropriate source for the type of services and supplies being procured. In addition, they have the expertise to ascertain what provisions should be included in interagency agreements to provide for appropriate contract administration and reporting to protect DoD's interests.

Details of the Audit. We evaluated 97 agreements for interagency acquisitions valued at $235.1 million that 25 DoD activities had entered into with the Department of Energy since FY 1985 (see Appendix B). The evaluation disclosed that interagency acquisitions at 23 of these 25 activities were approved by DoD program officials who lacked the authority under FAR and DFARS 17.502 to approve such acquisitions. The audit also disclosed that there may not have been adequate contract administration services provided for several of these interagency acquisitions.

Most of the services and supplies obtained were for projects not related to energy and nuclear warhead programs, so were outside of the scope of items reasonably obtained from the Department of Energy and did not require the skills of the Department of Energy's national laboratories or nuclear weapon production facilities. We believe that it was inappropriate and unreasonable for DoD activities to obtain these types of services and supplies through the Department of Energy. Examples of these acquisitions are listed below.

- $15.5 million to develop a Foreign Military Sales accounting and billing system for the Defense Security Assistance Agency.

- $10.6 million to develop a centralized civilian pay system for the Air Force Accounting and Finance Center.

- $6.4 million for services to improve the coordination and control of personal property movement and storage throughout DoD for the Army Military Traffic Management Command.

The principal reason that the DoD program officials cited for not obtaining appropriate approvals was their lack of understanding of restrictions in the FAR and DFARS, which limited the authority to approve interagency acquisitions to certain designated senior DoD officials and DoD contracting officers. They also viewed the Department of Energy as a means of awarding contracts more quickly and easily than going through DoD procurement channels.

Internal control procedures and practices were not adequate within these DoD activities to preclude violations of FAR and DFARS restrictions. Also those procedures and practices were not adequate to preclude the program officials from obtaining the funding required to enter into interagency agreements. Internal control procedures and practices at the DoD funding offices did not require any approvals from DoD officials designated by FAR and DFARS 17.502 before transferring funds to the Department of Energy.

Risks Associated With Internal Control Deficiencies. The lack of adequate internal control procedures and practices at the DoD activities and their funding offices increased the risk of contract overpricing and increased the susceptibility of the procurements to mismanagement, abuse, and fraud. We believe that the same conditions existed at most of the other DoD activities that had interagency agreements with the Department of Energy. The following examples illustrate the increased risks associated with the internal control deficiencies.

Office Space Leased. Program officials at the Air Force Command and Control Systems Program Management Office used an interagency agreement for software development and modernization with the Department of Energy as a mechanism for leasing office space. The leased office space was near Gunter

Air Force Base in Montgomery, Alabama, and was for Air Force personnel. The space was leased through a subcontract awarded on the Air Force's behalf by Martin Marietta Energy Systems, Inc., the management and operating contractor of the Department of Energy's Oak Ridge National Laboratory. The lease covered the period from May 1986 through December 15, 1988. The Air Force transferred $663,608 to the Department of Energy to facilitate the leasing arrangements, including the acquisition of furniture and other alterations and modifications. There were no detailed billings showing how much of the leasing costs was attributable to the acquisition of furniture and other alterations and modifications. The lack of control over purchased assets is discussed separately below.

The Air Force's leasing arrangements circumvented statutory and regulatory requirements which were established to ensure that office space is rented at fair and reasonable prices. This included U.S.C., Title 10, Section 2662, which requires that the Military Departments report to the House and Senate Committees on Armed Services any proposed transactions for the lease of real property where the estimated annual rental cost is estimated to be greater than $100,000.

