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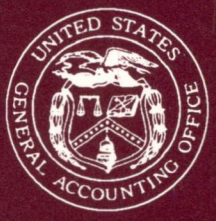
United States General Accounting Office

GAO

High-Risk Series

December 1992

NASA Contract Management



GAO/HR-93-11

GAO **United States**
General Accounting Office
Washington, D.C. 20548

Comptroller General
of the United States

December 1992

The President of the Senate
The Speaker of the House of Representatives

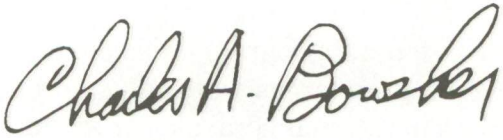
In January 1990, in the aftermath of scandals at the Departments of Defense and Housing and Urban Development, the General Accounting Office began a special effort to review and report on federal government program areas that we considered "high risk."

After consulting with congressional leaders, GAO sought, first, to identify areas that are especially vulnerable to waste, fraud, abuse, and mismanagement. We then began work to see whether we could find the fundamental causes of problems in these high-risk areas and recommend solutions to the Congress and executive branch administrators.

We identified 17 federal program areas as the focus of our project. These program areas were selected because they had weaknesses in internal controls (procedures necessary to guard against fraud and abuse) or in financial management systems (which are essential to promoting good management, preventing waste, and ensuring accountability). Correcting these problems is essential to safeguarding scarce resources and ensuring their efficient and effective use on behalf of the American taxpayer.

This report is one of the high-risk series reports, which summarize our findings and recommendations. It describes our concerns over the National Aeronautics and Space Administration's (NASA) lack of adequate controls over a variety of contract management and related activities. NASA has implemented or begun to implement most of the recommendations we have made for improving these activities. NASA has also implemented other contract management improvement initiatives.

Copies of this report are being sent to the President-elect, the Democratic and Republican leadership of the Congress, congressional committee and subcommittee chairs and ranking minority members, the Director-designate of the Office of Management and Budget, and the Administrator of the National Aeronautics and Space Administration.



Charles A. Bowsher

Contents

Overview

The National Aeronautics and Space Administration's (NASA) procurement budget is one of the largest of all civilian agencies' in the federal government. Each year, NASA spends about 90 percent of its funds on contracts. In the last decade, the value of NASA procurements measured in 1990 dollars has risen dramatically from about $8.5 billion to almost $13 billion annually.

Throughout the procurement cycle—from the development of procurement plans, through the award and performance of contracts, to their final settlement—NASA must act to protect the government's rights and interests. An important part of this process involves overseeing contracts after their award in order to help ensure that contractors are acting in accordance with their obligations and are performing as efficiently and effectively as possible.

The Problem

Since the late 1980s, NASA has acknowledged that its contract management is vulnerable to waste and mismanagement, based on its own internal management reviews and audits by the NASA Inspector General. We also have reviewed specific activities in a variety of areas related to contract management in recent years and have

reported that NASA has had problems in effectively managing its contracts.

Without effective management of its contracts, NASA cannot reasonably ensure that the funds provided to its contractors will be spent effectively and accounted for properly. In some cases, inadequate contractor oversight has contributed to cost increases, schedule delays, and development problems with expensive space equipment. For example, the GOES-next weather satellite project is now at least 3 years behind schedule, and its estimated cost has more than doubled to over $1.7 billion. Also, the $1.5 billion Hubble Space Telescope had critical technical flaws that were not detected until after it was launched.

The Causes

NASA's difficulties in contract management were largely linked to three major internal problems. First, NASA's planning was not realistic; it was based on a much higher level of funding than was likely to be made available. For example, NASA's program plans for fiscal years 1993 through 1997 called for up to about $20 billion more than was likely to be provided. To adjust plans to actual budgets, NASA's projects and programs often have to be slowed down, thereby extending

schedules and increasing total contract costs.

Second, NASA sometimes used ineffective procedures and systems to oversee and manage contractors. The lack of uniform testing policies and the inability to adequately oversee contractors' activities contributed to problems such as those affecting the GOES-next weather satellites. Further, problems with cost reporting, property management, accounting, and information systems impaired NASA's ability to monitor contracts.

Third, some of NASA's field centers were not fully complying with governmentwide, agency, or field center contract management requirements, primarily because they were operating with ineffective guidance and oversight from NASA headquarters.

GAO's Suggestions for Improvement

We have offered numerous observations and recommendations on a variety of issues related to contract management. NASA has taken, or is planning to take, steps to address these issues, including modifying plans to reflect realistic budget projections; establishing project priorities; developing overall testing policies; tracking contract

cost and schedule changes agencywide; improving training for procurement personnel; and correcting specific problems relating to awarding, modifying, and administering contracts.

Beyond the matters we have raised, NASA has identified the need for, and has implemented, numerous other improvement initiatives, including increasing procurement staffing and taking a variety of steps to help better identify and reward efficient and effective performance by its contractors.

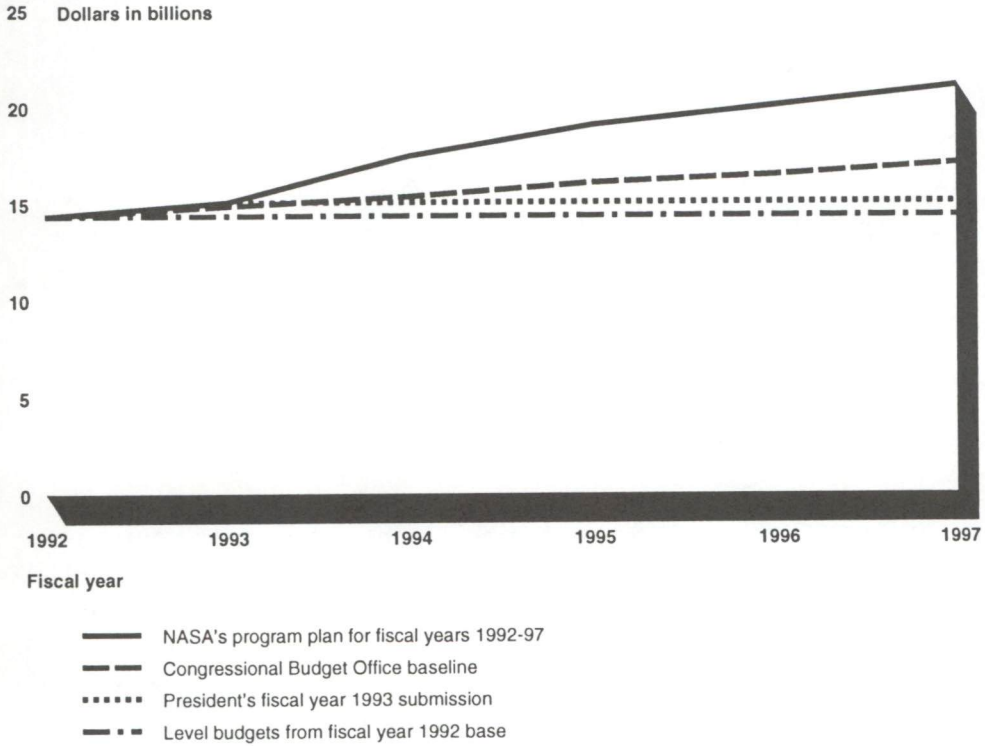
The nature, scope, and variety of efforts underway to improve contract management and related areas throughout the agency illustrate the extent of the commitment by NASA management to effectively resolving the problems in these areas. Although this commitment is promising, these problems will require time and sustained effort to correct. NASA's problems in contract management and related areas were many years in the making. They will not be corrected quickly. NASA management faces a formidable challenge that will demand continuing vision, perseverance, and strong leadership.

Lack of Realism in Planning

An overarching concern that can ultimately affect NASA's ability to manage its contracts is the agency's failure to plan realistically for the budgetary resources that are likely to be available to fund its programs. Unless strategic and program plans are reasonably consistent with likely budgets, there is an increased risk of significant adverse impact on NASA's programs. When planning expectations are followed by substantially lower funding levels, NASA is forced to make program changes, including adjustments to the planned content and pace of work. Since most of NASA's work is done by contractors, such program adjustments can contribute to contract cost increases and schedule delays.

From the late 1980s through the early 1990s, NASA received large increases in its budget. However, NASA's budget for fiscal year 1993 is essentially unchanged from the previous year, and Congress has told the agency that its future budget growth may be severely limited. Unfortunately, NASA is currently overcommitted, with its program planning estimates for 1993 through 1997 up to about $20 billion higher than the amounts likely to be appropriated under current federal budget constraints, as shown in figure 1.

Figure 1: NASA Is Pursuing More Programs Than Can Be Funded With Projected Budget Resources



(Figure notes on next page)

Notes: Preliminary NASA program planning estimates for fiscal years 1993 through 1997 total over $90 billion.

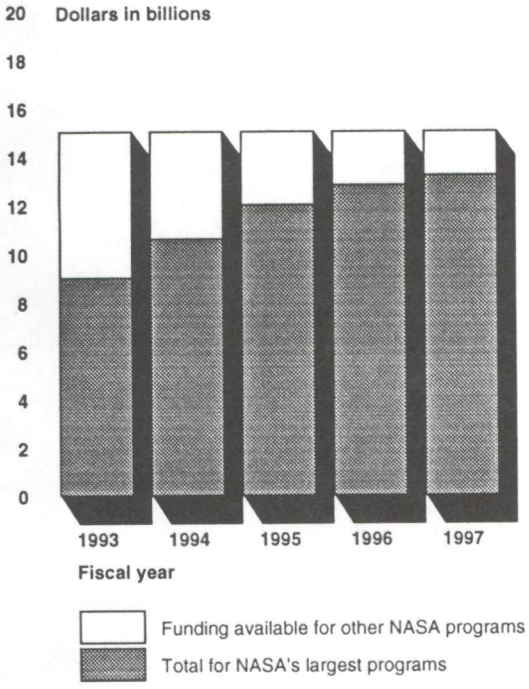
Congressional Budget Office baseline estimates include adjustments for inflation only and total $79.5 billion for fiscal years 1993 through 1997.

The executive branch's fiscal year 1993 budget submission projected flat funding levels of about $15 billion annually for NASA through 1997, or a 5-year total of about $75 billion.

Level budgets from the fiscal year 1992-enacted NASA budget of $14.3 billion would provide total funding of $71.5 billion for fiscal years 1993 through 1997.

In addition, NASA's largest programs, if carried out as currently planned, will consume an increasing share of NASA's future budgets. For example, if NASA received about $15 billion for each of the next 5 years, as anticipated in the President's fiscal year 1993 budget submission, NASA's 11 largest programs in that submission would have required over 75 percent of the 5-year funding total in the President's budget. Figure 2 shows each year's increasing share of NASA's likely funding that these large programs would have required.

Figure 2: Increased Funding for NASA's Largest Programs May Reduce Budget Resources for Other Programs



Unplanned program cost increases would, of course, further exacerbate potential funding shortfalls. In addition, there are several support areas in which future funding demands may emerge, including hazardous waste cleanup and maintenance of facilities.

NASA's overcommitment, plus potential additional funding demands, mean the agency's programs may not be able to proceed as planned. However, NASA does not clearly differentiate between the programs it "must do" and the programs it "should do." For example, NASA's first agencywide strategic plan, Vision 21, failed to recognize the budget/planning mismatch and to set relative priorities should the agency be forced to stretch out or cancel programs because of lower-than-planned funding. Without a set of priorities or contingency plans, NASA will have no orderly method of choosing between or among programs should it be faced with making such decisions. Unless it starts to plan realistically, NASA will continue to perpetuate resource shortages that limit its ability to effectively manage contracts by subjecting its programs to a recurring annual cycle of cutbacks, restructurings, schedule extensions, and potential terminations.

Ineffective Oversight of Some Contractors

NASA's technical oversight procedures and its cost reporting, property management, accounting, and information systems did not adequately ensure that the money paid each year to contractors and the government-owned property they held were managed effectively or accounted for accurately.

