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COMMITTEE ON GOVERNMENT REFORM

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Mr. Chairman and Members of the Committee, I am pleased to be here at your request to testify on the Department of Energy's (Department) contract administration activities.

The Department is one of the most contractor dependent agencies in the Federal government. It places great reliance on contract operations to accomplish its mission. The basic premise of this relationship is that contractors manage the day-to-day operations, while the Department is responsible for administering the contracts to ensure that the taxpayers receive fair value for their money and that the contractors are held accountable for their performance.

Although the Department has made some progress in restructuring its contract activities, our reviews have shown that the Department has not done an adequate job of contract administration. As a result, taxpayer funds have not always been spent economically and efficiently. Because of the critical importance of contract administration, the Office of Inspector General (OIG) has performed substantial work in this area.

BACKGROUND

Facilities management contracts have been used by the Department and its predecessor agencies since the 1940s. This continues today with key operations being performed by over 30 such contractors. Currently, the Department, to include the National Nuclear Security Administration (NNSA), has approximately 100,000 contract employees, plus numerous subcontract employees, who support the Department's mission at its contractor-

operated facilities. In Fiscal Year 2002, for example, $15.7 billion, or nearly 75 percent, of the Department's budget was spent on its facilities management contracts. The Department's contractors use these funds to maintain and secure the Nation's nuclear weapons stockpile, remediate environmental contamination from past weapons production, and conduct leading-edge research and development activities.

The Federal Acquisition Regulation authorizes the Department to enter into these unique facilities management contracts. We have observed a number of differences between facilities management contracts and traditional cost-type contracts. Facilities management contracts generally:

- Indemnify the contractors for virtually all costs and liabilities incurred;
- Have succeeding contractors retain all but a few employees of the preceding contractor;
- Are frequently extended noncompetitively;
- Do not require submission of traditional invoices for review, approval, and payment; and,
- Allow the contractor to draw funds from a letter-of-credit account as costs are incurred rather than bill the Department after the fact.

Because of these differences, the Department's contractors have been provided significant flexibilities. These flexibilities, in some cases, have led to great benefits, but they have also created opportunities for mismanagement of taxpayer-provided resources.

Over the past several years, based on criticisms of its contracting practices, the Department has initiated a series of actions to modify and reform its contract administration activities. These included developing alternative contracting approaches, increasing competition, and using performance-based contracts. The General Accounting Office's report on contract reform (GAO-02-798, September 2002) addresses these initiatives and the progress the Department has made. In addition, partially as a result of OIG reports, the Department has recently:

- Completed a comprehensive "top-to-bottom" review of its environmental management program;
- Modified its field structure to eliminate an unnecessary layer of management; and,
- Held the University of California accountable for procurement and property deficiencies at Los Alamos National Laboratory.

CONTRACT ADMINISTRATION CHALLENGES

Despite the Department's reform efforts, our reviews have indicated that more needs to be done to strengthen its administration of contractor operations. In the past, the Department has not always effectively monitored contractor performance or held the contractors accountable for their actions. Our reviews have disclosed continuing weaknesses, including the failure to:

- Develop quantifiable, outcome-oriented contractor performance measures;
- Maintain a system to track critical aspects of contractor performance;
- Require strict adherence to contract terms;
- Require utilization of a full range of project management tools; and,
- Rate and reward contractors commensurate with their performance.

Our recent special report on *Management Challenges at the Department of Energy* (DOE/IG-0580, December 2002) highlighted the continuing challenges the Department faces in contract administration. This report identified seven key management challenges, which represented the most serious management and performance issues that impacted the Department's ability to carry out its critical missions. Since the Department is heavily reliant on contractors to perform its missions, contract administration permeates all of these areas. A discussion of these challenges follows, and serves to illustrate the problems the agency has faced, and continues to face, in implementing an effective contract administration strategy.