These arrangements may also have violated the restrictions of U.S.C., Title 40, Section 278(a), which prohibits appropriations from being obligated or expended for the occupancy of a building to be occupied for Government purposes, when the annual rent exceeds 15 percent of the fair value of the rented space. In addition, the U.S.C. states that costs to modify the premises to meet user needs should not exceed 25 percent of the first year's lease cost for the duration of the lease. Based on information provided by Air Force and Corps of Engineers' specialists in industrial and office real estate, we estimated that the fair rental value of the leased space (for the period May 1986 through December 15, 1988), including the 25-percent limitation on modification costs and utilities and janitorial costs, was only $250,417. This is $413,191 less than the amount actually paid.

The Air Force subsequently leased this office space directly through appropriate DoD procurement channels. In addition to complying with all statutory and regulatory requirements -- including Congressional reporting requirements -- in directly leasing this office space, DoD procurement specialists were able to negotiate a 40-percent reduction in the contractor's proposed monthly rental costs from $14,517 per month to $10,364 per month. This contrasted with an average cost of more than $21,000 per month (including furniture acquisition, alterations, and modifications) during the 31.5 month period the space was being leased through the Department of Energy.

Directed Contracting. Program officials at 4 of the 25 DoD activities reviewed used interagency acquisitions through the Department of Energy as a vehicle for directing the placement of

contracts with preselected companies. This directed contracting involved seven interagency acquisitions valued at $18.4 million.

For example, the Naval Air Test Center used the Department of Energy as a mechanism for awarding a contract to Syscon Corporation. The Navy had previously contracted directly with Syscon Corporation to develop a portion of the Navy Standard Automated Financial System. When Navy program officials decided that they wanted additional work performed on this system by Syscon Corporation they went to the Department of Energy, instead of going through appropriate DoD procurement channels and providing the justifications required for a sole-source noncompetitive procurement. Martin Marietta Energy Systems, Inc., the management and operating contractor of the Department of Energy's Oak Ridge National Laboratory, agreed to enter into a subcontract on the Navy's behalf with Syscon Corporation to obtain these services. As of April 29, 1989, the Department of Energy had billed the Navy $987,310 for this contract. This included $102,661 in various fees and charges that the Department of Energy assessed that would not have been required if the Navy had continued to contract directly with Syscon Corporation for these services.

Year-End Spending. Our review of 706 funding documents totaling $242.4 million at the 25 DoD activities showed that 25 percent of the obligations totaling $59.4 million was made during the final month of a fiscal year. Although these DoD funds were obligated by the Department of Energy's acceptance of the DoD funding documents accompanying DoD's interagency order requests, the actual contracting by the Department of Energy's national laboratories could have been done at a later date. The high percentage of obligations funded during the last month of the fiscal years indicates a lack of adequate acquisition planning as well as a last minute effort to obligate funds before they expired. By using the Department of Energy to make these acquisitions, DoD program officials were able to avoid the review procedures for year-end spending contained in Office of Management and Budget (OMB) Policy Letter 81-1, "Procurement Procedures, Advance Procurement Planning, and Review of End-of-Year Purchases." These procedures require a detailed review of purchases made in the last quarter of the fiscal year in order to reduce wasteful practices resulting from hurried or unnecessary end-of-year procurements. These requirements were reemphasized by the Director of OMB in his June 30, 1988, memorandum, "Prevention of Wasteful Year-End Spending," and by the Deputy Secretary of Defense in his August 3, 1988, memorandum, "Year-End Spending," requesting that the Secretaries of the Military Departments and the Directors of the Defense Agencies monitor year-end spending under their internal control programs in accordance with DoD Directive 5010.38, "Internal Management Control Program." We believe that the lack of overall planning and internal controls that we observed, and the timeliness and convenience afforded by the interagency acquisition alternative

compared to formal DoD procurement methods, make interagency acquisitions prime targets for year-end spending abuses.

