

U.S. DEPARTMENT OF ENERGY
OFFICE OF INSPECTOR GENERAL

FOLLOWUP AUDIT ON
THE PROCUREMENT OF SUPPORT SERVICES FOR
THE ENERGY INFORMATION ADMINISTRATION

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THE ENERGY INFORMATION ADMINISTRATION

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OFFICE OF INSPECTOR GENERAL
OFFICE OF AUDIT SERVICES

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Audit Report Number: CR-B-97-03

SUMMARY

This audit was performed to follow up on actions taken in response to our July 1990 report on "Procurement of Support Services for the Energy Information Administration" (CR-OC-90-2). The report stated that over 50 percent of the work under the cost-reimbursement contracts examined was recurring, could have been estimated with a reasonable degree of accuracy, and was suitable for fixed-price contracting. The Federal Acquisition Regulation states that contracting officers should avoid protracted use of cost-reimbursement contracts after experience provides a basis for firmer pricing.

In responding to the prior report, the Office of Procurement Operations (Procurement) advised that it would work closely with the Energy Information Administration (EIA) to identify work susceptible to fixed-price contracting. Although EIA stated a preference for broad statements of work and cost-reimbursement contracts because they provide greater flexibility in accomplishing program objectives, it agreed to develop more definitive statements of work as its contracts expired.

EIA and Procurement had made little progress towards awarding firm-fixed-price contracts. Much of EIA's contract work continued to be recurring in nature, but it had not developed statements of work that were appropriate for awarding firm-fixed-price contracts. EIA and Procurement could not agree that the requirements of a firm-fixed-price contract had been met for two contracts that were subsequently awarded as labor hour contracts. As a result, none of the 14 EIA contracts valued at \$202 million, which were active in 1996, were firm-fixed-price contracts.

In this report, we recommended that EIA take advantage of the recently enacted Federal Acquisition Streamlining Act. This Act allows task-by-task contracting and should facilitate the use of firm-fixed pricing when EIA segregates out those tasks that can be definitized and estimated with a reasonable degree of accuracy.

The Administrator, EIA, agreed with the finding and recommendation and stated that management is committed to establishing guidelines and policies for best value contracting. Actions are underway to identify tasks where the work to be performed can be estimated with a reasonable degree of accuracy,

and EIA plans to award one fixed-price task order in August 1997.

_____/s/_____
Office of Inspector General

PART I

APPROACH AND OVERVIEW

INTRODUCTION

This audit was performed to follow up on actions taken in response to our July 1990 report on "Procurement of Support Services for the Energy Information Administration" (CR-OC-90-2). The audit disclosed that over 50 percent of the work under six of the cost-reimbursement contracts examined was recurring and could have been estimated with a reasonable degree of accuracy making the work suitable for fixed-price contracting. The report made recommendations to the Head of Procurement and the Administrator, EIA. These recommendations were to comply with procurement regulations by identifying recurring tasks that were susceptible to fixed-price contracting, preparing definitive statements of work that would permit fixed-price contracting, and awarding fixed-price contracts.

Procurement recognized the benefits of fixed-price contracting and agreed to work closely with the EIA to identify work susceptible to fixed-price contracting. These efforts resulted in the award of two labor hour contracts but no firm-fixed-price contracts.

The purpose of this followup audit was to review Procurement and EIA actions to develop definitive work statements for recurring tasks that are suitable for firm-fixed-price contracts. The audit objective was to determine what progress Procurement and EIA have made in utilizing firm-fixed-price contracts. In FY 1996, EIA had 14 contracts valued at about \$202 million that were issued as cost reimbursement and labor hour contracts.

SCOPE AND METHODOLOGY

This followup audit was performed from September 1996 through January 1997 at the EIA and Procurement Headquarters in Washington, DC. Audit work included evaluating the corrective actions taken on the prior audit recommendations. Discussions were held with officials in Procurement and EIA, and we reviewed organizational controls over the procurement process as well as policies, procedures, and practices related to the selection of contract types.

To determine whether EIA's work continued to be recurring in

nature, we compared the work performed on present contracts to the contract tasks included in the prior audit. Five support service contracts with a total value of about \$44.2 million were reviewed. For these contracts, the EIA contract files, including the statements of work, were reviewed and discussions were held with the EIA officials about the contractors' duties and responsibilities.

The audit was made in accordance with generally accepted Government auditing standards for performance audits and included tests of internal controls and compliance with laws and regulations to the extent necessary to satisfy the audit objective. Accordingly, we assessed the internal controls regarding the selection of contracting methods. Because our review was limited, it would not necessarily have disclosed all internal control deficiencies that may have existed. We did not rely on computer-processed data to accomplish the audit objective. A formal exit conference was waived by EIA on May 1, 1997.