Technical Activities Not Properly Monitored

Weaknesses in NASA's technical oversight procedures included the lack of uniform testing policies and the inability to adequately oversee contractors' activities. In some cases, these weaknesses contributed to increased contract costs, schedule delays, and impaired performance.

Because equipment cannot be readily repaired in orbit, it must be thoroughly tested before launch. But deciding on appropriate test programs is not a simple matter. Systems are not mass-produced—most, in fact, are one of a kind. As a result, testing programs must be tailored specifically for each project, but there should be a general framework within which to plan, conduct, and interpret tests. NASA, however, has no agencywide testing policies, and project testing requirements can vary from center to center. In some cases, hardware designed for the same mission may

be tested to different standards. For example, each of the centers developing space station hardware had planned to use its own testing criteria for the program. Consequently, different parts of the space station would have been tested to different tolerances for environmental extremes of heat and cold, under different durations of exposure. After a review team expressed concern, environmental testing criteria that would be applied to all space station hardware were drafted.

Contractor oversight has occasionally failed to detect critical problems at all or early enough to prevent costly schedule slippages. For example, in April 1990, NASA deployed the $1.5 billion Hubble Space Telescope to an orbit 380 miles above the earth. Soon after, the agency discovered that the primary mirror had been manufactured in the wrong shape, severely degrading some of the telescope's scientific capabilities.

NASA's work on the next generation of weather satellites, called GOES-next, also illustrates the impact of inadequate contractor oversight. The launch of the first GOES-next satellite is at least 3 years behind schedule, and the program's estimated cost has more than doubled to over $1.7 billion.

Development delays have been caused, in part, by NASA's failure to initially assign enough qualified staff to oversee the contractor developing GOES-next instruments. Although NASA increased its technical involvement, much of the damage—such as the use of improper materials and other contractor errors—had already been done. Consequently, if the only remaining operational geostationary U.S. weather satellite fails anytime soon, the National Weather Service's ability to predict and track hurricanes, like Hugo and Andrew, as well as other severe weather patterns, may be degraded.

Adequate Contractor Cost Reporting Not Ensured

NASA managers use contractor-provided cost data to help gauge progress on individual projects and to forecast future funding needs. On the basis of these cost reports, NASA managers may adjust program schedules, the scope of work, and funding requirements. However, contractor cost information was not always accurate, timely, or properly recorded. The contractors' reports were sometimes late, insufficiently detailed, or not received at all. Poor reporting was often due to NASA personnel not including appropriate reporting requirements in contracts.

Our visits to NASA's four largest centers revealed that they did not always receive contractor-reported cost and performance data, and program analysts sometimes inappropriately adjusted contractor cost data without supporting documentation. In some cases, these actions concealed overruns, underruns, or instances where costs exceeded obligations or budget plans. Internal reviews by NASA's Comptroller personnel had also identified similar problems with centers' adjustments to contractor reports; however, effective corrective actions were not taken.

Government-Owned, Contractor-Held Property Not Accounted for Properly

Contractors hold more than $13 billion in property provided or acquired under NASA contracts. Various centers were not properly accounting for some of this property. For example, at two of NASA's largest centers, some contractors' annual property reports were received too late to be used to update NASA's year-end financial statements and reports. In addition, various types of errors were associated with contractor property reports and related documentation at three NASA centers.

NASA relies extensively on other agencies' surveys of contractor property systems to

provide reasonable assurance that the contractors' property reports are reliable. However, the required survey reports were not always provided to NASA. For example, in fiscal year 1990, survey reports were not provided to one center for 13 contractors who held $3 million in NASA property. NASA internal reviews have also documented problems with the delinquent reporting of the results of property systems surveys at three other centers.

Adequate Agencywide Accounting System Not Available

NASA has a long-standing and well recognized need to develop an adequate agencywide accounting system to help improve financial oversight of contractors by providing more timely and accurate information. NASA's current costly, outdated, and nonintegrated reporting systems require multiple data entry and lengthy reconciliations. Deficiencies in these systems have resulted in improper account balances and unreliable financial reports.

NASA's efforts to develop an improved accounting system have been slow, and its planning for the project has been inadequate. Implementation of the new system is not scheduled to begin at the first center until March 1995, and there was no target date for

full agencywide implementation, as of September 1992.

Data on Extent of Contract Changes Not Provided

There were notable differences in contracts' cost and schedule growth rates at NASA's four largest centers. On the basis of a sample drawn from more than 1,800 contracts, we estimated that about one in every three contracts at NASA's four largest centers experienced cost increases, and more than two of every five contracts experienced schedule changes. Contract costs were increasing at an estimated annual rate ranging from less than half of one percent at one center to over 6.5 percent at another—a 16-fold rate difference. The estimated average rate of schedule delay was almost 9 percent annually, ranging from 4.5 percent at one center to 16 percent at another.

NASA did not know the extent of cost increases and time extensions because its procurement information system did not routinely provide this data. Thus, NASA procurement managers did not have useful information for targeting specific centers and contracts or types of contracts for further review to help determine the extent to which cost increases or schedule changes

were related to contract management problems.

Some Centers Not Fully Complying With Procurement Requirements

NASA field centers did not always fully comply with governmentwide, agency, or center requirements when awarding and modifying contracts. For example, in some instances at one or more of NASA's four largest centers, (1) proposed contract changes were not adequately evaluated by technical personnel, (2) negotiations of contract changes were not completed in a timely manner, (3) unauthorized personnel directed contractors to perform additional work, and (4) sole-source procurements were not properly justified. The first two problems were the most prevalent, while the last two problems existed to a much lesser extent. Some centers were also frequently not complying with requirements or following good management practices in the delegation of contract administration functions.

Proposed Contract Changes Not Adequately Evaluated

Ensuring the reasonableness of contract changes requires NASA personnel to technically evaluate contractors' proposals. Such evaluations are performed by the contracting officers' technical representatives, who are engineers or scientists from the program office being supported by the contract. At three of NASA's four largest centers, some of the required

four largest centers, some of the required evaluations were not done or were done poorly. In many instances, technical representatives did not evaluate all the necessary technical elements of the contractors' change proposals or explain how they had reached their conclusions. Without adequate technical evaluations, procurement personnel lacked important information for thoroughly evaluating contractors' proposals and obtaining the best prices.

NASA's management reviews have also frequently identified problems with the quality of technical evaluations. For example, inadequate technical evaluations have been cited as a continuing problem at one center since the mid-1980s. In response, center management developed a training course addressing the preparation of technical evaluations. However, the course had been slowly implemented, and none of the technical representatives we spoke with had attended it.

Contract Changes Not Negotiated in a Timely Manner

Unpriced contract changes allow a contractor to start work and incur costs before NASA and the contractor agree on terms and conditions, including price. Until

firm prices are negotiated, contractors have limited incentive to control costs. If work is completed before the change has been priced, the government will have lost the opportunity to review the contractor's proposed cost and to identify opportunities to do the work more efficiently.

Despite the advantages of pricing contract changes in a timely manner, NASA frequently did not negotiate contract changes within the 180-day period generally used as a guideline for completing such negotiations. For example, in July 1991, the four largest centers reported that there were 234 changes valued at approximately $2.2 billion outstanding for more than 180 days.

Because they were concerned about unpriced changes, NASA headquarters procurement officials began tracking the time required by the centers to negotiate such changes and comparing their performances. Since then, centers have shown progress in reducing the number and value of unpriced contract changes. However, the monitoring is continuing because as of August 31, 1992, NASA's four largest centers still had 175 unpriced contract changes, valued at about $1.9 billion, that were over 6 months old.

Moreover, almost three-quarters of this dollar amount was related to 56 unpriced changes over a year old.

Unauthorized Personnel Directed Contractors' Work

Only the contracting officer can authorize contract changes. However, in four instances at one of NASA's four largest centers, other personnel directed contractors to perform additional work. For example, after a contractor had informed the technical representative that additional materials were needed, the technical representative authorized the use of the materials without consulting the contracting officer. This contract's schedule was also extended by about 7 months due to another improperly authorized change.

In 1989, a NASA management review noted many instances in which the actions of technical representatives at this same center seemed to be eroding the authority of contracting officers. In response, center management prepared guidelines for technical representatives and developed a related training course. However, most of the technical representatives we contacted at the center did not have the guidelines, and the training course was voluntary and had been offered only a few times.

Sole-Source Procurements Not Properly Justified

NASA personnel at two centers did not follow the requirements of the Competition in Contracting Act (CICA) of 1984 in justifying sole-source procurements. Under CICA, contracting officers must promote and provide for full and open competition when soliciting offers and awarding contracts. Contracting officers may proceed with procurements without full and open competition only after proper justification and approval. When contracts are not awarded competitively, the government may have less assurance that it is paying fair and reasonable prices for goods and services, and it may lose the opportunity to obtain lower prices and increase the efficiency of its programs.

In late 1988, we reported that a contracting officer had not properly followed the requirements of CICA in a noncompetitive procurement of almost $3 billion worth of parts and fabrication services for the space shuttle's external tanks. Three years later, we reported that personnel at another center had improperly extended one contract and had noncompetitively added new work to another without justifying them as sole-source procurements.

Contract Administration Functions Not Properly Delegated

NASA procurement officials often rely on other government agencies to perform many contract administration functions. Currently, NASA pays over $40 million a year for such services. However, there were widespread and significant deficiencies in some centers' management of delegated contract administration activities that could seriously hamper contractor oversight. For example, the four centers we visited frequently did not make delegations in a timely manner and did not routinely inform the delegatees about major contract changes, including modifications that extended the life of the contract. In addition, some NASA contracting officers were unaware that contract administration activities had been delegated on contracts for which they were responsible.

Contract administration planning at the four centers did not comply with NASA's own guidelines. In most cases we reviewed, NASA personnel did not hold required conferences with the delegatees to plan the nature and extent of contract administration functions. In one case, a conference was not held on a contract valued at over $500 million because the contracting officer incorrectly believed that one was not required since the contract was for support services. In

contrast, all of the required contract administration and quality assurance planning conferences were held on the three major work package contracts for Space Station Freedom.

Factors Contributing to Compliance Problems

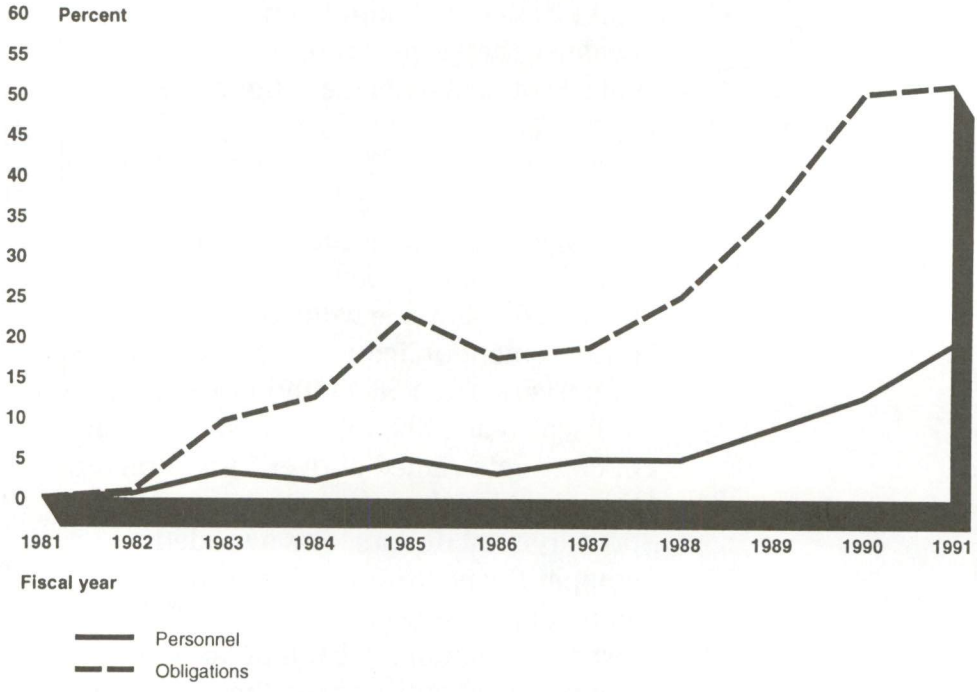
The NASA centers we reviewed failed to comply with requirements or to effectively correct contract management problems for a number of reasons. First, NASA operates largely in a decentralized fashion under which its field centers have considerable operating latitude. For this approach to be effective, headquarters must establish clear expectations and carefully monitor the performance of centers. Ineffective guidance and oversight have resulted in substandard contract management practices at some field centers.