Contract Administration. Information provided by the General Accounting Office (GAO) and several of the program officials at the 25 DoD activities we contacted raised concerns as to whether contracts awarded on DoD's behalf by the Department of Energy were effectively administered. Under the guidelines contained in FAR Subpart 17.5, "Interagency Acquisitions Under the Economy Act," the responsibility for administering contracts awarded on DoD's behalf by the Department of Energy rested primarily with the Department of Energy. It is, however, DoD's responsibility to ensure that the interagency agreement is properly written to provide for adequate contract administration and reporting. It is partly due to this need that authority for approving interagency acquisitions has been limited to DoD contracting officers and a limited number of senior DoD officials.

The General Accounting Office (GAO) in its February 9, 1989, Audit Report No. RCED-89-21, "Energy Management: DOE Should Improve Its Controls Over Work for Other Federal Agencies," reported that there is limited monitoring of Work for Others projects by Department of Energy officials after approval and acceptance of the orders. The GAO concluded that the Department of Energy had inadequate resources to effectively administer the Work for Others Program.

Several of the DoD program officials we contacted also raised concerns as to whether the Department of Energy was effectively administering contracts awarded on DoD's behalf. For example, a reviewing official at the Air Force Standard Systems Center at Gunter Air Force Base stated in his evaluation of work performed by the Department of Energy:

> It has now been three months since the decision to continue work with DOE was made. There is very little traceability of where or how the $34 million is spent. . . . of DOE continues to stand firm on his original position that he does not have to provide the Air Force with the information our cost people have requested to explain what is being performed at what cost. There has never been a method to determine if the cost is fair and reasonable and it appears that there will never be on the $34 million already obligated . . . . Based on DOE's past performance and the lack of a contractual relationship to have direct control over the contractors, as well as the inability to track cost in a satisfactory manner, I cannot recommend to . . . , the head of the requesting agency, that it is in the best interest of the Government to enter into another interagency agreement with DOE.

Control Over Property Acquired by Contractors. We found references to equipment purchases in interagency acquisition documentation at 9 of the 25 DoD activities visited. The interagency agreements did not contain provisions that property acquired with DoD funds by Department of Energy contractors and their subcontractors would be turned over to DoD upon completion of the project. We found that the billings provided by the Department of Energy did not provide any details on equipment or property acquired with DoD funds. We were not able to establish the amount spent for equipment; however, based on statements of work and other project documentation, we believe the amount is significant.

Effective Internal Controls. There is a need to establish effective internal control procedures to minimize the risk that unauthorized DoD officials will approve orders for interagency acquisitions. We doubt that authorized DoD procurement professionals would have determined that it was in DoD's best interest to make most of the procurements we reviewed through the Department of Energy. These procurement professionals generally have the skills and training necessary to determine if the other Federal agency can obtain the requested services and supplies more economically and efficiently than through direct DoD contracting. The procurement professionals are also in the best position to ensure that the interagency agreement provides for compliance with all FAR and DFARS requirements in the award and administration of contracts awarded on DoD's behalf, and for the reporting of cost and asset data required by DoD to fulfill its own reporting and control requirements. By circumventing the internal controls inherent in compliance with the FAR and DFARS, the interagency procurement practices we observed substantially increased the susceptibility of the procurements to mismanagement, abuse, and fraud.

Training and Disciplinary Action. The finding that unauthorized DoD program officials placed orders for interagency acquisitions at 23 of the 25 DoD activities we reviewed indicates that there is a widespread misunderstanding of the FAR and DFARS requirements for placing interagency acquisitions. To correct this deficiency, appropriate training must be provided to DoD program officials. The training should focus on why the approval of DoD procurement professionals is required whenever an interagency acquisition is contemplated. The training should emphasize that interagency acquisitions should only be approved when the other Federal agency:

- has unique expertise not available within DoD;

- can routinely and reasonably provide the services or supplies within the scope of its functional responsibilities;

- is able to obtain the services or supplies more economically and efficiently than would be possible through direct DoD contracting; and

- is able to comply with all FAR and DFARS requirements in the award and administration of contracts awarded on DoD's behalf, including requirements for competition, sole-source justifications, obtaining certified cost and pricing data as required by the Truth-in-Negotiations Act, obtaining contract audits, and performing cost and price analyses.

