



U.S. Department of Energy
Office of Inspector General
Office of Audits and Inspections

Audit Report

The Department of Energy's Management of Contractor Responsibility Determinations

OAS-M-13-07

September 2013



Department of Energy
Washington, DC 20585

September 4, 2013

MEMORANDUM FOR THE SENIOR PROCUREMENT EXECUTIVES FOR THE
DEPARTMENT OF ENERGY AND THE NATIONAL
NUCLEAR SECURITY ADMINISTRATION

A handwritten signature in black ink, appearing to read "Rickey R. Hass".

FROM: Rickey R. Hass
Deputy Inspector General
for Audits and Inspections
Office of Inspector General

SUBJECT: INFORMATION: Audit Report on "The Department of Energy's
Management of Contractor Responsibility Determinations"

BACKGROUND

The Department of Energy (Department) is second only to the Department of Defense in contract awards, expending approximately 90 percent of its budget through a variety of contracts and financial assistance agreements. From January 2010 to January 2012, the Department's Office of Headquarters Procurement Services (Headquarters Procurement) and the National Nuclear Security Administration's (NNSA) Office of Acquisition Management in the Albuquerque Complex (Albuquerque Procurement) awarded contracts totaling approximately \$6 billion to 1,315 contractors. The President's January 2010 Memorandum for the Heads of Executive Departments and Agencies noted that the Federal government pays more than half a trillion dollars a year to contractors and has an important obligation to protect American taxpayer funds and the integrity of the Federal acquisition process. Federal procurement regulations require contractors to certify that they meet eligibility requirements. Contracting officers are required to utilize such certifications to make responsibility determinations for procurements which exceed the simplified acquisition threshold of \$150,000.

The U.S. Government Accountability Office's April 2007 testimony on tax compliance, *Thousands of Federal Contractors Abuse the Federal Tax System*, found that tens of thousands of companies with serious tax delinquencies had Federal contracts. The Federal Acquisition Regulation (FAR) requires that the Government limit the award of contracts to non-responsible contractors, such as those with tax delinquencies. Because of the extent of contracting activities, we initiated this audit to determine whether the Department had effective processes and procedures to prevent awarding contracts to contractors with tax delinquencies and to those deemed non-responsible.

RESULTS OF AUDIT

We determined that Headquarters Procurement and Albuquerque Procurement did have processes and procedures in place to restrict contracts awards to entities with tax delinquencies

and those deemed non-responsible.¹ However, we identified opportunities where these processes and procedures could be improved. Specifically, we identified instances in which required offeror representations and certifications were either not completed or were not up-to-date at the time of contract award. In addition, important procurement documentation used in determining a bidder's responsibility was not always included in the official contract files, as required by Department policies and procedures.

The problems we identified occurred, in part, because Headquarters Procurement and Albuquerque Procurement management did not ensure that procurement personnel consistently implemented controls designed to determine whether a contractor was responsible. In addition, management did not always ensure that the official contract files were properly maintained. To their credit, Headquarters Procurement and Albuquerque Procurement indicated that corrective measures have been taken as a result of our audit. Headquarters Procurement has proposed an automated check and balance system within the Strategic Integrated Procurement Enterprise System (STRIPES) to ensure that documentation supporting a responsibility determination is included in the official contract file. Additionally, Albuquerque Procurement indicated that their Con Write system has been reprogrammed to return a fatal error when a contractor is on the federal debt or debarred list. According to the Department's Acquisition Guide, affirmative responsibility determinations are an important part of safeguarding agency interests by ensuring awards are made to responsible contractors and taxpayer dollars are used in an effective manner.

Contractor Responsibility Determination Requirements

The FAR sets forth requirements that must be met prior to awarding contracts to prospective contractors. Specifically, for our review of contract awards made between January 2010 and January 2012, the FAR required prospective Government contractors to register in the Central Contractor Registration (CCR) database. If a prospective contractor was not registered in CCR within the time prescribed by the contracting officer, the contracting officer was required to make the award to the next otherwise successful bidder. In addition to CCR, contractors with awards exceeding \$150,000 were also required to register in the Online Representation Certification Application (ORCA) and maintain an annual up-to-date registration in the database. In ORCA, as part of the responsibility matter clause (FAR Clause 52.209-5), the prospective contractor certifies that it is not being debarred, declared ineligible for Federal contracts, suspended, indicted on criminal/civil charges, and does not have tax delinquencies of \$3,000 or greater, among other things. The certification (now referred to as an entity's Representations & Certifications) is legally binding between the Government and a prospective contractor and certifies that the contractor is not misrepresenting itself and not trying to defraud the Government.