Other factors contributing to compliance problems included (1) a primary emphasis on awarding contracts to the detriment of oversight activities occurring after contract award; (2) a lack of minimum agencywide standards for training personnel who plan, monitor, and evaluate contractors' technical performance; (3) corrective actions for contract management problems that were not effectively implemented; (4) center

personnel who were not familiar with requirements or did not consider them to be critical; and (5) procurement management surveys that had limited effectiveness because they generally did not assess the causes of problems identified.

In addition, NASA officials believe that the erosion of the agency's contract management capabilities is also partially due to a shortage of procurement personnel. In the last decade, the value of NASA's procurement obligations increased about 51 percent, from $8.4 billion to $12.7 billion in fiscal year 1990 dollars. Also, the number of contracts valued at over $1 million more than doubled, and the percentage of procurement dollars NASA awarded competitively grew steadily from 45 percent to 82 percent. Generally, the award and administration of larger or competitive contracts require more time and effort than for smaller or noncompetitive ones. Despite the increased value and complexity of contracts, the number of procurement personnel awarding and administering contracts grew only about 19 percent—from 907 to 1,082. The relative growth in procurement personnel and procurement obligations is shown in figure 3.

Figure 3: Percentage Increases in NASA Procurement Personnel and Procurement Obligations in Fiscal Year 1990 Constant Dollars



NASA's Efforts to Improve Contract Management and Related Areas

NASA has been working to improve many areas of contract management. Its headquarters' staff have become increasingly active over the last few years—proposing, implementing, or completing numerous initiatives. Some of these are related to our recommendations on the need for improved oversight of contractors and procurement centers. For example, we recommended that the NASA Administrator

- develop testing policies that define NASA's testing goals and establish agencywide minimum standards for space systems' test programs;
- direct contracting officers to enforce requirements that their technical representatives perform and document adequate evaluations;
- establish and enforce minimum training requirements for contracting officers' technical representatives that emphasize their roles and responsibilities, scope of authority, and relationship to other members of the procurement management team;
- ensure that procurement centers develop and implement adequate procedures for complying with requirements for delegating

contract administration functions; and

- improve the reliability of contractors' cost data and the controls over government property held by contractors.

Consistent with some of these and other recommendations and observations we have made, NASA created an organization to focus on contract management within its headquarters' procurement office and has been working on known contract management issues, such as improved training for members of the procurement team and the timely negotiation of contract changes. In working on this last matter, one NASA center recently evaluated the causes of delays in its pricing of contract changes and recommended ways to streamline the process.

NASA also modified its procurement information system to enable cost and time changes on its contracts to be summarized routinely and comprehensively, and the agency has been using this information to improve the targeting of its procurement management oversight activities. Due to rising concerns about the management of delegated activities, NASA has been improving oversight and coordination of delegated

contract administration services. For example, it developed a new procedure requiring that procurement supervisors ensure appropriate contract administration planning conferences are held.

NASA is also addressing other issues we raised that may ultimately affect the quality of its contract management. For example, the agency is developing overall testing policies and related procedural guidelines. It has also begun to deal with the lack of realism in planning—that is, to bring the planning of the content and pace of its programs reasonably in line with likely future budgets. NASA has been reviewing the costs of all major programs, and it plans to make appropriate adjustments to ensure a balanced overall space and aeronautics program within budget realities. Senior NASA managers have also agreed to develop priorities in conjunction with the agency's fiscal year 1994 budget request.

Apart from our work on contract management and related areas, NASA—based on the results of assessments by its headquarters' staff and others—has identified the need for or implemented other contract management improvements related to additional procurement staff; a special

focus for dealing with nonproductive contractor employees; the use, management, and structure of award fees; the purchasing practices of major contractors; and subcontract pricing.

Other procurement improvement initiatives underway would focus on streamlining the contracting process for procurements ranging from $25,000 to $500,000; promote better use of certain types of contracts; hold contractors more accountable for their work; systematically measure contractors' performance; and consider companies' past performance when awarding contracts.

Conclusions and Action Needed

NASA's contract management weaknesses were many years in the making and will require time and sustained effort to correct effectively. A vital step related to that effort is to do agency planning that clearly states NASA's vision for the future and the steps to realize that future in an affordable manner. Failure to deal aggressively with the mismatch between program plans and likely budgets will impair NASA's ability to effectively manage its contracts and will dampen the effects of the contract management improvements that may result from actions currently underway or recently completed.

The commitment of NASA management to correcting the plans/budgets mismatch and resolving the agency's contract management difficulties increases the likelihood of, but does not guarantee, eventual success. In principle, we support NASA's initiatives. Based on the work we have done over the last 2 years, efforts such as those currently underway throughout the agency are necessary to the thorough consideration of actions that could, over time, accomplish effective change. We have seen numerous corrective actions fail time and time again to effectively correct existing problems. It is time for bolder action.

A potential obstacle that may prevent or slow these efforts is the agency's organizational culture.[1] For many years, NASA's culture has been characterized by a "can-do" attitude and a strong esprit-de-corps, and it has been a major factor contributing to the agency's hard-earned reputation for technical brilliance and monumental achievements. However, these positive aspects of NASA's culture are accompanied by negative ones, including strong, center-based loyalty and resistance to change.

Eliminating resistance to change may be the more formidable challenge to the agency's improvement efforts. For example, until recently, NASA traditionally accepted all of the cost risk under its research and development contracts. When NASA headquarters procurement officials began advocating that cost risk be shared with contractors, sharp differences surfaced within NASA on how best to apportion it, with some NASA field centers resisting any change to the traditional approach.

NASA management faces the daunting task of changing fervent views held for many years

[1]"Organizational culture" refers to the underlying assumptions, beliefs, values, attitudes, and expectations shared by an organization's members.

and injecting into NASA's culture a more open-minded approach to evaluating the old ways of doing business while simultaneously preserving the culture's positive features. To effectively do so will take time. The NASA Administrator has noted that changing an organization's basic way of doing business is a long and difficult process—a process NASA is just beginning.

Related GAO Products

Financial Management: NASA's Financial Reports Are Based on Unreliable Data (GAO/AFMD-93-3, Oct. 29, 1992).

NASA: Large Programs May Consume Increasing Share of Limited Future Budgets (GAO/NSIAD-92-278, Sept. 4, 1992).

NASA Procurement: Opportunities to Improve Contract Management (GAO/T-NSIAD-92-33, May 7, 1992).

Space Station: Contract Oversight and Performance Provisions for Major Work Packages (GAO/NSIAD-92-171BR, Apr. 14, 1992).

NASA Procurement: Improving the Management of Delegated Contract Functions (GAO/NSIAD-92-75, Mar. 27, 1992).

NASA Procurement: Approach to Sharing Risk Under Certain Research and Development Contracts Is Starting to Change (GAO/T-NSIAD-92-12, Mar. 18, 1992).

NASA Budget: Potential Shortfalls in Funding NASA's 5-Year Plan (GAO/T-NSIAD-92-18, Mar. 17, 1992).

NASA Procurement: Agencywide Action Needed to Improve Management of Contract Modifications (GAO/NSIAD-92-87, Mar. 2, 1992).

NASA Procurement: Management Oversight of Contract Cost and Time Changes Could Be Enhanced (GAO/NSIAD-91-259, Sept. 30, 1991).

Space Project Testing: Uniform Policies and Added Controls Would Strengthen Testing Activities (GAO/NSIAD-91-248, Sept. 16, 1991).

Financial Management: Actions Needed to Ensure Effective Implementation of NASA's Accounting System (GAO/AFMD-91-74, Aug. 21, 1991).

Weather Satellites: Action Needed to Resolve Status of the U.S. Geostationary Satellite Program (GAO/NSIAD-91-252, July 24, 1991).

Environmental Protection: Solving NASA's Current Problems Requires Agencywide Emphasis (GAO/NSIAD-91-146, Apr. 5, 1991).

NASA Maintenance: Stronger Commitment Needed to Curb Facility Deterioration (GAO/NSIAD-91-34, Dec. 14, 1990).

Space Shuttle: External Tank Procurement Does Not Comply With Competition in

Contracting Act (GAO/NSIAD-89-62, Dec. 28, 1988).

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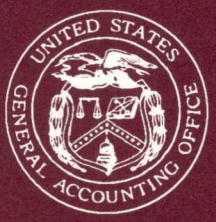
GAO

High-Risk Series

December 1992

Superfund Program Management



GAO/HR-93-10

GAO **United States**
General Accounting Office
Washington, D.C. 20548

Comptroller General
of the United States

December 1992

The President of the Senate
The Speaker of the House of Representatives

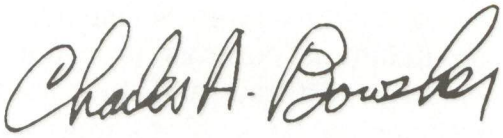
In January 1990, in the aftermath of scandals at the Departments of Defense and Housing and Urban Development, the General Accounting Office began a special effort to review and report on federal government program areas that we considered "high risk."

After consulting with congressional leaders, GAO sought, first, to identify areas that are especially vulnerable to waste, fraud, abuse, and mismanagement. We then began work to see whether we could find the fundamental causes of problems in these high-risk areas and recommend solutions to the Congress and executive branch administrators.

We identified 17 federal program areas as the focus of our project. These program areas were selected because they had weaknesses in internal controls (procedures necessary to guard against fraud and abuse) or in financial management systems (which are essential to promoting good management, preventing waste, and ensuring accountability). Correcting these problems is essential to safeguarding scarce resources and ensuring their efficient and effective use on behalf of the American taxpayer.

This report is one of the high-risk series reports, which summarize our findings and recommendations. It describes our concerns over the Environmental Protection Agency's (EPA) management of the Superfund program. In view of the escalating costs of hazardous waste cleanups and the growing constraints on federal resources, it focuses on the need for informed judgments to allocate resources among competing environmental protection needs. It also discusses EPA's limited recovery of Superfund cleanup costs from private parties and inadequate attention to contract management.

Copies of this report are being sent to the President-elect, the Democratic and Republican leadership of the Congress, congressional committee and subcommittee chairs and ranking minority members, the Director-designate of the Office of Management and Budget, and the Administrator of the Environmental Protection Agency.



Charles A. Bowsher

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Overview

The Superfund program was created in 1980 as a short-term project to clean up the nation's worst hazardous waste sites. At that time, the extent and severity of the country's hazardous waste problems were thought to be limited. Although a definitive cost estimate for completing the cleanup effort has yet to be determined, it is clear that in the coming decades, cleanup of thousands of Superfund sites, hundreds of which are owned by the federal government, could cost hundreds of billions of dollars.

The actual level of future funding will depend on federal budget constraints and the priority assigned to the cleanup effort relative to other national needs. Since fully funding the cleanup will be difficult at best, efficient use of whatever funds are made available for cleanup is vital. The better the effort is managed by the Environmental Protection Agency (EPA), the greater the likelihood that more cleanups will be completed, resulting in better protection of human health and the environment.

The Superfund law requires the parties that are responsible for contaminated sites to clean them up or to reimburse EPA for the cleanups it performs. To pay for EPA cleanups, the law established a trust fund

(Superfund), which is primarily financed by a tax on crude oil and certain chemicals and by an environmental tax on corporations. Federal agencies cannot use the Superfund to finance their cleanups but instead must rely on the agencies' annual appropriations.

The Problem

An effort as costly as our nation's hazardous waste cleanup problem should be justified on evidence that expenditures will result in commensurate benefits to human health and the environment. However, Superfund expenditures have not been based on an adequate comparison of the sites' risks with other environmental problems.

Superfund's enormous projected costs also underscore the need for efficient program administration. We have frequently reported, however, that deficiencies in EPA's efforts to recover costs from responsible parties and in its management of contractors have increased expenses unnecessarily.