Appropriate disciplinary action should also be taken against the DoD program officials who have flagrantly disregarded the requirements of the FAR and DFARS in their placement of interagency acquisitions. In our opinion, the actions taken by program officials at the Air Force Command and Control Systems Program Management Office in leasing office space through the Department of Energy are examples of obvious and flagrant disregard of the FAR and DFARS.

Report and Track Material Weaknesses. The material internal control weaknesses identified in this report should be reported and tracked as required by DoD Directive 5010.38, "Internal Management Control Program." Because the material weaknesses identified were widespread throughout DoD and involved another executive branch agency, these material weaknesses should be included in the Secretary of Defense's annual internal control report to the President and Congress as required by Title 31, United States Code, Section 512, and by OMB Memorandum, "Year-End Internal Control Report," September 26, 1983.

RECOMMENDATIONS FOR CORRECTIVE ACTION

We recommend that the Under Secretary of Defense for Acquisition direct the heads of the appropriate DoD components to:

1. Establish internal control procedures and practices to minimize the risk that orders for interagency acquisitions will be placed by unauthorized DoD program officials. These internal control procedures and practices should include steps to ensure that no funds are transferred to another Federal agency for interagency acquisitions without obtaining approval from DoD officials authorized by Federal Acquisition Regulation and Defense Federal Acquisition Regulation Supplement 17.502, "Interagency Acquisitions Under the Economy Act - General."

2. Provide training for the program officials who exceeded their authority by placing interagency acquisitions with the Department of Energy and take appropriate disciplinary action against DoD program officials who flagrantly disregarded the requirements of the Federal Acquisition Regulation and Defense Federal Acquisition Regulation Supplement in their placement of interagency acquisitions. This training should reemphasize that acquisitions of services or supplies should only be obtained through an interagency acquisition with another Federal agency when that agency has unique expertise not available within DoD; can routinely and reasonably provide the services or supplies

within the scope of its functional responsibilities; is able to obtain the services or supplies more economically and efficiently than through direct DoD contracting; and is able to comply with all Federal Acquisition Regulation and Defense Federal Acquisition Regulation Supplement requirements in the award and administration of contracts awarded on DoD's behalf including reporting requirements and requirements for competition, sole-source justifications, obtaining certified cost and pricing data as required by the Truth-in-Negotiations Act, obtaining contract audits, and performing cost and price analyses.

3. Report and track the material weaknesses identified as required by DoD Directive 5010.38, "Internal Management Control Program." Because the material weaknesses identified were widespread throughout DoD and involved another Executive Branch agency, these material weaknesses should be included in the Secretary of Defense's annual internal control report to the President and Congress as required by Title 31, United States Code, Section 512, and by OMB Memorandum, "Year-End Internal Control Report," September 26, 1983.

MANAGEMENT COMMENTS

The Principal Deputy Assistant Secretary of Defense (Production and Logistics) concurred with the finding and recommendations and has initiated corrective actions. The complete text of his comments is in Appendix E.

COMPENDIUM OF FEDERAL ACQUISITION REGULATION (FAR) DEFENSE ACQUISITION REGULATION SUPPLEMENT (DFARS) REQUIREMENTS APPLICABLE TO INTERAGENCY ACQUISITIONS

FAR/DFARS, Subpart 1.6, "Contracting Authority and Responsibilities" - Makes the contracting officer responsible for ensuring that contracts are effectively administered.

FAR/DFARS 2.101, "Definitions" - Defines "Head of the Agency" within the DoD as being limited to the Secretary of Defense; the Assistant Secretary of Defense (Production and Logistics); the Secretary, Under Secretary, and Assistant Secretaries of the Army, Navy, and Air Force; and the Directors and Deputy Directors of Defense Agencies, except to the extent that any law or Executive Order limits the exercise of authority to specific individuals at the Secretarial level.