In July 2012, the Federal Government began combining Federal procurement systems and the Catalog of Federal Domestic Assistance into one new system. During the first phase of transition, the System for Award Management (SAM) replaced CCR and ORCA. Thus contractors are now required to submit the same information to SAM that was formerly required for CCR and ORCA. In November 2012, the Excluded Parties List System functionality was also incorporated within SAM.

¹ Attachment 1 contains a detailed breakout, by office, of the results of our audit.

Contractor Representations and Certifications

Based on our review of 413 contract awards that exceeded the \$150,000 simplified acquisition threshold, we determined that contractor representations and certifications, key factors in determining the responsibility of a prospective contractor, were not always present in the ORCA system. Specifically, our review of contract awards at Headquarters Procurement and Albuquerque Procurement identified instances in which information was either not present or not up-to-date at the time of award. In addition, we found that both procurement offices had not always adequately maintained the official contract files.

Some entities were awarded contracts even though they had not registered in the online certification databases, as required. In a number of other instances, contracts were awarded before the self certification was completed. In yet other examples, Headquarters Procurement made awards even though the offeror's certification had expired. Specifically, our review disclosed that:

- Headquarters Procurement and Albuquerque Procurement had 7 contractors with 9 contract awards totaling almost \$3.6 million that had not registered in the ORCA data base during the time of our review;
- Contract awards were made to 5 contractors with 12 contracts totaling over \$28 million by Headquarters Procurement prior to the ORCA certifications being completed; and
- Headquarters Procurement had 4 contractors with total contract awards of over \$3 million that had expired ORCA certifications.

We also identified a contractor with contract awards totaling over \$314 million that had affirmed on their ORCA certifications that they had been or were presently indicted or convicted of a criminal offense by a Federal, state or local agency. However, no due diligence follow-up procedures were conducted by the Contracting Officer or Contract Specialist to determine if the criminal offense adversely impacted the contractor's responsibility determination, as required by the FAR. The FAR requires that agencies follow up if a prospective contractor provides an affirmative response to the "responsibility matter clause." Specifically, contracting officers are to obtain and document information that would help them determine the prospective contractor's responsibility or refer the prospective contractor to the debarring/suspension official for a resolution. After bringing this matter to the attention of Headquarters Procurement, the Contracting Officer followed up with the contractor. The contractor provided written documentation showing that a settlement in the case was reached and all matters related to its previous disclosure had been judicially resolved.

Official Contract Files

In addition, our review disclosed that Headquarters Procurement and Albuquerque Procurement had not always sufficiently maintained official contract files. The contract files are the official record of the actions undertaken in the contract award and provide key documentation should

issues arise with the contract. Specifically, we found 47 instances in which contract correspondence files we reviewed did not contain all supporting documents required by the FAR for determining perspective contractors' responsibility.

Both procurement offices are required to maintain contract files that support a determination of responsibility or non-responsibility. According to Chapter 9.4 of the Department's Acquisition Guide, documents and reports supporting a determination must be included in the contract file. Given the requirement for prospective contractors to register in SAM (formerly CCR and ORCA), and the importance of the information relating to contractors' Representations and Certifications, the official contract files should reflect that the contracting officer has reviewed this information during the responsibility determination. Also, contracting officers are required to check the Excluded Parties List in SAM to ensure prospective vendors have not been debarred from doing business with the Government. The Excluded Parties List provides a comprehensive list of individuals and firms excluded by Federal agencies from receiving Federal contracts, subcontracts and other types of assistance or benefits, both financial and nonfinancial. Searches of the Excluded Parties List are essential to ensure that the Department is conducting business with responsible contractors only. Despite this requirement:

- Nine of the files we reviewed at Headquarters Procurement for contracts totaling over \$8 million did not contain documentation or reports supporting the Contracting Officer's responsibility determination.
- Contracting officials at Headquarters Procurement and Albuquerque Procurement could not demonstrate that the CCR database had been reviewed prior to awarding 10 contracts totaling over \$11.5 million. Prior to July 2012, CCR was one of the primary databases for the Government to manage information on prospective contractors. Furthermore, unless exempt by FAR 4.1102, contractors are required to register in CCR in order to do business with the Government. In one instance, we found that a Headquarters Procurement official provided a contractor with a paper form to sign instead of registering in the CCR. The official stated that he assumed the contractor would follow through with the required online registration. However, there was no evidence of such actions or follow up conducted by the Department.
- No evidence was found that contracting officers had conducted an Excluded Parties List System search for 14 prospective contractors prior to the awarding of contracts totaling over \$10 million at the 2 procurement offices.
- Official contract files did not contain evidence that the ORCA database had been searched for contractor performance issues and the responsibility matter clause in ORCA had been reviewed for 23 contracts totaling over \$61 million at the 2 procurement offices.

Implementation of Controls

These issues occurred because Headquarters Procurement and Albuquerque Procurement management did not ensure that internal controls were consistently implemented by procurement personnel, in accordance with the FAR and the Department's Acquisition Guide. Specifically,

management did not ensure that contractor representations and certifications were in place prior to contract award. Furthermore, management did not ensure that documents supporting a responsibility determination were maintained in the official contract file.

The Department had developed internal controls designed to ensure that awards were made to responsible prospective contractors. In accordance with the FAR, the Department's Acquisition Guide serves as the internal operating procedures for procurement and program personnel involved in the acquisition process. Chapter 9 of the Department's Acquisition Guide provides guidance to procurement personnel to determine if perspective contractors are responsible in accordance with FAR. According to the guide, affirmative responsibility determinations are an important part of safeguarding agency interests. Determinations ensure awards are made to responsible contractors and taxpayer dollars are used in an effective manner. Although procurement officials were familiar with the Department's Acquisition Guide and FAR requirements regarding responsibility determinations, we found that management did not ensure these requirements were consistently followed.

Further, the Department's Acquisition Guide states that all supporting documentation must be included in the Department's official contract files. Albuquerque Procurement maintains hard copy contract files and Headquarters Procurement utilizes STRIPES as its official system of record to document all contract award files. However, a Headquarters Procurement official indicated that some records were kept in personal files and not uploaded to STRIPES. Subsequently, procurement personnel were asked to provide any information supporting a responsibility determination; however, some officials could not provide the requested information. Also, an official indicated that a procurement employee had left the procurement organization and we noted that the necessary files had not been transferred into STRIPES. In other instances, Headquarters Procurement officials added supporting documents to the official contract file after we had requested copies of contract documentation.

Contract Awards

Due to restrictions on querying Internal Revenue Service databases, we were unable to identify any contracts awarded to contractors with tax delinquencies. However, the weaknesses we identified regarding the implementation of internal controls place the Department at an increased risk of awarding contracts to contractors deemed non-responsible due to possible tax delinquencies or civil/criminal indictments against them. Also, the official contract files may not have the necessary documentation on file should questions arise over a contract award. Given the current economic climate and the need to ensure that taxpayers' dollars are spent prudently, it is imperative the Department conduct due diligence and effectively manage its processes for preventing awards to contractors deemed non-responsible.

RECOMMENDATION

Contracting officers and contracting specialists cannot review criminal/civil violation databases, nor can they access Internal Revenue Service files due to Internal Revenue Code 6103, which protects taxpayer confidentiality and return information. In light of this, the Department must rely solely on the contractor self-certification disclosures for this information. Therefore, to

address the weaknesses we observed in the contractor self-certification process, we recommend the Senior Procurement Executives for the Department of Energy and the National Nuclear Security Administration:

- Ensure that contracting officers fully implement safeguards regarding contractor responsibility determinations, to include:
 - Verifying that contractors have a current self certification in the SAM database; and
 - Fully documenting all responsibility determinations in the official contract files.

MANAGEMENT REACTION

Department and NNSA management concurred with the report's recommendations. The Office of Headquarters Procurement Services agreed to take the lead on conducting training on the importance of "Contractor Responsibility Determinations" along with associated policies, regulations, processes and procedures. It also agreed to modify the STRIPES solicitation/award checklist, to include retaining supportive documentation within STRIPES and devising an automated process for ensuring responsibility determinations adherence.