The Causes

Some experts think hazardous waste sites are a lesser concern than other environmental threats, such as global atmospheric changes. But today, the federal government lacks an adequate system for

assessing the health and environmental risks posed by Superfund sites relative to other environmental problems. Without this information, priorities cannot be set or resources allocated effectively.

With regard to how efficiently the Superfund is being used, EPA has recovered only a small fraction of the Superfund resources that it has spent. As of September 30, 1992, EPA had collected just 10 percent of the $5.7 billion that it had classified as recoverable from responsible parties. Because it lacks complete data on its past recovery efforts, EPA cannot explain this low rate of repayment, but we have reported that EPA has failed to control collection efforts sufficiently or to seek full recovery of its costs. For example, although EPA has recently proposed regulations to change its approach to recovering indirect costs, so far it has excluded from its recovery efforts over $1 billion in such costs. In addition, potential recoveries have been reduced by the Superfund law's restrictions on charging interest.

Although it relies heavily on contractors to perform much of its cleanup work, EPA until this year ignored long-standing deficiencies in the management of its contracts. More

specifically, EPA failed to properly control contractors' costs or reduce Superfund's vulnerability to excessive damage claims resulting from contractors' negligence.

GAO's Suggestions for Improvement

EPA has taken positive steps to address some of these problems. For example, it has begun to develop a risk-based planning approach that would give priority to problems posing the greatest danger. Also, EPA has worked harder to compel responsible parties to perform cleanups themselves and has recently proposed new regulations for recovering more of its costs. The agency has also placed new emphasis on monitoring contract costs.

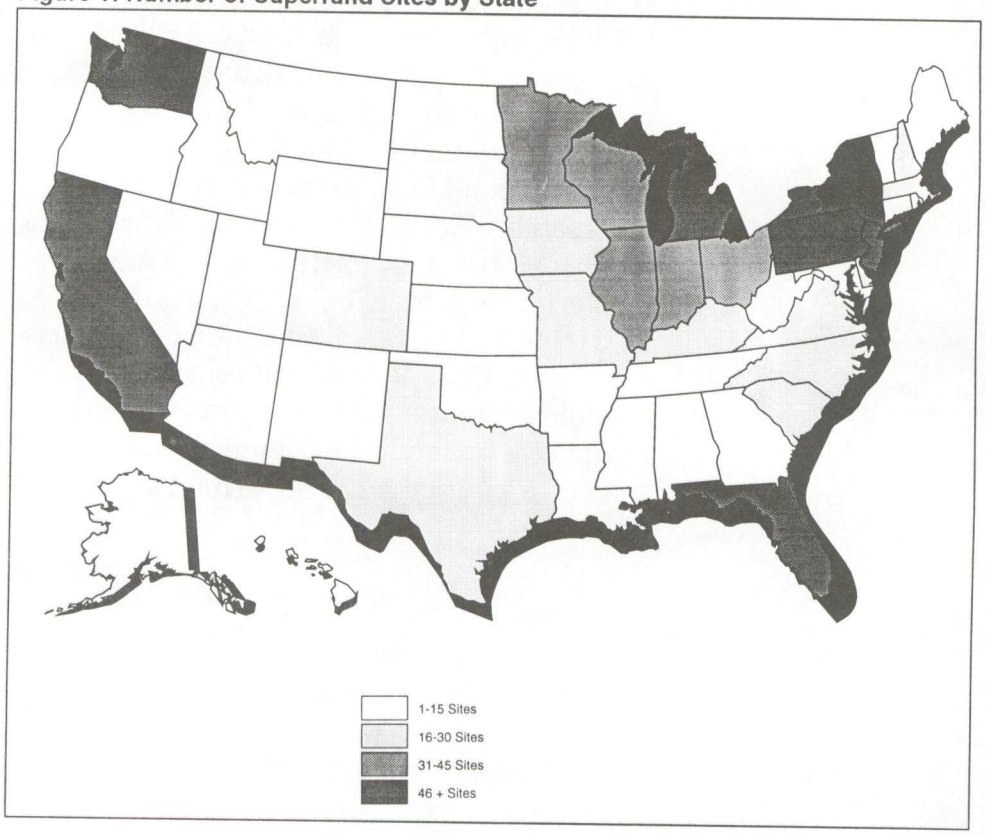
These actions alone, however, are unlikely to solve Superfund's problems. We have recommended additional steps, among them that EPA work with the Congress to reorder its budget priorities to reflect the relative risks of environmental problems. We also said that EPA should place more emphasis on recovering program costs—for instance, by working to recover more of its costs and by keeping better records of negotiations—and that the Congress should permit EPA to charge greater interest on its costs. We have also recommended additional changes in

EPA's contract management, particularly in limiting Superfund's liability for damage claims.

Superfund

Disposal of hazardous waste at thousands of landfills, industrial plants and other locations across the country has contaminated these sites and endangered nearby communities. The Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (CERCLA) created the Superfund program to clean up the most dangerous of these sites. Originally given $1.6 billion and a 5-year life, the program has twice been reauthorized and now has a spending cap of $15.2 billion; it is expected to run indefinitely. As of September 30, 1992, EPA had identified 1,275 Superfund sites. (See fig. 1.)

Figure 1: Number of Superfund Sites by State



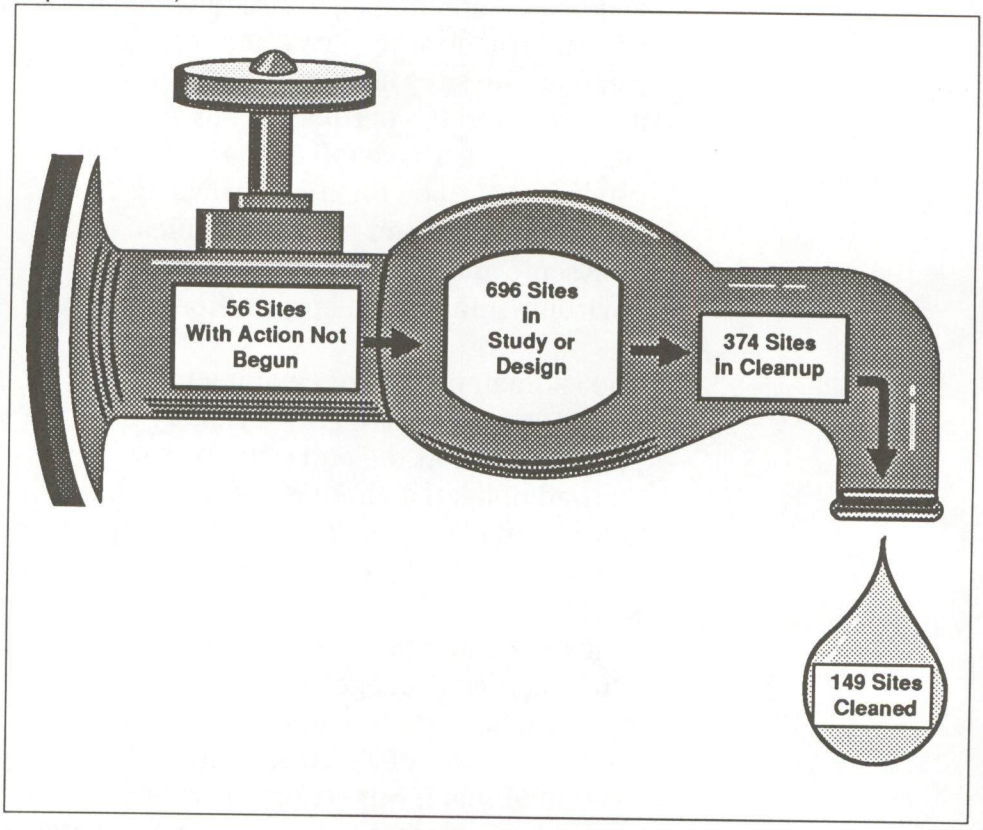
Source: GAO presentation of EPA data.

CERCLA authorizes EPA to compel parties responsible for contaminated Superfund sites, such as waste generators, waste haulers, and site owners or operators, to

clean them up. If responsible parties cannot be located, are unable, or are unwilling to perform the cleanup, EPA is authorized to clean up the sites itself and seek recovery of its costs from the parties. To pay for EPA cleanups, CERCLA established a trust fund (Superfund) to be financed primarily by a tax on crude oil and certain chemicals, such as arsenic and mercury, and by an environmental tax on corporations.

The estimated costs of cleaning up Superfund sites have grown rapidly over the past 12 years. At the end of fiscal year 1992, EPA had obligated about $11.4 billion but had completed cleanups at fewer than 12 percent of the current Superfund sites. (See fig. 2.) EPA has estimated that the fund's share of the costs to clean up current sites will be $40 billion and recognizes that many more sites will be added to Superfund over time. A 1991 University of Tennessee study estimated that if Superfund grew to 6,000 sites, cleanup costs for EPA and the private sector, excluding costs for federal facilities and Superfund's administration, could amount to $300 billion in 1990 dollars over the next 30 years.

Figure 2: Status of 1,275 Superfund Sites in Cleanup Pipeline, as of September 30, 1992



Source: GAO presentation of EPA data.

Current cost estimates for cleaning up the federal government's hazardous waste legacy are also staggering. Estimates for the

Department of Defense (DOD) and the Department of Energy (DOE) total close to $200 billion. Although these estimates represent a large portion of the potential federal costs, the full picture is not yet known. Federal agencies cannot pay for their cleanups through Superfund's trust fund but must obtain funds from other appropriations.

Setting Priorities and Allocating Limited Resources

As constraints on the federal budget grow, environmental needs are increasingly competing for federal funds. Although funds should be allocated to the programs that most effectively reduce health and environmental risks, the government has not assessed the comparative risks of the nation's environmental problems, in part because it does not have the necessary data or methodologies. The huge sums needed to clean up Superfund sites and disagreements about the dangers posed by these sites make risk-based funding decisions especially important. EPA has begun to develop a strategic plan for responding to environmental problems on the basis of estimated risks, but full implementation is a long way off.

Differing Views on Dangers of Hazardous Waste Sites

Opinions on the relative risks of hazardous waste sites and other environmental problems differ considerably. Scientific assessments have generally suggested that contamination from hazardous waste sites poses a lesser risk than other environmental problems. However, public opinion, according to 1988 and 1990 Roper polls, considers hazardous waste sites to be a high risk. Federal funding appears to be more closely aligned with the public's perception