FAR/DFARS, Part 6, "Competition Requirements" - Establishes requirements for full and open competition for all contractual requirements. Limits the use of sole source and less than fully competitive contracting procedures and requires substantial justification for any exceptions to full and open competition.

FAR/DFARS, Part 7, "Acquisition Planning" - Requires Federal agencies to perform acquisition planning and to conduct market surveys for all acquisitions in order to promote and provide for full and open competition, or to obtain competition to the maximum extent practicable.

FAR/DFARS, Part 15, "Contracting by Negotiation" - Defines procedures and requirements for establishing contract prices for contracts not awarded through competitive sealed bidding procedures. Covers negotiation requirements for both competitive and noncompetitive procurements. Includes several requirements to ensure the reasonableness of negotiated contract prices, including requirements for performing a cost or price analysis, obtaining field pricing support, obtaining cost and pricing data from the contractor, and requiring the contractor to provide a certificate of current cost or pricing data certifying the accuracy, currency, and completeness of the cost and pricing data provided.

FAR/DFARS, Subpart 17.5, "Interagency Acquisitions Under the Economy Act" - Provides that an agency may place orders with any other agency for supplies and services that the servicing agency may be in a position or equipped to supply, render, or obtain by contract if it is determined by the head of the requesting agency, or a designee, that it is in the Government's interest to do so. DFARS 17.502(a) defines the designee of the head of the requesting agency within DoD as being limited to contracting officers unless otherwise directed by departmental regulations. FAR 17.504 requires the servicing agency to comply fully with the competition requirements of FAR, Part 6, when an interagency acquisition requires the servicing agency to award a contract.

FAR/DFARS, Subpart 42.3, "Contract Administration Office Functions" - Provides that actions be taken to ensure contracts are effectively administered in circumstances where the procurement contracting officer delegates all or a portion of the responsibilities for contract administration to a contract administration office.

PRINCIPAL DOD ACTIVITIES AND INTERAGENCY ACQUISITIONS REVIEWED

Activity Visited	Number of Projects	Dollar Value (millions)
Army Activities		
Finance and Accounting Center	1	$ 2.0
Information System and Engineering Command	3	4.6
Corps of Engineers	2	4.6
Army Research Institute	8	8.5
Army Materiel Command	1	1.0
Military Traffic Management Command	3	10.1
Total Army	18	$ 30.8
Navy Activities		
Naval Air Systems Command	5	$ 1.6
Naval Military Personnel Command	9	28.4
Navy Regional Data Automation Center	8	5.7
Accounting and Finance Center	1	3.4
Naval Aviation Maintenance Office	1	7.8
Naval Aviation Depot Operations Center	1	.9
Naval Air Test Center	2	1.1
Office of Naval Research	6	5.0
Marine Corps Headquarters	2	1.7
Total Navy	35	$ 55.6
Air Force		
Standard Systems Center	7	$ 55.7
Engineering and Services Center	12	21.5
Accounting and Finance Center	2	12.4
Security Assistance Accounting Center	1	15.5
Total Air Force	22	$105.1
Other DoD Activities		
Joint Chiefs of Staff	7	$ 13.4
Defense Logistics Agency	1	.1
Defense Technical Information Center	1	.2
National Security Agency	3	1.0
Defense Nuclear Agency	2	.1
Defense Advanced Research Projects Agency	8	28.8
Total Other DoD Activities	22	$ 43.6
Total Activities Reviewed	97	$235.1

SUMMARY OF POTENTIAL MONETARY AND OTHER BENEFITS RESULTING FROM AUDIT

RECOMMENDATION REFERENCE	DESCRIPTION OF BENEFIT	AMOUNT AND TYPE OF BENEFIT
1.	Improve internal control procedures by reducing risk that further orders for interagency acquisitions will be placed by unauthorized DoD program officials.	Nonmonetary Nonquantifiable
2.	Improve internal control procedures by providing training on requirements for placing interagency acquisitions and taking disciplinary action against those who violate these requirements.	Nonmonetary Nonquantifiable
3.	Help ensure implementation of Recommendations 1. and 2.	Nonmonetary Nonquantifiable