NNSA noted that it will reinforce existing policies and procedures through real-time training during the next Procurement Excellence Training session and also provide written refresher notices to further reinforce requirements, procedures and controls related to the verification of contractor self-certifications. In addition, NNSA agrees that the Senior Procurement Executive should reinforce the policies and procedures to ensure staff follows internal controls, including effectively maintaining documentation supporting the contracting officers' responsibility determination. Finally, NNSA suggested that it should be clarified that the Contracting Officer's signing of a contract constitutes a determination that the prospective contractor is "responsible" with respect to that contract.

AUDITOR COMMENTS

Management's corrective actions, planned and taken, are responsive to our recommendations. As to the area in which NNSA management expressed concern, we clarified our report to indicate that the issues we noted with regard to determinations of responsibility applied to the required documentation and reports that supported a determination of responsibility by the contracting officer. Management's comments are included in Attachment 4.

Attachments

cc: Deputy Secretary
Chief of Staff
Director, Office of Management

Detailed Breakout, by Office, of the Results of Our Audit

Review of Contractor Representations and Certifications				
	Number of Contracts Reviewed	Not Registered in ORCA	Awards Made Prior to ORCA Being Completed	Expired ORCAs
Headquarters Procurement				
Number of Contractors	124	5	5	4
Number of Contracts	195	6	12	4
Albuquerque Procurement				
Number of Contractors	123	2	--	--
Number of Contracts	218	3	--	--

Review of Official Contract Files					
	Number of Contracts Reviewed	No Documents Supporting a Responsibility Determination	Missing CCR Database Search	Missing EPLS Search	Missing ORCA Database Search
Headquarters Procurement					
Number of Contract Files	25	9	9	13	17
Albuquerque Procurement					
Number of Contract Files	24 ²	--	1	1	6

² We had selected a sample of 25 official contract files to review at the National Nuclear Security Administration Office of Acquisition Management in the Albuquerque Complex. However, Albuquerque Procurement officials were unable to locate one of the contract files selected for review. Thus, we were only able to physically review 24 official contract files.

OBJECTIVE, SCOPE AND METHODOLOGY

OBJECTIVE

The objective of our audit was to determine whether the Department of Energy (Department) had effective processes and procedures to prevent awarding contracts to contractors with tax delinquencies and deemed non-responsible.

SCOPE

The scope of our audit included all procurement awards made by the Department's Office of Headquarters Procurement Services (Headquarters Procurement) and the National Nuclear Security Administration's (NNSA) Office of Acquisition Management in the Albuquerque Complex (Albuquerque Procurement) to contractors from January 1, 2010 to January 30, 2012, that were over the \$150,000 simplified acquisition threshold. The audit was performed between February 2012 and August 2013, at Headquarters Procurement and Albuquerque Procurement.

METHODOLOGY

To accomplish the objective, we:

- Reviewed Federal laws and regulations, including the Federal Acquisition Regulation (FAR), Presidential Memoranda, Office of Management and Budget Memoranda and Internal Revenue Service tax codes.
- Reviewed Headquarters Procurement and Albuquerque Procurement policies, procedures and guidance, including the Department Acquisition Regulations and Acquisition Guide.
- Determined the status of the proposed *Contracting and Tax Accountability Act of 2011*.
- Interviewed key personnel within Headquarters Procurement and NNSA Office of Acquisition Management located in Washington, DC and Albuquerque, New Mexico, respectively.
- Reviewed all 195 procurement awards made by Headquarters Procurement and 218 procurement awards made by Albuquerque Procurement to contractors from January 1, 2010 to January 30, 2012, that were over the \$150,000 simplified acquisition threshold, to include:
 - A review of the contractor's self certifications on the Central Contractor Registration (CCR) for contractors' responses to Federal debt obligations; and
 - A test of controls to determine whether contracting officers reviewed contractors' online certification regarding FAR 52.209-5 clause on "Responsibility Matters" and whether contractors registered in CCR prior to contract awards.

- Judgmentally selected 50 contracts and reviewed their contract correspondence files for evidence that FAR 9 standards were met. Specifically, we sought documentation to support a determination of contractor responsibility, to include evidence the contractor registered in CCR and was not listed on the Excluded Parties List System.
- Compared the listing of Headquarters Procurement and Albuquerque Procurement contractors to the Excluded Parties List System to determine if any debarred or suspended contractors received contract awards from the Department.