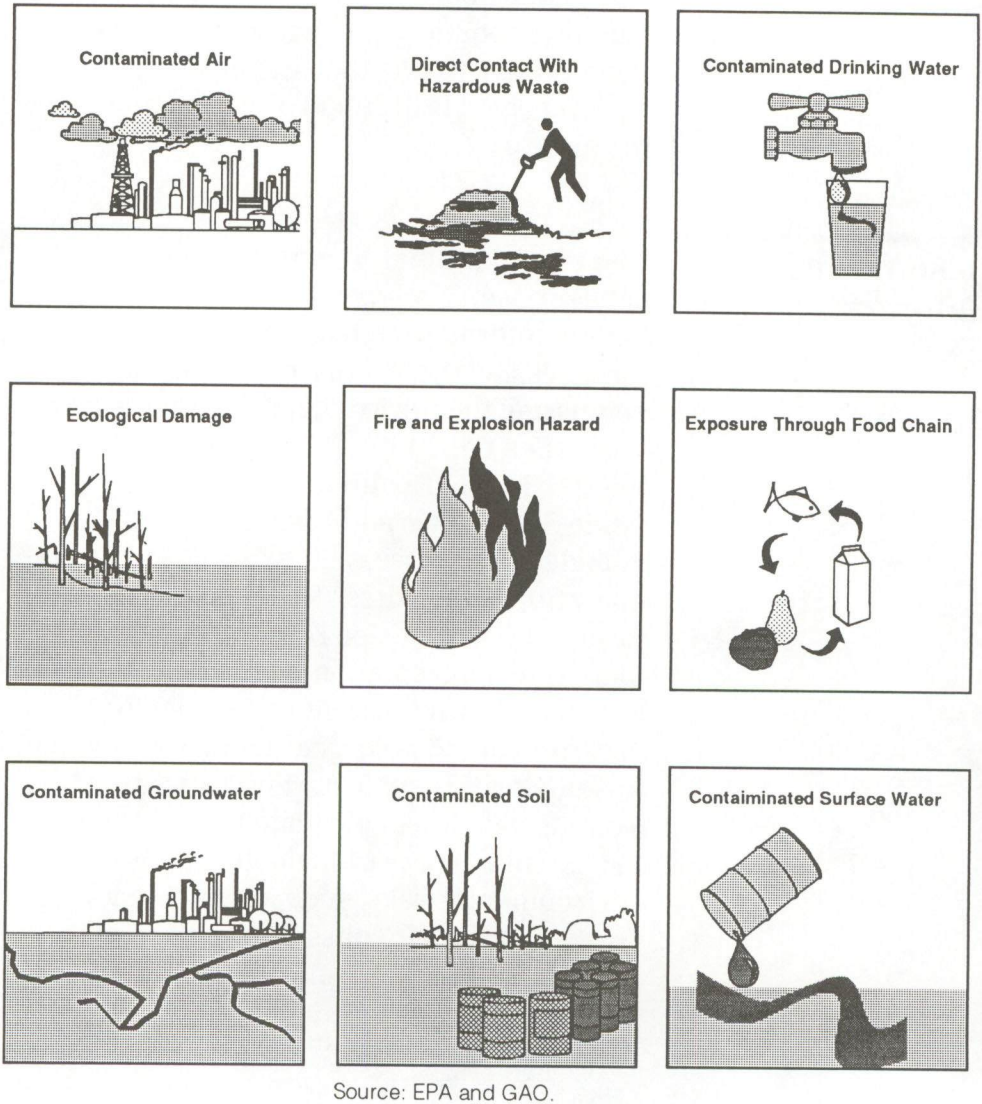
of environmental risk: Superfund accounts for about one-fourth of EPA's budget. In contrast, global atmospheric changes and indoor air pollution, which some experts rank as higher risks than Superfund sites, have received less public attention and fewer resources.

Insufficient Information to Define Risks

One reason for disagreements over the danger posed by Superfund sites may be the limited information that the government has for assessing these sites' risks and for comparing them with other environmental risks. (See fig. 3.) In 1991, we reported that the U.S. Public Health Service's Agency for Toxic Substances and Disease Registry had not adequately assessed the health risks of many Superfund sites. The National Research Council also recently concluded that critical information on the health effects associated with these sites was lacking because limited resources had been devoted to studying this subject.[1] Furthermore, existing data are inadequate to characterize the extent of some of the nation's other environmental risks, such as the threats posed by toxic air emissions and coastal water pollution, according to EPA.

[1]Environmental Epidemiology: Public Health and Hazardous Wastes, U. S. National Research Council, Committee on Environmental Epidemiology (Washington, D.C.: 1991).

Figure 3: Types of Environmental and Public Health Risks Addressed at Superfund Sites



Source: EPA and GAO.

Better System Needed to Allocate Limited Funding

In addition to inadequate information, the government does not have a good system for allocating funding to environmental problems in accordance with risk. We have recommended that EPA work with the Congress to shift resources from environmental problems whose risks are less severe to problems whose risks are greater and to educate the public about relative environmental risks. EPA's Science Advisory Board has also recommended that EPA improve the data and analytical methodologies that support the assessment, comparison, and reduction of different environmental risks and that EPA better align program priorities with health and environmental risks. [2]

One area that illustrates the need for risk-based priority setting is the funding of the federal government's hazardous waste cleanups. The federal government does not have an effective way to measure the relative risk of these sites across agency lines or to assign priorities to these cleanups, which could cost hundreds of billions of dollars. Although federal agencies submit annual cleanup plans to EPA for review, this review is not suitable for rank ordering federal

[2]Reducing Risk: Setting Priorities and Strategies for Environmental Protection, Relative Risk Reduction Strategies Committee, EPA Science Advisory Board (Sept. 1990).

cleanups because EPA assumes that all cleanups will be funded. EPA acknowledges that a comprehensive approach to setting cleanup priorities across agency lines will be needed when the cost of federal cleanups exceeds available funding.

EPA has begun to develop a new comprehensive risk-based strategic planning approach within the agency. This approach would position EPA to assess the risks associated with environmental problems and to give priority to the greatest risks. EPA faces some constraints in adopting this approach, such as the agency's statutory authorities that limit its flexibility to shift priorities on the basis of risk assessments. Nevertheless, the agency is currently identifying what data on environmental conditions and risks are available for implementing this process.

Increasing Recovery of Superfund Costs

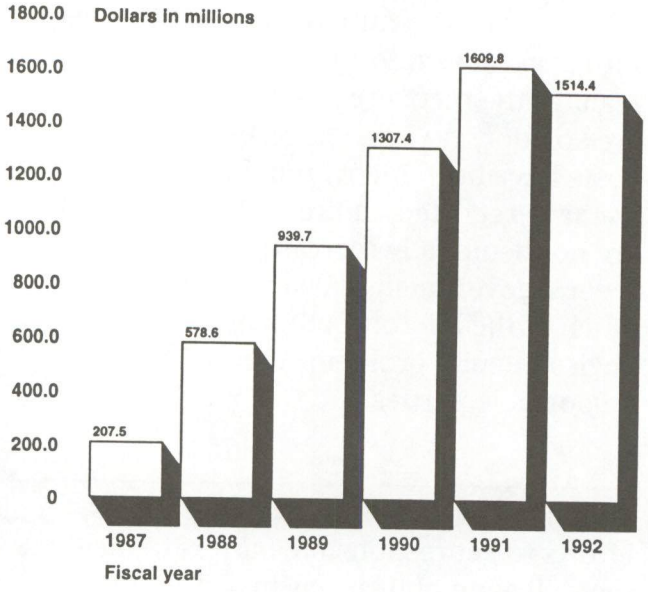
Parties responsible for contaminating Superfund sites are required by CERCLA to clean them up or to reimburse EPA for a government-funded cleanup. In recent years, EPA has compelled many responsible parties to perform cleanups directly but has recovered only a small part of the program's costs. While we are currently reviewing the reasons for the low reimbursement rate, our past work has identified some of the causes. First, EPA lacks information to adequately manage the recovery effort. Because its data are so poor, EPA cannot explain why so few costs have been recovered. In addition, as we have reported, indirect costs and interest are not being fully recovered. As a result, the federal government has been left footing much of the bill for remediating environmental problems created by responsible parties.

Increasing Privately Funded Cleanups

Beginning in 1989, EPA strengthened its efforts to get responsible parties to meet their cleanup obligations in an initiative called "Enforcement First." This approach gave clear preference to privately financed cleanups over Superfund-financed cleanups and increased Superfund's enforcement resources and activities. This new emphasis worked. EPA increased the annual value of

privately funded cleanups from $207.5 million in fiscal year 1987 to more than $1.5 billion in fiscal year 1992. (See fig. 4.)

Figure 4: Estimated Value of Responsible Parties' Cleanup Work, Fiscal Years 1987-92



Source: GAO presentation of EPA data.

Low Recovery of Cleanup Costs

EPA's improved record for compelling privately funded cleanups contrasts sharply

with its low recovery of Superfund expenditures. At the end of fiscal year 1992, EPA had disbursed $7.3 billion in federal funds for the Superfund program and had classified about $5.7 billion of this amount as recoverable from responsible parties. [3] Yet EPA had agreements with responsible parties or court orders to recover only about $795 million—just 14 percent of the $5.7 billion—and actually collected $546 million—10 percent of the total recoverable.

In its efforts to recover costs, EPA faces certain limitations, such as sites—referred to as "orphan sites"—that have no identified responsible parties to reimburse the agency. In addition, EPA has waived recovery of some costs as an incentive for parties to take over cleanup responsibilities at sites. The agency has not quantified the costs that cannot be recovered at orphan sites or the costs that have been waived in settlement negotiations.

Previously Reported Weaknesses

Our past reports identified the following deficiencies in EPA's cost recovery effort:

- Cost recovery records are incomplete and unreliable. National figures on costs

[3]Additional amounts will be classified as recoverable as ongoing cleanup projects are completed.

expended and recovered are only approximations. Field offices have not documented realistic bottom-line positions in advance of negotiations, and negotiators have not kept records of what costs they have and have not sought to recover. Therefore, the success of the negotiations cannot be measured.

- The cost recovery effort has been understaffed and assigned a low priority, creating backlogs in cost recovery cases.

- Full costs, including indirect costs and interest charges, have not always been sought in cost recovery negotiations.

- CERCLA restricts interest charges on unpaid costs.

To address these deficiencies, our past reports have recommended that EPA (1) improve its record-keeping to permit meaningful evaluations of its performance in recovering costs; (2) strengthen its strategic planning for managing this program, including determining its staffing needs; and (3) seek fuller recovery of its program costs. As described below, EPA has proposed a rule to seek reimbursement of more of its indirect costs. However, cost recovery

records continue to be inadequate, and, according to an EPA cost recovery program official, understaffing is still a problem. Furthermore, we recommended in 1991 that the Congress amend CERCLA to remove interest accrual restrictions, but no action has yet been taken.

The losses attributable to inadequate program information and to understaffing are unknown. However, we can estimate the value of the indirect costs and some of the interest charges that have not been recovered.

Indirect Costs

EPA's current policy has excluded over $1 billion in indirect costs from recovery. In 1989, we reported that EPA had not sought to fully recover its indirect costs for two reasons. First, the agency had narrowly defined "recoverable" indirect costs to exclude certain categories of costs, such as research and development. Second, the agency's formula for allocating indirect costs to Superfund sites had effectively excluded from recovery a large portion of the indirect costs that had not been categorically excluded.

In August 1992, EPA proposed regulations to change its approach to recovering indirect costs. Under this proposal, the agency would seek to recover the previously excluded categories of indirect costs and would revise its method for distributing indirect costs so that almost all indirect costs would be recoverable. This proposal, if adopted, would almost triple the indirect costs recoverable from responsible parties, according to agency estimates, and allow EPA to seek recovery of some of the over $1 billion now excluded.

Interest Costs

EPA has also missed the opportunity to recover hundreds of millions of dollars in interest costs because (1) CERCLA limits the interest that EPA can charge and (2) agency personnel have not always tried to claim interest. We estimated that in 1990 alone EPA could have accrued $105 million in interest on its fiscal year 1989 expenditures if statutory limits on EPA's collection of interest costs had been changed.

CERCLA restricts interest charges on amounts due from responsible parties in two ways. First, it can significantly delay the date from which interest begins to accrue. CERCLA permits interest accrual from the date that

funds are spent or the date that payment is demanded, whichever is later. As authorized by CERCLA, EPA sometimes waits several years after funds are expended to demand repayment. In a fiscal year 1989 settlement, for example, EPA Region V sought to recover $81,287 in interest that had accrued from the date that it had demanded payment. However, it could have sought $322,414—or almost four times as much—if accrual had begun from the date that funds were expended. On a broader basis, we estimated that EPA could have accrued in 1990 about $80 million in interest on its fiscal year 1989 expenditures.

Second, CERCLA allows EPA to accrue interest on program costs only at the government's borrowing rate, which is lower than commercial lending rates. We estimate that this limit reduced the interest accrued in 1990 on fiscal year 1989 settlements by about $25 million. Furthermore, this amount, in effect, represents a subsidy to the responsible parties that leave their cleanups to the government. Whereas the responsible parties that borrow money for cleanups have to obtain financing from lenders at commercial rates, the parties that reimburse EPA are charged the government's lower borrowing rate. Precedents for charging

more than the government's rate exist in other programs. The Internal Revenue Service, for example, charges an additional 3 percent on late tax payments. Therefore, we recommended that the Congress amend CERCLA to eliminate this subsidy.