BACKGROUND

The mission of the EIA, which was established in 1977, is to provide essential, relevant, and timely energy information to the Executive Branch, the Congress, state governments, and the public. This work involves collecting energy information, analyzing this information, and designing and issuing publications.

Much of the data collection is recurring with the results being summarized in various weekly, monthly, annual, and triennial energy reports. Specific EIA offices and divisions concentrate on energy resource reserves; energy production, consumption, distribution, sales, and technology; and data related to the availability of future energy resources in light of national needs.

EIA uses contractors in many aspects of its operation--from the collection of energy information to its publication. At the time of the 1990 audit, contractor support was being provided under 12 multi-year contracts valued at about \$173 million. All were cost-reimbursement contracts and annual expenditures under these contracts were about \$34 million. In Fiscal Year 1996, support services were being procured under 12 multi-year cost-reimbursement type contracts and two labor hour contracts valued at about \$202 million with annual expenditures of about \$40 million.

This followup report disclosed a continuing need to use firm-fixed-price contracts, which should be considered by management in preparing the yearend assurance memorandum on management controls. Part II of this report provides details on our finding and recommendation. Part III of this report includes detailed management and auditor comments.

FINDING AND RECOMMENDATION

Use Of Firm-Fixed-Price Contracts

FINDING

Procurement regulations require the Department to avoid protracted use of cost-reimbursement contracts after experience provides a basis for firmer pricing. The prior audit found that EIA had awarded cost-reimbursable contracts for recurring work that was suitable for fixed pricing. The Office of Inspector General recommended the preparation of definitive statements of work suitable for fixed-price contracting. However, EIA and Procurement had made little progress in awarding firm-fixed-price contracts. As yet, no firm-fixed-price contracts have been awarded because EIA and Procurement have not identified recurring tasks and developed the definitive statements of work necessary for this type of contract. As a result, the potential of firmer prices obtainable through using firm-fixed-price contracts had not been realized although EIA spends about \$40 million annually for contract support.

RECOMMENDATION

We recommended that the Administrator, Energy Information Administration, assist the Deputy Assistant Secretary for Procurement and Assistance Management in conforming to the recommendations in the prior audit report and to take advantage of recent changes in contract law by:

- o identifying and segregating out recurring tasks where the work to be performed can be estimated with a reasonable degree of accuracy,
- o preparing definitive statements of work for recurring tasks that enable the use of firm-fixed-price tasks and contracts, and
- o pursuing changes in contracting practices to facilitate awarding firm-fixed-price tasks.

MANAGEMENT REACTION

The Administrator, Energy Information Administration, agreed with the finding and recommendation. EIA is committed to establishing guidelines and policies for best value contracting. Actions are underway to identify the work that can be awarded as fixed-price and one fixed-price task order is planned to be awarded in August 1997.

DETAILS OF FINDING

REQUIREMENTS FOR FIRM-FIXED-PRICE CONTRACTING

The Federal Acquisition Regulation (FAR) provides a selection of contract types grouped into two broad categories: fixed-price and cost-reimbursement contracts. The specific contract types range from firm-fixed-price in which the contractor has full responsibility for the performance costs and resulting profit or loss to cost-plus-fixed fee in which the contractor has minimal responsibility for the performance costs and the negotiated fee (profit) is fixed. In between, there are various incentive contracts in which the contractor's responsibility for the performance, costs and profit or fee incentives offered are tailored to the uncertainties involved in contract performance.

The FAR states that cost-reimbursement type contracts are suitable only when uncertainties preclude accurate estimates of contract performance; otherwise, fixed-price contracts should be used. The FAR also states that in a series of contracts in the course of an acquisition program, changing circumstances may make a different contract type appropriate in later periods than that used at the outset. In particular, contracting officers should avoid protracted use of cost-reimbursement or time and materials contracts after experience provides a basis for firmer pricing.

In June 1993, the Secretary of Energy formed a Contract Reform Team, chaired by the Deputy Secretary, to evaluate the contracting practices of the Department and to formulate specific proposals for improving those practices. This report, "Making Contracting Work Better and Cost Less," was issued in February 1994 and concluded that, as the largest civilian contracting agency, the Department must significantly reform its contracting practices. The team found that most of the Department's support service contracts did not provide explicit incentives for quality performance and cost control. The contracts often combined, in a single support service contract, widely diverse requirements (e.g. recurring and non-recurring requirements). This practice of combining requirements inhibited development of performance-based work statements, firm pricing arrangements, and objective performance measurements.