Due to the restrictions of the Internal Revenue Code 6103, *Confidentiality and Disclosure of Returns and Return Information*, which protects the disclosure of tax returns and return information, we were unable to query the Internal Revenue Service database to identify any Department and NNSA tax delinquent contractors.

We conducted this performance audit in accordance with generally accepted Government auditing standards. Those standards require that we plan and perform the audit to obtain sufficient, appropriate evidence to provide a reasonable basis for our findings and conclusions based on our audit objectives. We believe that the evidence obtained provides a reasonable basis for our findings and conclusions based on our audit objective. Because our review was limited, it would not necessarily have disclosed all internal control deficiencies that may have existed at the time of our audit. We also assessed performance measures in accordance with the *Government Performance and Results Modernization Act of 2010* and found that the Department has no performance measures that are relevant to the audit objective. We assessed the reliability of computerized data because we planned to rely upon it to accomplish our audit objective. However, we determined that, in a number of instances, data was missing. Accordingly, we made a recommendation to correct this deficiency.

Management waived an exit conference.

RELATED REPORTS

Office of Inspector General

- Audit Report on [*Non-Facility Contractor Prior Performance*](#) (DOE/IG-0857, October 2011). This report disclosed that the Department of Energy (Department) had not always considered prior contractor performance nor completed contractor performance assessments in a timely manner for non-facility contracts and financial assistance awards. For example, the Department could not demonstrate that it had evaluated contractor prior performance before making 20 percent of the contracts and financial assistance awards reviewed by the Inspector General. Pre-award evaluations of a prospective contractor's prior performance and reviews of the Excluded Parties List System were not always conducted primarily because procurement officials and/or contracting personnel did not follow or apply Federal and Departmental requirements and procedures. Additionally, Department officials stated that post award evaluations of contractor performance were often not performed because contracting officer's representatives did not place sufficient emphasis on completing this requirement.

U.S. Government Accountability Office

- Testimony on [*Tax Compliance: Thousands of Federal Contractors Abuse the Federal Tax System*](#) (GAO-07-742T, April 2007). The U.S. Government Accountability Office (GAO) has periodically reported on high-risk Federal programs that are vulnerable to fraud, waste, and abuse. Two such high-risk areas are managing Federal contracts more effectively and assessing the efficiency and effectiveness of Federal tax administration. Weaknesses in the tax area continue to expose the Federal government to significant losses of tax revenue and increase the burden on compliant taxpayers to fund government activities. Previous GAO audits and related investigations have reported that thousands of Federal contractors had substantial amounts of unpaid Federal taxes. Specifically, about 27,000 Department of Defense contractors, 33,000 civilian agency contractors, and 3,800 GSA contractors owed about \$3 billion, \$3.3 billion, and \$1.4 billion in unpaid taxes, respectively.

MANAGEMENT COMMENTS



Department of Energy
National Nuclear Security Administration
Washington, DC 20585



July 31, 2013

MEMORANDUM FOR RICKEY R. HASS
DEPUTY INSPECTOR GENERAL
FOR AUDITS AND INSPECTIONS
OFFICE OF INSPECTOR GENERAL

FROM: CYNTHIA A. LERSTEN
ASSOCIATE ADMINISTRATOR
FOR MANAGEMENT AND BUDGET

A handwritten signature in black ink, appearing to read "C. Lersten", written over the printed name of Cynthia A. Lersten.

SUBJECT: Comments on the Office of Inspector General Draft Report Titled "*The Department of Energy's Management of Contractor Responsibility Determinations*" (A12GT018/ 2012-00247)

Thank you for the opportunity to review and comment on the subject draft report. The report provides two recommendations to help ensure effective implementation of current requirements for contractor responsibility determinations.

NNSA agrees with the Inspector General's (IG) recommendations. The attachment to this memorandum provides NNSA's specific actions and timelines to address each recommendation. We have also provided general and technical comments to enhance the clarity and factual accuracy of the report. If you have any questions regarding this response, please contact Dean Childs, Director, Audit Coordination and Internal Affairs at (301) 903-1341.