PROJECT MANAGEMENT/PROCUREMENT

Our reviews have shown that the Department's contractors continue to experience problems in managing large projects. At the request of the NNSA, we conducted a review of the Tritium Extraction Facility under construction at the Savannah River Site, operated by Westinghouse Corp. and Bechtel Inc. Our report, *The Department of*

Energy's Tritium Extraction Facility (DOE/IG-0560, June 2002), disclosed that the project might cost approximately $100 million more than planned and will not be completed by February 2006, as scheduled. In this case, as well as in other projects we reviewed, Department officials did not require that its contractors make full use of project management controls. We raised similar concerns in our reports on the Pit Production Project at Los Alamos National Laboratory, operated by the University of California, and the Spallation Neutron Source Project at Oak Ridge National Laboratory, operated by University of Tennessee-Battelle.

More recently, my office conducted a special inquiry at the Los Alamos National Laboratory. The focus of this review was to determine whether the Laboratory had engaged in a deliberate cover up of procurement irregularities and security concerns. Our report on *Operations at Los Alamos National Laboratory* (DOE/IG-0584, January 2003) noted that a series of actions taken by Laboratory officials obscured serious property and procurement management problems and weakened relevant internal controls. These actions created an atmosphere in which Los Alamos employees were discouraged from, or had reason to believe they were discouraged from, raising concerns to appropriate authorities. During the time period in question, the Department gave the Laboratory an excellent rating in both personal property management and procurement management.

In addition, our report on the *U.S. Department of Energy's Purchase Card Programs - Lessons Learned* (I01OP001, February 2002) disclosed misuse of purchase cards, the vast majority of which were in the hands of contractor employees. Even when appropriate

policies and procedures were present, they were not adequately enforced. The Department's Chief Financial Officer, in a recent follow-up review, identified instances where:

> cardholders and approving officials did not follow established procedures, and where existing controls and procedures were not adequate to safeguard against misuse. Major causes included: ineffective implementation of basic controls such as prior authorization of purchases and approving official reviews, a proliferation of cardholders, inadequate training, and a lack of specific criteria for cardholder and approving official accountability for purchases.

ENVIRONMENTAL CLEANUP

In an effort to make the Department's environmental remediation program more effective and efficient, Secretary Abraham directed the Office of Environmental Management to conduct a "top-to-bottom" assessment of all aspects of this $210 billion program. The 2002 assessment report concluded that remediation activities, which are largely performed by contractors, have not focused on reducing risk or completing the cleanup with an appropriate sense of urgency.

Our reviews of the Department's contractor operations have disclosed similar problems. In our report, *Remediation and Closure of the Ashtabula Environmental Management Project* (DOE/IG-0541, January 2002), we found that the Department had not required

strict compliance with the terms of the remediation contract. For instance, the contractor (RMI Titanium Co.) did not always follow the approved Department decommissioning plan for the Ashtabula site. Additionally, the contractor incurred questionable costs and developed new technologies instead of dedicating resources to site remediation activities. As a result, the cleanup effort at Ashtabula might not be completed until 2012 instead of 2003, as originally scheduled. This would extend the 10-year expected life of the project to 19 years, resulting in a likely increase in project costs (and the burden on the taxpayers) of over $60 million.

In our report, *Disposition of the Department's Excess Facilities* (DOE/IG-0550, April 2002), we found that the Department and its contractors did not fully consider mission requirements, risk reduction, and costs when prioritizing facility disposition activities at contractor-operated facilities. In certain cases, disposition plans were in conflict with requirements for new facilities. In other instances, facilities posing little risk to human health and the environment were decommissioned while Department contractors deferred disposition of buildings representing substantially greater risks.

Further, in our report, *Treatment of Mixed Incinerable Waste* (DOE/IG-0588, March 2003), we noted significant inefficiencies in the treatment and storage of the Department's mixed incinerable waste at contractor locations. For example, the Department continued to pay a contractor substantial costs and fees for operation of the Toxic Substances Control Act Incinerator operations at Oak Ridge, even though minimum burn requirements were not being met.

