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Before the

Subcommittee on Government Management,
Organization and Procurement

of the

Committee on Oversight and Government Reform

U.S. House of Representatives

FOR RELEASE ON DELIVERY

2:00 PM

July 18, 2007

Mr. Chairman and members of the Subcommittee, I am pleased to be here today at your request to testify on issues pertaining to contract management at the Department of Energy.

More than any other civilian agency in the Federal government, the Department of Energy places significant reliance on contractors. There are about 15,000 Federal employees at the Department. In contrast, there are approximately 100,000 contract employees plus a significant number of subcontract employees, who operate the Department's National Laboratories, production facilities, and environmental remediation projects. The operations performed by contractors consume at least three-quarters of the Department's budget. As we have reported annually, managing this type of operation is one of the most pressing management challenges facing the Department. This challenge permeates almost every aspect of the Department's programmatic and administrative activities, including the National Nuclear Security Administration.

The Department's dependence on contractors can be traced back to the origins of the agency and the Manhattan Project. Since that time, this unique partnership has allowed flexibility in the accomplishment of highly technical and scientific endeavors. Through this arrangement, the Department and its contractors have played a key role in developing and sustaining the Nation's nuclear weapons stockpile, uncovering the complexities of the human genome, advancing the capabilities of scientific computing, and developing treatments for cancer and other diseases.

Despite these successes, contract administration at the Department has not been without its problems. As a member of Congress recently remarked, “the agency has a long record of inadequate management and oversight of contracts... Although [the Department] has made some oversight improvements...problems [continue] to exist in contract management at the Department of Energy.”

I would like to take a few minutes today to explore some of the issues related to the Department’s administration of its contracts. Specifically, I will discuss the origins of the Department’s contracting structure, the problems the agency has faced in contract administration, and the actions the Department needs to take to effectively and efficiently manage its contract operations.

CONTRACTING STRUCTURE

The Department of Energy contracting structure dates back to the 1940s. To address a wartime challenge, the Federal government sought the best scientific and technical expertise from industry and academia in developing the atomic bomb to meet the geopolitical threats facing the Nation. In undertaking this task, the Department’s predecessor agencies provided some of the country’s leading firms and academic institutions, through a cost-reimbursable contracting arrangement, with the land, facilities and operating resources necessary to solve this critically important assignment.

Many elements of that structure remain in place today as essential components of the Department’s operations. Although the contractual documents that define the

Department's relationship with its contractors have become more detailed and the fees paid to its contractors have increased substantially, the basic structure remains largely unchanged. The agency's major facilities are wholly-owned and financed by the government, but these facilities are operated by contractors. The government generally indemnifies the contractors operating the Department's facilities for the activities performed at these locations.

The Department's arrangement with its contractors, however, continues to evolve. Within the last ten years, the agency has instituted two major modifications to its contracting practices. First, the Department has instituted performance-based contracting. Under this type of arrangement, the payment of fees is tied to the accomplishment of specific tasks and projects. Second, largely associated with congressional interest, the Department is in the process of recompeting virtually all of its major facility contracts. Some contract operations, like the Los Alamos National Laboratory, had been run by the same contractor for over 50 years. We believe that these changes, which have been expedited by Secretary Bodman, should enhance contract operations in the Department of Energy.

CONTRACT ADMINISTRATION CHALLENGE

Although the agency has taken several positive steps in recent years, our work has documented deficiencies in the way the Department administers its contracts. These deficiencies have led to significant security lapses and wasteful spending practices. For example, my office has identified contract activities that were not conducted in an

economic and efficient manner, and health and security issues that were not given the attention they deserve. Most importantly, contractors were not always held accountable for their actions.

In preparing for this testimony, we were informed by the Subcommittee of its interest in agency contracts with Wackenhut Services, Inc., the Bechtel Corporation, and the University of California, three of the Department's most prominent contractors. I would like to address three recent reports issued by my office pertaining to contractual issues specifically involving these institutions. These reports are representative of the Department's continuing contract administration challenge.

*Selected Controls over Classified Information
at the Los Alamos National Laboratory*

The Office of Inspector General conducted a special review, which revealed a serious breakdown in security controls at the Los Alamos National Laboratory, one of the premier contractor-operated laboratories in the nuclear weapons complex. We found that, in many cases, the Laboratory, currently operated for the Department by Los Alamos National Security, LLC (a private limited liability company formed by the University of California, Bechtel, BWX Technologies, and Washington Group International), did not enforce existing safeguards or provide adequate attention and emphasis necessary to ensure a secure cyber security environment. Specifically, in a number of areas, security policy was non-existent, applied inconsistently, or not followed. In short, the findings of our report raised serious concerns about the Laboratory's ability to protect both classified and sensitive information systems.

Contributing to the situation were shortcomings in Federal management of laboratory operations. These included inadequate Federal review and inspection of the Laboratory's classified information systems. For example, National Nuclear Security Administration officials told us that they placed a great deal of emphasis on reviewing security plans and accrediting systems, but they did not perform physical inspections to validate that the plans were accurate and were actually being carried out as planned. As a consequence, Federal officials were not able to ensure that security controls were properly designed and put in place

in a manner that would effectively mitigate security risks at one of the nation's premier national weapons laboratories.