Besides statutory restrictions on charging interest, failure to consistently seek recovery of some interest costs has limited EPA's collection of interest. EPA sought interest from responsible parties on only 22 of the 89 fiscal year 1989 settlements that we surveyed—making no attempt to recover about $4.5 million out of $10.5 million in interest—primarily because agency personnel were unfamiliar with procedures for calculating these costs. The amount of interest not sought nationally is unknown, however, because EPA does not regularly collect data on how often its negotiators try to recover interest. Although EPA has issued guidance identifying where assistance in calculating interest is available and has adopted an automated system that can calculate interest costs, it has not determined whether its personnel are now consistently seeking to recover interest.

Inadequate Attention to Contract Management

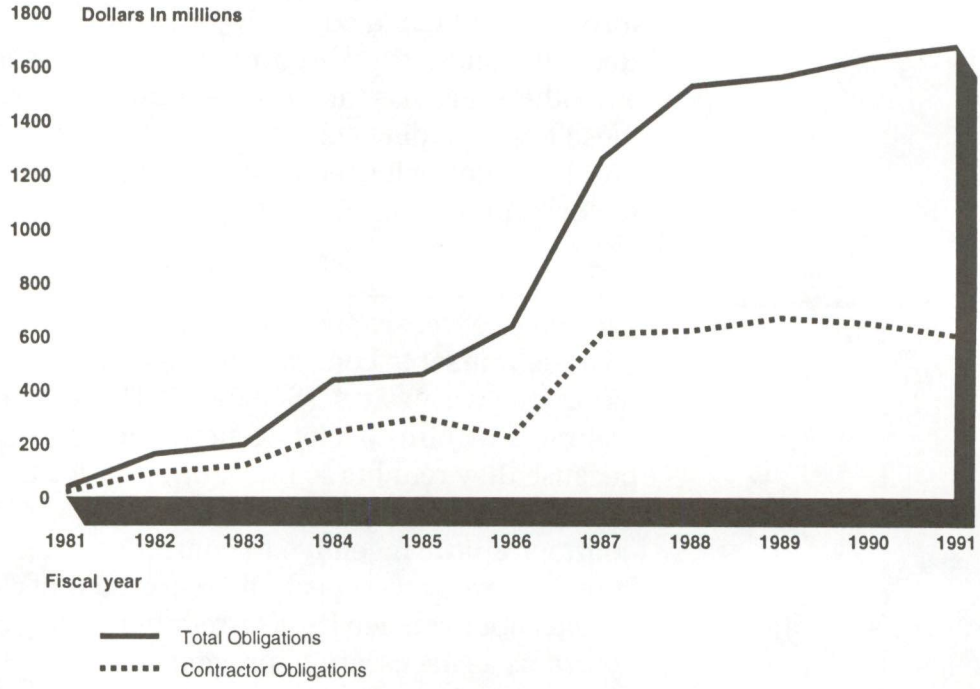
Billions of dollars are at stake in EPA's management of Superfund contracts. But for years the agency tolerated deficiencies in contract management—including uncontrolled costs and excessive exposure to damage claims stemming from contractors' negligence—and failed to follow through on planned corrective measures. Recently, under pressure from the Congress and others, EPA has taken steps to remedy these long-standing contract management problems. EPA will need to sustain this effort to correct these problems.

Controlling Contractors' Costs

EPA makes extensive use of cost-reimbursable contracts to clean up hazardous waste sites. (See fig. 5.) These contracts require special agency oversight because they reimburse the contractor for all allowable costs and therefore give the contractor little incentive to control costs. However, we have repeatedly reported that EPA has not overseen its cost-reimbursable contracts as necessary to prevent contractors from overcharging the government. For example, EPA has not satisfactorily estimated the cost of work before approving contractors' budgets or reviewed contractors' charges either before

payment or afterwards in postpayment audits.

Figure 5: EPA's Obligations for Superfund Contracts and the Total Program, Fiscal Years 1981-91



Note: These figures do not include obligations for Superfund contracts awarded by the U.S. Army Corps of Engineers, which handles the more expensive construction cleanup contracts.

Source: GAO presentation of EPA data.

We reported in 1988 and 1991 that EPA had not protected itself against potentially wasteful contract spending by preparing independent government cost estimates—that is, the government's own projection of what contract work should cost. These estimates protect the agency from depending too heavily on the contractor's cost proposal for judging what contract work should cost.

EPA regional staff had prepared independent government cost estimates for only 4 of 30 cleanup studies that we reviewed in 1991. Although used infrequently, these estimates proved to be effective in reducing contractors' proposed budgets—in one case, from $3 million to $1.6 million.

In addition, EPA had not effectively used two other basic cost control techniques—invoice reviews and audits. In 1988 and 1991, we reported that EPA was not adequately reviewing contractors' monthly invoices, or bills, to ensure that contractors' charges were reasonable. We also reported in 1990 that audit backlogs had hampered the agency's timely review of the accuracy of contractors' direct and indirect cost charges and increased the vulnerability of Superfund contract dollars to waste, fraud, and abuse.

Without controls over contractors' costs, Superfund resources can be wasted. For example, we reported in March 1992 that one of Superfund's largest contractors had included $2.3 million of expenses not allowable under the Federal Acquisition Regulations in its indirect cost pool, a portion of which is charged to EPA. The expenses were for things such as tickets to professional sporting events, alcohol at company parties, and travel by nonemployee spouses of company employees. Additionally, we identified indirect costs of $266,500 that, while not specifically unallowable, appeared questionable for allocation to federally sponsored contracts.

Reducing Excessive Indemnification

Together with inadequate controls over cost-reimbursable contracts, overly liberal indemnification policies and practices threaten to seriously drain Superfund resources.

In 1986, amendments to CERCLA authorized EPA to indemnify contractors—that is, to pay for any damages caused by their negligence at Superfund sites—because pollution insurance was not available at that time. This indemnification was, however, to be granted only up to a limit to be specified by EPA.

However, as we first reported in 1989, EPA has been granting almost all of its contractors unlimited indemnification, despite the law's requirements and considerable evidence that contractors would work at lower levels of protection. Under EPA's current approach, each indemnification agreement is backed by the entire unobligated balance of Superfund, which was $1.75 billion at the beginning of fiscal year 1991. Therefore, we recommended that EPA limit Superfund's potential exposure to indemnification losses by implementing CERCLA's requirements to establish dollar limits on indemnification agreements and by determining the lowest level of indemnification that would ensure the availability of an adequate number of contractors.

Increasing Management's Attention to Contract Management

After years of inattention to these repeatedly reported deficiencies, EPA—under mounting pressure from the Congress, EPA's Inspector General, and GAO—began this past year to address its contract management problems, including the root causes. EPA has elevated the procurement function in the organization, designating senior officials in headquarters and field units to be accountable for procurement efforts;

developed an implementation plan to correct problems; and reported Superfund contract management as a material weakness in its December 1991 Federal Managers' Financial Integrity Act report.

In addition, EPA has recently initiated efforts to exercise greater financial control over its Superfund contracts. For example, since early this year, it has required its staff to develop independent government cost estimates for Superfund contracts. It is also working to develop cost-estimating expertise by, for example, providing additional cost information guidance to its staff. To reduce its audit backlog, EPA has requested funding to increase the number of auditors in its Office of Inspector General. Although these steps promise to improve contract management, they will require more complete follow-through on the part of EPA's managers than has been evident in the past to ensure lasting change.

Although EPA has also taken some steps to control contractors' indemnification, it has made limited progress. For example, the agency has drafted new indemnification guidelines; however, as of November 1992, these guidelines still had to be approved by the Office of Management and Budget.

Conclusions and Action Needed

The cleanup of hazardous waste disposed of for generations without adequate safeguards will require a decades-long, major commitment of national resources. Because potential costs are so great, funding decisions need to be based on solid information about the risks posed by disposal sites and the benefits of cleanups. In addition, whatever funds are devoted to the effort must be managed to bring the greatest possible return. Our work has disclosed a need to better justify the budget priority assigned to the cleanup effort and improve program management.

The federal government cannot afford to spend the hundreds of billions of dollars expected to be needed to clean up Superfund sites without good assurance that this level of funding is appropriate. Finding the right funding level requires comparing the relative risks to human health and the environment of Superfund sites and of other environmental problems and the relative risk reduction that spending on Superfund cleanups and other environmental programs will achieve. Currently, decisions about funding are being made without adequate assessments of risks. If steps are taken to assess the relative risks posed by environmental problems, the Congress and

EPA will have a more rational basis upon which to debate the allocation of limited federal resources.

Although EPA has increased privately funded cleanups, it has not improved its chronically low recovery of Superfund costs. Our reports have identified the following causes of this low recovery: inadequate records to evaluate recovery efforts, understaffing, failure to pursue many costs, and statutory restrictions on interest charges. EPA has proposed a rule to enlarge the definition of recoverable indirect costs, but other changes are needed. For example, EPA needs to develop the necessary information to assess the adequacy of its efforts to return past expenditures to the trust fund. In addition, amendments to CERCLA's interest provisions would increase the costs that EPA could seek to recover and eliminate the current subsidy to responsible parties that leave cleanup work to the government. Given Superfund's potentially enormous costs, failure to make these changes could be very expensive.

Until this year, EPA had not given high priority to managing Superfund contracts even though it contracts out work worth billions of dollars. Our reviews have disclosed the results of EPA's neglect: poorly

controlled contractors' costs and excessive vulnerability to indemnification losses. In the face of rising criticism over contract abuses, EPA's management has made a commitment to improve cost controls and has begun organizational and procedural changes. However, a sustained effort is essential if permanent improvements are to be achieved. Moreover, indemnification deficiencies still have not been corrected and remain a threat to the program's resources.

Related GAO Products

Superfund: EPA Cost Estimates Are Not Reliable or Timely (GAO/AFMD-92-40, July 1, 1992).

Federally Sponsored Contracts: Unallowable and Questionable Indirect Costs Claimed by CH2M Hill (GAO/T-RCED-92-37, Mar. 19, 1992).

Superfund: EPA Has Not Corrected Long-standing Contract Management Problems (GAO/RCED-92-45, Oct. 24, 1991).

Superfund: Public Health Assessments Incomplete and of Questionable Value (GAO/RCED-91-178, Aug. 1, 1991).

Superfund: More Settlement Authority and EPA Controls Could Increase Cost Recovery (GAO/RCED-91-144, July 18, 1991).

Environmental Protection: Meeting Public Expectations With Limited Resources (GAO/RCED-91-97, June 18, 1991).

EPA's Contract Management: Audit Backlogs and Audit Follow-up Problems Undermine EPA's Contract Management (GAO/T-RCED-91-5, Dec. 11, 1990).

Superfund: A More Vigorous and Better Managed Enforcement Program Is Needed (GAO/RCED-90-22, Dec. 14, 1989).

Superfund: Contractors Are Being Too Liberally Indemnified by the Government (GAO/RCED-89-160, Sept. 26, 1989).

Making Superfund Work Better: A Challenge for the New Administration (GAO/T-RCED-89-48, June 15, 1989).

Superfund Contracts: EPA's Procedures for Preventing Conflicts of Interest Need Strengthening (GAO/RCED-89-57, Feb. 17, 1989).

Environmental Protection Agency: Protecting Human Health and the Environment Through Improved Management (GAO/RCED-88-101, Aug. 16, 1988).

Superfund Contracts: EPA Needs to Control Contractor Costs (GAO/RCED-88-182, July 29, 1988).

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Department of Energy Contract Management

GAO/HR-93-9

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of the United States

December 1992

The President of the Senate
The Speaker of the House of Representatives

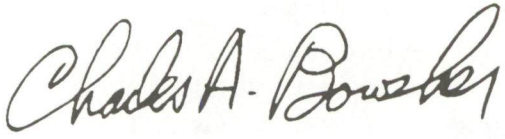
In January 1990, in the aftermath of scandals at the Departments of Defense and Housing and Urban Development, the General Accounting Office began a special effort to review and report on federal government program areas that we considered "high risk."

After consulting with congressional leaders, GAO sought, first, to identify areas that are especially vulnerable to waste, fraud, abuse, and mismanagement. We then began work to see whether we could find the fundamental causes of problems in these high-risk areas and recommend solutions to the Congress and executive branch administrators.