ACTIVITIES VISITED OR CONTACTED

Office of the Secretary of Defense

Assistant to the Secretary of Defense (Atomic Energy), Washington, DC
Comptroller of the Department of Defense, Washington, DC

Department of the Army

Deputy Assistant Secretary of the Army (Procurement), Washington, DC
Army Materiel Command, Alexandria, VA
HQ, U.S. Army Corps of Engineers, Washington, DC
Military Traffic Management Command, Falls Church, VA
U.S. Army Finance and Accounting Center, Indianapolis, IN
U.S. Army Information Systems and Engineering Command, Fort Belvoir, VA
U.S. Army Research Institute for the Behavioral and Social Sciences, Alexandria, VA

Department of the Navy

Naval Air Systems Command Headquarters, Arlington, VA
Naval Air Test Center, Patuxent River, MD
Naval Audit Service, Falls Church, VA
Naval Aviation Depot Operations Center, Patuxent River, MD
Naval Aviation Maintenance Office, Patuxent River, MD
Naval Military Personnel Command, Arlington, VA
Navy Accounting and Finance Center, Arlington, VA
Navy Regional Data Automation Center, Washington, DC
Office of the Chief of Naval Research, Arlington, VA
Headquarters, U.S. Marine Corps, Arlington, VA

Department of the Air Force

Engineering and Services Center, Panama City, FL
Assistant Secretary of the Air Force (Acquisition), Washington, DC
Security Assistance Accounting Center, Denver, CO
Standard Systems Center, Montgomery, AL
U.S. Air Force Accounting and Finance Center, Denver, CO

Other Defense Activities

Defense Advanced Research Projects Agency, Rosslyn, VA
Defense Communications Agency, Arlington, VA
Defense Criminal Investigation Services, Atlanta, GA
Defense Criminal Investigation Services, St. Louis, MO
Defense Logistics Agency, Alexandria, VA
Defense Nuclear Agency, Alexandria, VA
Defense Technical Information Center, Alexandria, VA
Joint Chiefs of Staff, Washington, DC
National Security Agency, Fort Meade, MD

ACTIVITIES VISITED OR CONTACTED (continued)

Non-DoD

General Accounting Office, Resources, Community, and Economic Development Division, Washington, DC
Department of Energy, Washington, DC

ASSISTANT SECRETARY OF DEFENSE
WASHINGTON, D C 20301-8000

PRODUCTION AND
LOGISTICS

May 25, 1990

P/CPA

MEMORANDUM FOR DEPUTY ASSISTANT INSPECTOR GENERAL FOR AUDITING

SUBJECT: Draft Report on the Audit of DoD Hotline Allegation of Irregularities in DoD Contractual Arrangements with the Department of Energy (Project No. 9CC-8001)

This is in response to your request for comments regarding the subject draft report. I generally concur with your findings and recommendations which are essentially the same as those contained in your audit report on the Library of Congress (Report No. 90-034).

Corrective actions have been initiated regarding the proper use of interagency acquisitions. These actions by the Services and the Defense Logistics Agency include the initiation of comprehensive instructions to include establishing appropriate internal controls. These initiatives and those resulting from my recent memorandum issued to the Services and the Defense Logistics Agency should eliminate the weaknesses identified with the use of interagency acquisitions.

We are attaching a copy of the May 10, 1990, memorandum and specific comments on the draft report.