New contracting approaches were promoted by the 1994 Federal Acquisition Streamlining Act (FASA). The FASA provides for multi-award contracts with task assignments written as either firm-fixed-price, cost-plus-award-fee, or cost-plus-fixed-fee. Individual tasks can then be more narrowly defined for shorter periods of time, which would create a contract vehicle more suitable for fixed-price contracts. For each individual task, EIA can decide whether it is more suitable for fixed-price or cost-type contracting. EIA officials expect this type of contract to be in place by mid-1998. In the interim, EIA has plans to use similar contracts in place at other Federal agencies and has approval to use a multi-award contract at the Department of Transportation.

WORK PERFORMED BY EIA CONTRACTORS

EIA and Procurement have made little progress towards awarding

firm-fixed-price contracts. The recommendations made in our July 1990 report were designed to bring the contracting process into compliance with the FAR for EIA's energy survey work that was recurring in nature. EIA continues to use cost-type support service contracts, and Procurement has not awarded any fixed-price contracts.

Our prior audit found that work under six cost-plus-fixed-fee contracts was recurring and could have been estimated with a reasonable degree of accuracy, which would enable the use of fixed-price contracting. We recommended the preparation of definitive statements of work that would permit fixed-price contracting. We also recommended that EIA analyze the cost-reimbursement contracts not included in the audit to identify additional work suitable for more firm-fixed-price contracting.

The majority of EIA's workload pertains to data collection and publication of reports on energy-related subjects. Data is collected by various surveys and completion of EIA data collection forms from which reports are prepared periodically. To determine if the nature of EIA's work had changed since the prior audit, five contracts were reviewed that involved tasks similar to those previously reviewed. Most of the survey work performed under the task assignments for these contracts was recurring for many years and had not changed materially since our 1990 audit report. This was confirmed in discussions with EIA staff responsible for these contracts. Discussion of several of these surveys and how long this work has been performed by contractors follows:

- o EIA has used contractors since 1977 to collect and report data from oil and gas companies on a weekly, monthly, and annual basis relating to national oil and gas production, importation, and usage. For example, the contractor performs all survey processing activities to receive, edit, and tabulate data on a weekly basis for several surveys including a refinery report, a bulk terminal report, a product pipeline report, and a crude oil stock report. There are about 450 respondents that provide data for the weekly surveys.
- o Contractors have been used since before 1983 to collect and report data on electricity usage. One report produced is the monthly Power Plant Report that includes data on the generation of electricity, fuel consumption, and fuel stocks with a reporting universe consisting of about 735 electric utilities. The report is used to analyze U.S. energy consumption; the supply and demand for coal, natural gas, petroleum, hydroelectric, and nuclear energy; and the total generation of electricity.
- o Contractor surveys of energy consumption and expenditures in residential and commercial buildings have been performed since 1978 and are currently performed every 3 years. The surveys involve interviewing a national sample of building owners, which requires contractors to have a field organization to perform these interviews. For example, the commercial building survey is designed to include about 5,000 personal interviews with building owners/managers throughout the United States with data collected

on building size, location, energy sources, and energy consumption. After completing the interviews, the contractor is responsible for manual and automated edits and consistency checks of the data and adjustments for nonresponsive interview requests. The contractor must deliver to EIA a clean, edited file for use as input in statistical and analytical publications.

- o Contractors have conducted annual surveys of oil and gas well operators since 1982 to prepare annual reports on domestic oil and gas reserves. The main purpose of the survey is to provide timely estimates of proven reserves on a national level. The annual surveys involve annually contacting about 5,000 oil and gas well operators and operators of about 800 natural gas processing plants in the country. Ongoing requirements consist of routine data collection, data processing operation and maintenance, table generation, analytic and technical writing, etc. Special requirements may include system enhancements, data research projects, etc.

We recognize that there may be unique work that cannot be anticipated when a task is approved. In the future, in order to permit firm-fixed-price contracting, it would be necessary to provide separate tasks for any unanticipated work that could not be covered under the provisions of the firm-fixed-price task. In addition, while the number of respondents to particular surveys may change over time as the universe of companies change, EIA should be able to anticipate such changes and incorporate this information into its contracting process.

REASONS RECOMMENDATIONS IN PRIOR AUDIT REPORT NOT IMPLEMENTED

EIA and Procurement have not identified recurring tasks and developed definitive statements of work that are necessary for firm-fixed-price contracting. The present contracts include recurring work as well as work that is unique and arises as the contract progresses. However, EIA program offices did not want to split this work into separate contracts because they believed it would complicate the work process by involving the use of multiple contractors. However, the use of a firm-fixed-price contract requires that every task is specifically defined for the entire contract term. The unforeseen, less definable tasks are more suitable for cost-type contracts.