*Quality Assurance Standards for the Control Network
at the Waste Treatment Plant*

In one of the largest and most important of environmental remediation projects in the world, the Department of Energy is constructing a Waste Treatment Plant at its Hanford, Washington, site. The \$12.2 billion Plant is designed to treat and prepare 53 million gallons of radioactive and chemically hazardous waste for disposal. We recently completed a review of the computerized integrated control network that is being installed to monitor key processes of the Plant. Our review disclosed that the control system acquired by Bechtel National, the Department's contractor at the Hanford site, did not meet applicable quality assurance standards. Given this situation, we concluded that the Department could not be sure that the Plant will perform as needed, thereby potentially impacting the schedule, cost and safety of this \$12 billion project.

We noted a number of problems in the process used by Bechtel to procure the control system. Specifically, Bechtel did not perform a supplier evaluation or consistently define quality assurance standards that were to be used for the control system of the Plant. We concluded, as well, that Department officials had not taken necessary steps to assure that Bechtel's actions were consistent with agency quality assurance standards. In fact, the Department was unaware of the nuclear quality assurance standards issue prior to our review. In responding to our report on this matter, the Department indicated that it planned to provide more rigorous oversight of the contractor's procurement process and it would ensure that the control network will meet current nuclear safety and quality assurance standards.

Protective Force Performance Test Improprieties

Deficiencies in the management of the guard forces at the Department's major facilities have also raised concerns in recent years. For example, on June 26, 2003, a test of the performance capabilities of the protective force at the Department's Y-12 National Security Complex in Oak Ridge, Tennessee, was conducted. The guard force at this site is charged with protecting one of the most sensitive facilities in the Nation's nuclear weapons complex. In response to an allegation, the Office of Inspector General examined the facts surrounding the June 2003 test as well as whether there had been a pattern over time of site security personnel compromising protective force testing.

Our review confirmed that the subject performance test may have been compromised. Several individuals told us that controlled information was shared with security police officers prior to their participation in the tests. We were also

informed that this practice spanned from the mid-1980s to the present. While several different contractors have held the protective force contract during this period, the contractor responsible for the protective force at the time of the June 2003 test was Wackenhut Services, Inc. Our review further disclosed that in addition to participating in the actual performance tests, contractor personnel also participated in the detailed planning and development of the tests – from our perspective a clear conflict of interest.

To address this situation, we recommended that the Department be more proactive in its management of the security contract at the Y-12 facility and consider the information disclosed during our review in making its award fee determination on the protective force contract.

As these reports illustrate, effective contract administration is not only key to the economic and efficient operation of the Department's programs and activities, but it is also central in helping to prevent security lapses as well as to address critical safety and health issues.

CONTINUING CONTRACT ADMINISTRATION CHALLENGES

While a number of relevant changes are in process, the Department needs to do a better job administering its numerous contracts. As we have testified previously, the Department should:

- Ensure that its contracts are structured properly and that competition is maximized;
- Provide the technical guidance as well as the human, financial, and related resources necessary for contractors to complete their critical work assignments successfully;

- Establish realistic expectations of desired outcomes and achievable contractor metrics;
- Effectively monitor contractor performance; and
- Hold individuals and entities accountable when expectations are not met.

In our judgment, emphasis on contractor accountability is particularly important. Given the expanding number, scope, and complexity of the Department's contracts, holding contractors strictly accountable for their performance is not an easy task. Nonetheless, contracting officials need to be more aggressive in redirecting work assignments as appropriate, making fee determination evaluations, making cost allowability determinations, and ultimately, pursuing suspensions and debarments. Each of these tools can and should be used in a tailored fashion to ensure that the government and the taxpayer receive value for their expenditures. With respect to debarment, the Federal government has promulgated regulations that prohibit it from contracting with, or extending certain benefits to, any company or person whom the government deems to be "nonresponsible." The Department of Energy exercises this authority and currently has 45 individuals and companies on its debarment, or excluded parties, list. Each one of these actions resulted from investigations by the Office of Inspector General.

In addition to these mechanisms, to effectively structure, monitor and enforce contracts, the Department of Energy in particular, and the Federal government in general, needs personnel experienced in contract management to effectively carry out agency missions. This has become more challenging in recent years as the number and value of contracts

has increased, while the number of personnel available to administer these contracts has remained relatively constant. For example, over the last eight years, the number of contract specialists at the Department has decreased slightly while the value of funds provided to contractors has increased by 40 percent. We are currently evaluating this very issue in a separate review. Further, as we look into the future, many of the individuals performing contract management functions at the Department are approaching retirement age. Therefore, the Department will need to develop human resource strategies to meet this continuing challenge.

CONCLUSION

In order to achieve the goals of the Department in areas of national security, science, and advanced technology, as well as to operate as an efficient steward of taxpayer dollars, we believe that the Department must place greater emphasis on efforts to adopt and maintain sound contract administration practices. Furthermore, as the Department explores new governance models, it is imperative that fundamental oversight principles are followed as a means of ensuring accountability and protecting against waste and mismanagement.

Mr. Chairman and members of the subcommittee, this concludes my statement. I will be pleased to answer any questions you may have.