We identified 17 federal program areas as the focus of our project. These program areas were selected because they had weaknesses in internal controls (procedures necessary to guard against fraud and abuse) or in financial management systems (which are essential to promoting good management, preventing waste, and ensuring accountability). Correcting these problems is essential to safeguarding scarce resources and ensuring their efficient and effective use on behalf of the American taxpayer.

This report is one of the high-risk series reports, which summarize our findings and recommendations. It describes our concerns over systemic contract management weaknesses in the Department of Energy. It focuses on the Department's failure to adequately oversee the contractors that it relies on to manage and operate the nuclear weapons complex and national laboratory network. The report delineates the consequences of an approach to contract management based on noninterference in contractors' activities. It also discusses GAO's suggestions to the Secretary of Energy for improving contract management and reducing risk.

Copies of this report are being sent to the President-elect, the Democratic and Republican leadership of the Congress, congressional committee and subcommittee chairs and ranking minority members, the Director-designate of the Office of Management and Budget, and the Secretary-designate of Energy.



Charles A. Bowsher

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Overview

Fundamental contract management weaknesses in the Department of Energy (DOE) have led to widespread mismanagement of federal property and funds. In response to calls from us and others for increased oversight, DOE has taken positive steps toward reforming its contract management. In particular, the Department's leadership has begun to instill a new organizational culture that acknowledges management shortcomings.

DOE's approach to contract management dates back to the Manhattan Project of World War II, when the federal government sought to obtain private industry's participation in dangerous and uncertain activities by giving contractors wide latitude in operating the government's weapons research and production facilities. Under the veil of national security, contractors operated largely without oversight or financial risk.

DOE recognizes that this lenient approach to contract management has placed at risk the government's multibillion-dollar annual investment in contractors' services. The Department's recent reforms are designed to give contractors more incentive to act responsibly and at the same time to increase

DOE's oversight of contractors' activities. Changing an approach to contract management that has led to so many problems will, however, take time and leadership.

The Problem

DOE is the largest civilian contracting agency in the federal government, providing employment to about 140,000 contractor personnel. About $15.6 billion of DOE's $19 billion procurement budget for fiscal year 1991 went to 35 contractors working under 52 contracts for management and operations. These contractors design, test, develop, and produce the nation's nuclear weapons; manage DOE's national laboratories; and conduct research in energy and science.

DOE's contracting approach has led to contracts that have virtually tied DOE's hands, requiring DOE to reimburse contractors for money and materials that the contractors' own employees have stolen and for fines that the contractors have incurred by violating environmental laws. We have identified substantial evidence of the systemic nature of DOE's contract management problems, finding, for example, that 10,000 secret documents were missing

from a nuclear weapons facility and that subcontracting costs for nuclear waste containers had tripled. Similarly, DOE's Inspector General (IG) found that requirements for congressional approval had been circumvented to obtain funding for an unauthorized construction project. In addition to these costs, the long-term effects of DOE's contract mismanagement and emphasis on production—the environmental, safety, and health problems at DOE's nuclear weapons complex—are now estimated to cost at least $160 billion to restore and correct. Since DOE will have to rely heavily on contractors for the cleanup effort, the need for wholesale improvements in DOE's contract management remains urgent.

The Causes

Because DOE's management and operating contracts provide few incentives for contractors to operate cost-effectively, DOE needs to control costs carefully. However, weak oversight remains one of the Department's fundamental contracting problems. DOE has not provided the staff and other resources needed to monitor contractors' operations, and it does not have the management and financial information necessary for effective oversight. For

decades, the secrecy surrounding contracted activities has discouraged oversight. Furthermore, until recently, the international competition for weapons supremacy led DOE to emphasize production over environmental, safety, and health considerations.

Compounding DOE's contract management problems are contracts that limit the Department's control over contractors' operations. Nearly 70 percent of DOE's management and operating contracts do not contain standard clauses that other federal agencies commonly use to protect the government's interests. DOE's contracts give contractors excessive latitude, increase the government's financial risk, and restrict the Department's ability to control costs. In addition, DOE does not provide objective criteria for the award or management fees that it pays contractors, leaving open the possibility of abuse in fee determinations.

GAO's Suggestions for Improvement

DOE has made significant changes to strengthen contract management. New contract provisions will require contractors to perform work only when specifically authorized and will make contractors liable for improper performance and accountable

for improper behavior. DOE is also using award fees to motivate improvements in contractors' environmental, safety, and health performance.

Although DOE's progress is noteworthy, new reforms will require DOE to substantially upgrade its oversight capabilities. Existing staff must be given the right skills to administer new provisions, and information systems must be developed and implemented to provide the kinds of data needed for the more intensive oversight brought about by reforms. Changing a contract management approach that has developed over half a century is certainly not easy. Implementing reforms such as those DOE has begun will take years and will require commitment from DOE's managers, employees, and contractors.

DOE Contracting

During World War II, the Manhattan Engineer District of the U.S. Army Corps of Engineers—a predecessor to DOE—was responsible for developing and producing the first atomic bomb. More commonly known as the Manhattan Project, the enterprise was based on contractual arrangements among the War Department, industry, and academic organizations and created an unprecedented approach to contract management in response to the exigencies of war.

After the war, the newly created Atomic Energy Commission decided that special incentives were needed to retain the participation of its management and operating contractors. Under a "philosophy of least interference," the Commission gave its contractors virtual independence in managing and operating the sprawling 12-state network of weapons facilities. External oversight of the contractors' activities was limited by national security concerns. The Commission's lack of involvement in the operations of its own facilities was reflected in contract clauses that relieved the contractors of virtually all financial risk and exempted them from most federal and state environmental laws. DOE

carried over this contract management approach intact.

Today, DOE is the only cabinet-level office to contract out its major missions. Providing employment to about 140,000 contractor and 20,000 federal personnel, DOE is also the largest civilian contracting agency in the federal government. In fiscal year 1991, about $15.6 billion of DOE's $19 billion procurement budget went to management and operating contractors who not only design, test, develop, and produce the nation's nuclear arsenal but also manage the country's national laboratories and conduct basic research in science and energy.

To manage and operate its facilities, DOE has entered into 52 fully cost-reimbursable contracts with 35 contractors. These include multinational firms and academic organizations, such as Westinghouse, General Electric, AT&T, and the University of California. The University of California and AT&T have operated some of DOE's facilities continuously since 1943 and 1949, respectively.

DOE's contracts are generally cost reimbursable because of the difficulties in estimating production and research work

loads and costs in advance. DOE uses primarily two types of contracts—cost-plus-award-fee and cost-plus-management-fee. The majority of DOE's contracts—28 out of 52—are held by profit-making firms and are cost-plus-award-fee contracts. Fiscal year 1991 award fees ranged from $673,000 to $18 million. A cost-plus-award-fee contract compensates a firm for costs incurred and provides an additional fee on the basis of DOE's evaluation of the company's performance. Most of the remaining 24 contracts are with nonprofit organizations and are cost-plus-management-fee contracts that, in addition to reimbursing all costs, provide a supplemental fee agreed upon during contract negotiations.

DOE's Oversight of Contractors Is Weak

Fundamental weaknesses in DOE's contract management include insufficient oversight of contractors and their subcontractors and lack of essential management and financial information. Although cost-reimbursable contracts require extensive monitoring and DOE relies heavily on them, DOE has not provided the necessary oversight to hold contractors accountable and protect taxpayers' funds. Furthermore, because DOE does not have essential management and financial information, it does not have the complete picture of its contractors' activities required for adequate oversight. Over time, these weaknesses have contributed in no small measure to the deterioration of the weapons complex as well as to the more insidious environmental, safety, and health problems brought on by working for half a century with the radioactive elements used to produce nuclear weapons.

Controls Over Contractors' Operations and Activities Are Weak

Much of DOE's vulnerability to waste, fraud, abuse, and mismanagement stems from long-standing inadequacies in the Department's oversight of contractors' operations and activities. Although DOE's "least interference" management approach may have been appropriate at the end of World War II, it has led over time to

negligible DOE control and limited contractor accountability. The following examples demonstrate the systemic nature of the problem.

Although DOE's contracting approach was established partly in the interests of national security, DOE's limited oversight has not produced that security. For example, the management and operating contractor at Lawrence Livermore National Laboratory could not account for 10,000 of 600,000 secret documents concerning nuclear weapons and laser technology. DOE's reviews of the contractor's controls were inadequate to identify this breach of security.

DOE's weak oversight has also led to inefficient nuclear production decisions. According to an August 1991 DOE IG report,[1] reports of on-hand quantities of nuclear materials from DOE's nuclear weapons laboratories contained inaccuracies ranging from 52 percent to 88 percent. The management and operating contractor for Sandia National Laboratory, for instance, had requested about $500,000 worth of uranium for its research needs when, in fact, the uranium was already in inventory and had been declared excess. However, DOE's

[1]Departmentwide Audit of the Visibility Over the Status of Nuclear Materials (DOE/IG-0296, Aug. 30, 1991).

field offices had delegated the preparation of inventory assessments to the management and operating contractors with little or no guidance, involvement, or oversight and had generally accepted the reports without question.

The subcontracting area provides further evidence of the systemic nature of DOE's contract management problem. DOE has inadequately overseen its prime contractors' subcontracting activities, which represented an expenditure of about $5.7 billion in fiscal year 1991. DOE's failure to oversee a subcontractor's quality control procedures and fabrication methods cost taxpayers millions of dollars. Instead of monitoring the subcontractor's operations from the start, DOE remained uninvolved while the subcontractor designed, tested, and produced containers for transporting nuclear waste. Consequently, DOE did not detect problems that led the Nuclear Regulatory Commission to reject 24 of the containers after the prime contractor had paid the subcontractor more than $8 million to develop and produce them. Ultimately, DOE paid the prime contractor about $14 million for 15 containers that met the Commission's design criteria—or about the same amount that the prime contractor had

originally agreed to pay the subcontractor for 52 containers. This tripling of per-unit costs could have been avoided if DOE had monitored the subcontractor's activities from the start.

Furthermore, DOE's internal program for examining prime contractors' subcontracting practices has identified numerous weaknesses, including insufficient competition for subcontracts and circumvention of DOE's approval of subcontracts. More than half of the reviews have identified questionable sole-source procurement problems. Yet lack of competition in obtaining subcontracts can limit the government's ability to obtain the best terms. For example, at one management and operating contractor, about 19 percent of the purchases that DOE reviewed did not contain adequate justification for sole-source procurement. These subcontracts totaled about $445,000. Similarly, at DOE's Waste Isolation Pilot Plant, all but one support service subcontract that DOE examined were sole source. Each subcontract started as an agreement to purchase goods or services at a relatively small dollar value for a limited period and then grew into a long-term subcontract with a high dollar value. Thus,

none of these contracts was put out to bid to obtain the best price for the government.

DOE Has Not Provided Needed Contract Administration

Because DOE's contracts are primarily cost reimbursable, extensive government oversight is required to preclude unnecessary contract costs. However, DOE historically has not provided the needed oversight under its "philosophy of least interference" in contractors' activities.

DOE now acknowledges the limited oversight it has provided in the past and the effects of its inattention. The Secretary of Energy's 1991 Federal Managers' Financial Integrity Act report cites inadequate staffing resources as a material weakness, demonstrating DOE's belief that its mission is being significantly affected by the shortages. At the DOE Albuquerque field office, only four staff members are responsible for financial management oversight of seven management and operating contractors that received about $4.1 billion in fiscal year 1991 obligations. These same staff members are also responsible for providing limited oversight of several other contractors. DOE has recognized the inadequacy and has begun hiring additional staff to improve its contract oversight.

Furthermore, as the DOE IG reported in 1990,[2] staffing problems—including vacant positions, turnover, and recruiting difficulties—have limited the ability of DOE's San Francisco field office to oversee key management and operating contracts for national laboratory operations. However, the IG itself cannot ensure that contractors' costs are accurate, allowable, and reasonable. Staffing and resource limitations have prevented the IG from completing the audits required under the 5-year cyclical audit plan that the IG considers necessary to evaluate contractors' costs.