After the 1990 audit, EIA stated that it reviewed its support service contracts as they came up for renewal to consider the use of firm-fixed-price contracting. EIA attempted to write definitive statements of work for two contracts that were initially proposed to be firm-fixed-price contracts. However, Procurement did not agree that the statements of work prepared by EIA were appropriate for firm-fixed-price contracts. EIA believed it had made progress in cost control since our previous audit, because two labor hour contracts, which are a form of time and materials contracting, and three cost-plus-award-fee contracts were issued instead of cost-plus-fixed-fee contracts. However, it has not awarded any firm-fixed-price contracts. This condition continues because EIA's proposed work statements did not meet Procurement's requirements for firm-fixed-price

contracting (i.e. tasks that could be specifically defined were not segregated from those that could not).

BENEFITS OF FIRM-FIXED-PRICE CONTRACTING

The benefits available to the Government by using firm-fixed-price contracting have not been realized although EIA spends about \$40 million annually for contract support. One benefit is that the cost of services is reduced through competition among the bidders prior to contract award. Also, this type of contract shifts the risk of rising costs to the contractor who has more control over such costs. Fixed-price contracts are preferred over cost-reimbursement contracts because costs incurred above the contract price are absorbed by the contractor while costs under the contract price represents profit. This incentive is lacking under cost-reimbursement contracts, which pay the contractors' actual costs. In the prior audit, we estimated that for five of the six contracts in the review, actual costs would exceed the stated contract amounts by an average of 34 percent. EIA relies extensively on small business contractors to perform much of its survey contract work. Although this may limit the competition to these groups for certain contracts, the use of firm-fixed-price contracting within that group is not precluded.

The multi-award contracts proposed as part of contracting reform process offers a new alternative for EIA to separate tasks into parts that can be specifically defined and parts that cannot be specifically defined. EIA should facilitate awarding firm-fixed-price tasks by pursuing changes in the contracting practices.

PART III

MANAGEMENT AND AUDITOR COMMENTS

In response to this report, the Administrator, Energy Information Administration, concurred with the finding and recommendation. A summary of management's comments and our response follows.

Recommendation. Conform to the recommendations in the prior audit report and take advantage of recent changes in contract law by (1) identifying and segregating out recurring tasks where the work to be performed can be estimated with a reasonable degree of accuracy, (2) preparing definitive statements of work for recurring tasks that enable the use of firm-fixed-price tasks and contracts, and (3) pursuing changes in contracting practices to facilitate awarding firm-fixed-price tasks.

Management Comments. Concur. Management stated that EIA is committed to establishing and implementing guidelines and policies for best value contracting. The EIA Administrator and the Deputy Assistant Secretary for Procurement and Assistance Management intend to work together to bring the new contract initiatives to realization within the EIA. After the new

multiple award contract (EIA Omnibus Procurement) is awarded, and in using other agencies' multiple award contracts, EIA will have the capability to put the new contracting initiatives into effect. With the multiple award contract, EIA will have the option of awarding either firm-fixed-price or cost-plus-fixed-fee task orders. Action will be taken to identify tasks where the work to be performed can be estimated with a reasonable degree of accuracy. With advice and assistance from Procurement Operations, the EIA Contracting Officer's Representatives and Technical Monitors will be asked to identify tasks that are suitable for fixed-price awards. EIA plans to award a fixed-price task order to a small business in early August 1997 using the Department of Transportation's Information Technology Omnibus Procurement.

Management commented that clarification is needed in the report, Part I, Background, which stated that "In Fiscal Year 1996, support services were being procured ...with an annual expenditure of about \$40 million." Management stated that in 1996 contract obligations totaled \$32 million, and will be less in 1997. Management also confirmed that none of EIA's support service contracts were fixed price. However, in 1996 EIA stated it did award over \$4 million in simplified acquisitions, which were fixed price procurements.

Auditor Comments. Management's planned actions are responsive to the recommendation. Concerning the clarification requested relating to the estimate of Fiscal Year 1996 expenditures of about \$40 million, this was based on the contracts valued at about \$202 million with a duration of about 5 years that were in effect when the audit was performed. The \$4 million in simplified acquisitions involved small procurements that totaled \$25,000 or less for items such as automated data processing equipment and training costs.

APPENDIX A

PART IV

Reports Issued by the Department of Energy's Office of Inspector General

| Report Number | Report Title |
|---------------|--|
| CR-B-95-06 | Audit of Department of Energy Support Service Contracting |
| CR-BC-91-01 | Review of Headquarters Use of Cost-Reimbursement Contracts |
| CR-OC-89-02 | Procurement of Headquarters Support Service Contracts |

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