David J. Berteau
Principal Deputy

Attachments

ASSISTANT SECRETARY OF DEFENSE
WASHINGTON, D.C. 20301-8000

PRODUCTION AND
LOGISTICS

May 10, 1990

P/CPA

MEMORANDUM FOR ASSISTANT SECRETARY OF THE ARMY (RESEARCH, DEVELOPMENT, AND ACQUISITION)
ASSISTANT SECRETARY OF THE NAVY (RESEARCH, DEVELOPMENT AND ACQUISITION)
ASSISTANT SECRETARY OF THE AIR FORCE (ACQUISITION)
DIRECTOR, DEFENSE LOGISTICS AGENCY

SUBJECT: Contracting Through Interagency Agreements

The Department of Defense Inspector General (DoDIG) recently concluded its audits of contracting through interagency agreements with the Library of Congress and the Department of Energy. In both instances, the DoDIG found that Department of Defense (DoD) program officials circumvented contracting procedures by not obtaining approvals from DoD contracting officers as required by the Federal Acquisition Regulation/Defense Federal Acquisition Regulation Supplement subpart 17.5. The DoDIG's reports also focused on the need for assuring that effective contract administration is accomplished for interagency acquisitions.

We recognize that certain corrective actions have been initiated by the Military Services and the Defense Logistics Agency. Nonetheless, we solicit your continuing support in providing appropriate training for program officials and establishing internal control procedures and practices to minimize the risk of orders for interagency acquisitions being placed by unauthorized DoD program officials.

David J. Berteau

David J. Berteau
Principal Deputy

DRAFT REPORT ON THE AUDIT OF DOD HOTLINE ALLEGATION OF IRREGULARITIES IN DOD CONTRACTUAL ARRANGEMENTS WITH THE DEPARTMENT OF ENERGY

PROJECT NO. 9CC-8001

We recommend that the Under Secretary of Defense for Acquisition direct the heads of the appropriate DoD components to:

Recommendation 1. Establish internal control procedures and practices to minimize the risk that orders for interagency acquisitions will be placed by unauthorized DoD program officials. These internal control procedures and practices should include steps to ensure that no funds are transferred to another Federal agency for interagency acquisitions without obtaining approval from DoD officials authorized by Federal Acquisition Regulation and Defense Federal Acquisition Regulation Supplement 17.502.

ASD(P&L) Response: Concur. ASD(P&L) issued a memorandum to the Services and Defense Agencies highlighting the DoDIG findings and reminding DoD program officials of their responsibilities to use their contracting offices.

Recommendation 2. Provide training for the program officials who exceeded their authority by placing interagency acquisitions with the Department of Energy and take appropriate disciplinary action against DoD program officials who flagrantly disregarded the requirements of the Federal Acquisition Regulation and Defense Federal Acquisition Regulation in their placement of interagency acquisitions. This training should reemphasize that acquisitions of services or supplies should only be obtained through an interagency acquisition with another Federal agency when that agency has unique expertise not available within DoD; can routinely and reasonably provide the services or supplies within the scope of its functional responsibilities; is able to obtain the services or supplies more economically and efficiently than through direct DoD contracting; and is able to comply with all Federal Acquisition Regulation and Defense Federal Acquisition Regulation Supplement requirements in the award and administration of contracts awarded on DoD's behalf including reporting requirements and requirements for competition, sole-source justifications, obtaining certified cost and pricing data as required by the Truth-in-Negotiations Act, obtaining contract audits, and performing cost and price analyses.

ASD(P&L) Response: Concur. ASD(P&L) memorandum of May 10, 1990, emphasized training and internal controls.

Recommendation 3. Report and track the material weaknesses identified as required by DoD Directive 5010.38, "Internal Management Control Program." Because the material weaknesses identified were widespread throughout DoD and involved another Executive Branch agency, these material weaknesses should be included in the Secretary of Defense's annual internal control report to the President and Congress as required by Title 31, United States Code, Section 512, and by OMB Memorandum, "Year-End Internal Control Report," September 26, 1983.

ASD(P&L) Response: Concur.

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