INFORMATION TECHNOLOGY MANAGEMENT

With an estimated $1.4 billion annual expenditure for information technology (IT), it is essential that the Department and its contractors develop and implement an effective IT management investment and control process. The Clinger-Cohen Act of 1996 and the E-Government Act of 2002 were intended to enhance the management and control of IT. Further, the *President's Management Agenda* encourages the use of electronic commerce to make it simpler for citizens to receive high-quality services from the Federal government while reducing the cost of delivering those services.

Although the Department continues to integrate IT into all aspects of its missions, it has experienced a substantial challenge in fully implementing the requirements of the Clinger-Cohen Act and related information security legislation. To illustrate, our report, *Nuclear Materials Accounting Systems Modernization Initiative* (DOE/IG-0556, June 2002), concluded that the Department had not adequately managed activities to redesign, modernize and integrate its nuclear materials accounting systems. Presently, the Department and its contractors maintain over 50 separate tracking systems, many of which are duplicative and inefficient.

Similarly, we found that while the Department had taken a number of positive steps to improve its unclassified cyber security program, many of its critical information systems, particularly at contractor locations, remain at risk. For example, our report, *The*

Department's Unclassified Cyber Security Program 2002 (DOE/IG-0567, September 2002), concluded that the Department and its contractors had not: (1) consistently implemented a risk-based cyber security approach; (2) assured continuity of operations through adequate contingency and disaster recovery planning; (3) strengthened its incident response capability by reporting all computer incidents; (4) ensured that employees with significant security responsibilities had received adequate training; or (5) adequately addressed configuration management and access control problems.

NATIONAL SECURITY

While the deterrent provided by nuclear weapons has been, and continues to be, a key component of the Nation's security posture, the Department and the Nation face a complex set of challenges related to defending against worldwide threats. These challenges, brought to the forefront by the events of September 11, 2001, require the Department and its contractors to consider implementing new security measures.

The OIG recently issued a report, *The Department's Unclassified Foreign Visits and Assignments Program* (DOE/IG-0579, December 2002), which disclosed that two contractor-operated laboratories had not adequately controlled unclassified visits and assignments by foreign nationals. While such visits and assignments can benefit the Department, the laboratories, and international partners by providing a forum for the exchange of scientific information, they also pose certain security risks. We found that

complete and up-to-date passport and visa information was not being maintained at the two contractor-operated laboratories examined. Also, access to a contractor site was frequently granted before required approvals were obtained and background indices checks were performed. In addition, the laboratories were not forwarding complete and up-to-date information on foreign visits and assignments to Department officials who were responsible for managing this program.

The OIG has also reported on weaknesses in remote access to unclassified information systems. In our report, *Remote Access to Unclassified Information Systems* (DOE/IG-0568, September 2002), we found that many offices had not implemented risk-mitigation strategies. Of the 13 Department and contractor organizations included in our review:

- Ten had not considered the risk associated with remote access when developing cyber security protection plans;
- Nine had not developed specific guidance addressing remote access security requirements; and,
- Nine had not required the use of protective measures such as personal firewalls, and up-to-date virus protection and systems software, when accessing network resources.

Inadequate protective measures placed critical Department and contractor unclassified information systems at risk of attack from internal and external sources and could

ultimately result in data tampering, fraud, disruptions in critical operations, and inappropriate disclosure of sensitive information.

PERFORMANCE MANAGEMENT

The Department and its contractors have also been criticized for deficiencies in performance management, an emphasis area in the *President's Management Agenda.* Noted deficiencies included performance measures that: (1) were not quantifiable; (2) did not support key goals; and, (3) were not results oriented. To illustrate, our report on *Environmental Management Performance Measures* (DOE/IG-0561, June 2002) noted that although the Office of Environmental Management had developed a number of corporate and project-specific performance measures, these measures did not capture overall program results. Specifically, the measures did not cover the majority of cleanup projects or budgets at contractor locations, capture overall program performance, or appropriately address risk. The lack of focus of the measures on overall program results deprived the Department and its contractors of a valuable tool for monitoring the progress of the cleanup program.