Attachment



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Attachment

**National Nuclear Security Administration (NNSA)
Response to the Inspector General (IG) Draft Report Titled
“The Department of Energy’s Management of Contractor
Responsibility Determinations”**

The IG recommended the Senior Procurement Executives for the Department of Energy and NNSA ensure that contracting officers fully implement internal controls regarding contractor responsibility determinations, to include:

Recommendation 1: Verifying that contractors have a current self-certification in the System for Award Management (SAM) database.

Management Response: Concur

NNSA agrees with the IG’s findings that contractors must have a current, verified self-certification in the SAM database prior to award. In order to reinforce existing policies and procedures, NNSA will ensure enhanced focus on this requirement by our acquisition staff through real-time training in the next Procurement Excellence Training session. In addition, NNSA will provide written refresher notices to further reinforce requirements, procedures and controls related to verification of contractor self-certifications. The estimated completion date for these actions is August 31, 2013.

Recommendation 2: Fully documenting all responsibility determinations in the official contract files.

Management Response: Concur

NNSA agrees the Senior Procurement Executive should reinforce the policies and procedures to ensure staff follows internal controls, including effectively maintaining documentation supporting the contracting officers’ responsibility determination. However, as currently stated, the recommendation may give the impression that a separate, signed responsibility determination document is required. In accordance with Federal Acquisition Regulation (FAR) 9.105-2(a)(1), the Contracting Officer’s signing of a contract constitutes a determination that the prospective contractor is “responsible” with respect to that contract.

To clarify, the supporting documentation should provide evidence of the “basis” for that determination. To ensure this documentation is consistently maintained as required, NNSA will ensure enhanced focus on this requirement by our acquisition staff through real-time training in the next Procurement Excellence Training session. In addition, NNSA will provide written refresher notices to further reinforce requirements, procedures and controls. The estimated completion date for this action is August 30, 2013.

Also, for clarity, NNSA suggests changing the recommendation to read: “Fully maintaining documentation supporting a determination of responsibility or non-responsibility as required by FAR 9.105-2(b)(1) in the official contract file.”



Department of Energy
Washington, DC 20585

August 2, 2013

MEMORANDUM FOR RICKEY R. HASS
DEPUTY INSPECTOR GENERAL FOR
AUDITS AND INSPECTIONS
OFFICE OF INSPECTOR GENERAL

FROM: INGRID KOLB
DIRECTOR
OFFICE OF MANAGEMENT

SUBJECT: Management Comments on Audit Report
"The Department of Energy's Management of
Contractor Responsibility Determinations"

MANAGEMENT COMMENTS

In response to the Office of Inspector General's findings and recommendations cited herein:

Ensure that contracting officers fully implement internal controls regarding contractor responsibility determinations, to include:

- Verifying that contractors have a current self certification in the System for Award Management (SAM) database;
- Fully documenting all responsibility determinations in the official contract files.

The Office of Headquarters Procurement Services (MA-64) will take the lead on four corrective actions:

1. Provide Training: Conduct internal training on the importance of "Contractor Responsibility Determination" along with associated policies, regulations, processes, and procedure, that MA-64.1 will implement as part of the corrective action.
2. Modify the Strategic Integrated Procurement Enterprise System (STRIPES) Solicitation/Award Checklist: In STRIPES there is a Checklist which the Contract Specialist's have access to, which requires them to certify that they have screened SAMS for this requirement. The form will be modified so that the



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screening is done three times during the combined pre-award/Award process as follows: 1. Evaluation of offerors, 2. Initial Selection and 3. Right before award.

3. **Retain Supportive Documentation:** The checklist will be part of the acquisition package and entered into STRIPES as one of the mandatory supporting documents along with the required accompanying forms.
4. **Automate the Process:** Work with the DOE STRIPES Coordination and Development Team for devising an automated process for ensuring Responsibility Determinations adherence.

Attachment

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1. What additional background information about the selection, scheduling, scope, or procedures of the audit or inspection would have been helpful to the reader in understanding this report?
2. What additional information related to findings and recommendations could have been included in the report to assist management in implementing corrective actions?
3. What format, stylistic, or organizational changes might have made this report's overall message more clear to the reader?
4. What additional actions could the Office of Inspector General have taken on the issues discussed in this report that would have been helpful?
5. Please include your name and telephone number so that we may contact you should we have any questions about your comments.

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Telephone _____ Organization _____

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Department of Energy
Washington, DC 20585

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