OIG reports have also identified specific contractor-operated programs that would have benefited from enhanced performance measurement. For example, our report on *Synchrotron Radiation Light Sources at Lawrence Berkeley National Laboratory and Stanford Linear Accelerator Center* (DOE/IG-0562, July 2002) disclosed that the beam

lines at Berkeley, operated by the University of California, were idle during 35 percent of the time when we made observations. Berkeley did not have a centralized scheduling system and, therefore, was unaware that additional beam time was available. As a consequence, scientifically-valid research proposals were rejected for study. We found that the Department did not require its contractors to track and report actual use of the facilities or establish useful performance measures to evaluate beam line use.

STOCKPILE STEWARDSHIP

The Department and its contractors are actively involved in maintaining the safety, reliability, and performance of the aging nuclear weapons in the Nation's stockpile. During the past year, OIG reports have addressed difficulties in meeting this critical mission. For example, our report on the *National Nuclear Security Administration's Test Readiness Program* (DOE/IG-0566, September 2002) disclosed that, based on the current status of available human and physical resources, the ability of the Department and its contractors to conduct an underground nuclear test within established parameters was at risk. A report issued by the Nevada Operations Office, *Enhanced Test Readiness Cost Study*, similarly concluded that the Department's ability to maintain a test readiness posture of 24 to 36 months was "at risk."

In addition, our report on *The Department of Energy's Pit Production Project,* (DOE/IG-0551, April 2002) disclosed that it was unlikely that the Department's contractor would be able to produce a certifiable pit in accordance with its performance plans. The Los

Alamos National Laboratory had the lead on this project. As of December 2001, over half of the approximately 40 nuclear manufacturing processes that will be used to produce pits were behind schedule.

More recently, our report, *Refurbishment of the W80 – Weapon Type* (DOE/IG-0590, March 2003), disclosed that it is unlikely that NNSA's W80 refurbishment project, which is estimated to cost over $1 billion, will meet its scope, schedule, and cost milestones. Specifically, Lawrence Livermore National Laboratory, operated by the University of California, and Sandia National Laboratories, operated by Lockheed Martin Corp., had cancelled and delayed testing, weapon component completion, and support-facility renovation activities, without notifying NNSA.

WORKER/COMMUNITY SAFETY

OIG reports have also identified problems related to contractor updates of safety procedures. For example, our previously mentioned report on the *National Nuclear Security Administration's Test Readiness Program* (DOE/IG-0566, September 2002) disclosed that contractors at the Nevada Test Site had not fully incorporated enhanced nuclear safety requirements into their nuclear explosives studies. Outdated or incomplete procedures could affect the Department's ability to resume underground testing should the President determine that such tests are necessary.

Likewise, our report on the *National Nuclear Security Administration's Nuclear Explosive Safety Study Program* (DOE/IG-0581, January 2003) disclosed that required comprehensive safety studies at Pantex, operated by BWXT Pantex, LLC, had been delayed for a majority of active nuclear weapons in the Nation's stockpile. Without approved safety studies, NNSA faced disruption to its nuclear weapons surveillance testing and dismantlement activities. In addition our report on *Explosives Safety at Selected Department of Energy Sites* (DOE/IG-0578, December 2002) indicated that improvements could be made in the areas of explosives, fire, and lightning safety at contractor-operated facilities in Nevada and Tennessee.

CONCLUSION

Failure of the Department to effectively manage certain aspects of its contract operations has led to excess expenditure of funds, use of taxpayer funds for purposes not intended, wasteful management practices, and excessive project costs.

Based on the work that the Office of Inspector General has completed over the years, we believe that Department managers must place even greater emphasis on efforts to adopt sound contract administration practices. Specifically, the Department must:

- Develop its own realistic expectations of desired outcomes;
- Establish clear contractor performance metrics;
- Closely monitor contract activities;

- Hold contractors accountable for their performance; and,
- Maximize competition.

Addressing the challenge of contract administration will require the commitment of all parties involved. In this regard, the Office of Inspector General will continue to focus on ways to improve the Department's operations and its contract management practices.

Mr. Chairman and Members of the Committee, this concludes my prepared testimony. I will be pleased to answer any questions.