DOE Lacks Essential Information to Make Decisions

Another fundamental weakness in DOE's contracting is lack of management information. DOE spends about $1.6 billion annually to provide its executives, managers, and staff with information to help them accomplish DOE's mission. Yet DOE's managers still do not have management and financial information essential for contract management. The following cases illustrate this weakness.

Our ongoing work has found problems in DOE's financial reporting systems. At the time that DOE's financial systems were designed,

[2]General Management Inspection of the San Francisco Operations Office (DOE/IG-0290, Sept. 20, 1990).

program managers were focusing primarily on producing weapons rather than on overseeing contractors. Now that DOE is attempting to strengthen oversight, these systems cannot reliably produce the information needed in such areas as functional and overhead costs. Thus, DOE lacks the information systems to gauge either the status or the costs of its contractors' activities.

DOE's failure to systematically monitor contractors' financial reporting practices has created an atmosphere conducive to financial irregularities. For example, as the DOE IG reported in March 1991,[3] the operating contractors at DOE's Savannah River production facility improperly charged a construction account (1) $13 million to fund a warehouse complex, directly circumventing congressional funding authorization, (2) $33 million to purchase unauthorized capital equipment, and (3) $13 million to cover a shortfall in operating funds. According to the IG, these practices enabled the facility to avoid reporting potential funding problems. At the time of the IG's audit, a Savannah River plant contractor was conducting a wall-to-wall inventory of the capital equipment acquired

[3]DOE IG Report on "Construction Carrying Account at the Savannah River Site" (ER-B-91-14, Mar. 15, 1991).

through these improper procedures. Contractor officials estimated that as much as 25 percent of this equipment might be missing.

DOE also lacks adequate systems to budget for certain types of financial commitments to contractors, called "uncosted obligations." These are obligations that DOE has made to contractors for goods and services that have not yet been provided and for which no costs have been incurred. Although DOE ended fiscal year 1991 with approximately $9.7 billion in uncosted obligations, it had not established a system for ensuring the analysis of these obligations during its budget preparation. Without adequate information on uncosted obligations and systematic reviews of its financial commitments, DOE cannot guarantee that its budget requests represent the minimum amount needed for annual operations.

Improving Contract Management Is Critical for Future Environmental Cleanup

DOE's fundamental contracting weaknesses have contributed to significant environmental, safety, and health problems at DOE's nuclear weapons plants. Because contractors will have a significant role in correcting these problems, improvements in DOE's contract management will be critical.

As DOE itself has admitted, its contractors have released radioactive contaminants at many, if not all, of its weapons production sites. In addition, years of neglect have made the complex obsolete and unsafe. We identified the effects of such behavior years ago and began projecting a more than $100 billion price tag for the cleanup.

Resolving safety issues at DOE facilities continues to be a significant problem for DOE. Safety concerns led to DOE's closing much of the complex and are an important reason why many key facilities remain closed. On the environmental side, DOE's efforts to clean up the legacy of weapons production have been hampered by technological, compliance, and management problems that have led, in turn, to missed milestones and escalating budgets. In the quest for weapons supremacy, DOE and its contractors placed an overriding emphasis on weapons production and relegated environmental, safety, and health issues to a minor role.

Over the years, contractors' concerns with meeting production quotas and DOE's inattention to oversight compounded DOE's environmental problems. Today, it is estimated that it will cost as much as

$160 billion to clean up the nuclear weapons complex and restore it to a safe condition. Given that contractors will be receiving much of this money, correcting DOE's contract management problems remains urgent.

Contract Provisions Weaken DOE's Control

The systemic weakness in DOE's contract management is also exhibited in the contracts themselves. About 70 percent of DOE's management and operating contracts do not employ standard contract clauses typically used by other federal agencies. Thus, from the outset, DOE is contractually precluded from exercising any authority it may have had to control contractors' activities. In addition, DOE does not provide adequate criteria or justification for the award and management fees that it pays contractors. Deviations in contract clauses expose the government to greater financial risk, and inadequate criteria or support for fees paid does not ensure that contractors are objectively compensated.

Nonstandard Contract Clauses Increase Costs

DOE's extensive use of nonstandard contract clauses has restricted the agency's ability to control costs. This fundamental weakness dates back to the use by DOE's predecessor agencies of special incentives that they believed were necessary to attract and retain contractors. Since then, DOE's contractors have been reluctant to negotiate contracts with more stringent clauses. Consequently, DOE's contracts with the University of California for operating three national laboratories did not include the standard

procurement clause that would require the contractor to obtain DOE's approval of vehicle leases. Thus, the Lawrence Livermore Laboratory was able to lease 58 vehicles from the university at commercial rates without obtaining DOE's approval. Under the university's rates, DOE paid about $600,000 more for the vehicles than it would have paid under government rates. When DOE directed the laboratory to terminate some commercial leases to reduce its fleet size, the laboratory did not comply, citing a contract clause requiring that DOE and the university mutually agree on property management issues. Thus, the contract that DOE had negotiated with the university prevented DOE from correcting this waste of funds.

Nonstandard indemnification clauses in some of DOE's contracts have grown out of DOE's historical practice of indemnifying, or reimbursing, almost all contractors' costs to compensate for the unique risks inherent in producing weapons. These clauses could require DOE to reimburse contractors for all costs, even those that it considered unreasonable, unless DOE could demonstrate that the costs had been incurred through the willful misconduct or bad faith of corporate management. Consequently, as we reported

in October 1989, a contract clause required DOE to reimburse a contractor for $420,000 in money and materials that a contractor's employee had stolen. Such payments reflect an irresponsible use of government funds.

DOE's Administration of Award and Management Fees Is Problematic

Another weakness in DOE's overall contract management is that DOE cannot always support the millions of dollars in award or management fees that it pays to contractors. Thus, contractors are sometimes rewarded for questionable performance. This is because DOE's performance evaluations of contractors are poor and, in some cases, DOE has no criteria for determining its fees. In 1989, we pointed out problems in DOE's award fee process and recommended that DOE restructure the process to reduce the level of discretion exercised in making a final award determination. The same problems we identified still exist.

We found that the DOE Albuquerque field office did not tell its contractors specifically what was expected of them or what significance would be attached to specific accomplishments or failures. Without specific criteria, DOE had no sound basis for assessing performance and determining the contractors' award fees.

We also found that a fee of nearly $2 million was awarded to the Rocky Flats management and operating contractor even though a DOE review board's initial rating of the contractor's performance had recommended no award at all on the basis of established evaluation criteria. The review board raised 30 significant deficiencies, chief of which was the contractor's poor environmental, safety, and health performance. However, a subsequent management review discounted the review board's recommendation and significantly increased the rating score to award a fee of $1.7 million. In addition, the final determination did not explain what weight had been assigned to environmental criteria, on which at least 51 percent of the award fee should have been based. These examples demonstrate that DOE still exercises considerable discretion in making final award fee determinations even when specific criteria exist.

Management fees paid to nonprofit organizations reflect similar problems. As the DOE IG reported in September 1990,[4] DOE lacks written criteria for establishing management fees. According to the report, DOE and the University of California

[4]General Management Inspection of the San Francisco Operations Office (DOE/IG-0290, Sept. 20, 1990).

negotiated a management fee of $12 million for the university to operate three weapons laboratories. This fee was to be increased automatically each year by $250,000 for fiscal years 1987 through 1992. Although DOE did not provide detailed justifications for these increases, DOE's contracts indicated that $8 million of the management fee was in lieu of reimbursing the university for indirect costs. The university was required to spend "a significant portion" of the remaining fee (which was about $4.75 million in fiscal year 1991) on "complementary and beneficial activities." DOE was unable to identify these "activities," yet it paid the $4.75 million fee. Because DOE has no guidelines for these fees, it is virtually impossible to evaluate their reasonableness.

DOE's Contracting Changes Will Take Time and Commitment

DOE acknowledges its contract management problems and has undertaken wholesale changes in its relationship with its contractors. These changes include a new management approach toward contractors and efforts to negotiate contract terms and conditions that are more consistent with the government's interests. We believe that DOE's actions are a step in the right direction but that it will take years to effect a cultural change in a 50-year-old business philosophy.

Change in DOE's Culture Acknowledges Fundamental Problems

One of the major changes is the Secretary of Energy's overall objective to instill a new culture within DOE. This cultural change acknowledges the systemic nature of DOE's contract management problems and institutes reforms in oversight and contractor liability.

According to the Secretary, the new culture embraces the development of (1) compatibility between DOE's mission to produce materials for nuclear weapons and to protect the environment—intended to replace almost 50 years of production at environmental expense, (2) a workplace culture that demands excellence and personal accountability—intended to replace DOE's ambiguous lines of authority, and

(3) an atmosphere that welcomes openness and constructive criticism—intended to replace DOE's practice of making decisions under extreme secrecy.

Furthermore, DOE identified contract management as a material weakness in its three most recent Federal Managers' Financial Integrity Act reports to the President and the Congress on internal control weaknesses. Thus, DOE has acknowledged that its contract management significantly impairs the fulfillment of its mission. In fiscal year 1992, DOE increased its staff, including staff for contract oversight. DOE believes that these changes will help address weaknesses in its contract oversight.

Initiatives Are Designed to Increase Contractor Oversight and Accountability

To direct contractors' activities more effectively and gain more control over costs, DOE is attempting to change contract terms and conditions and create new types of contracts. First, DOE is incorporating a new accountability rule into its contracts with profit-making organizations. Under this rule, DOE will (1) hold contractors liable for costs that could have been avoided by proper contract performance and (2) increase contractors' potential award fees to offset the increase in their financial risk. Second,

DOE is attempting to delete as many nonstandard contract clauses as possible, such as the mutuality clause with the University of California. Finally, DOE is introducing "task order contracting," a practice that will require specific DOE authorization for each task before money can be obligated or work can begin.

To increase contractors' compliance with environmental, safety, and health standards, DOE now requires that at least 51 percent of the award fee be based on these important measures of performance. Furthermore, DOE will deny the entire award fee if performance in any of these areas is unacceptable. DOE has also proposed a new contracting approach for cleaning up contamination at the nation's nuclear weapons sites. This new approach would transfer cleanup responsibilities at each DOE facility from an existing management and operating contractor to an environmental restoration management contractor. Goals include improving contractors' performance, lowering costs, achieving more timely restoration, and increasing accountability. DOE intends to pilot test this approach for at least 5 years at DOE's Fernald, Ohio, and Hanford, Washington, sites beginning in late 1992 and early 1993.

Initiatives Raise New Challenges

We believe that DOE's efforts to address these contract management problems are significant positive actions. However, the systemic nature of these weaknesses—insufficient oversight, lack of essential information, nonstandard contracts, and questionable fees—requires wholesale changes within DOE, including commitment not only from DOE but also from its contractors, and will take years to implement. Meanwhile, several problems whose solutions are crucial to achieving improved accountability and performance are not being fully addressed.

DOE's new rule to make contractors more accountable, for example, requires that DOE (1) incorporate accountability provisions into all existing cost-plus-award-fee contracts, (2) develop operational procedures to identify all avoidable costs, and (3) train staff to implement the rule in a timely manner. Until DOE completes all of these actions, however, the management and operating contractors may receive increased award fees without incurring any additional liability.

Although DOE now requires that 51 percent of a contractor's award fee be based on environmental, safety, and health

performance, the fee determination process is still largely subjective—as we found at Rocky Flats. DOE needs to show and document clearly the relationship between a contractor's performance and the amount of the award fee. The more DOE reduces the level of discretion in the award fee ratings, the more DOE will ensure that contractors are compensated objectively.

To improve oversight, task order contracting requires increased resources for administering contracts and estimating costs. Although DOE is increasing its staff, it is still unknown whether DOE will allocate sufficient resources to this area. In addition, neither DOE nor its contractors have developed adequate cost-estimating systems. Furthermore, DOE has not yet developed its own cost estimates for task orders and will therefore need to rely on estimates developed by contractors to negotiate cost, schedule, and performance milestones.

The environmental restoration management contractor approach carries over many problems from existing management and operating contracts. For example, the new contractor proposals state that site labor costs will not change. That is primarily because the new contractors will be required

to hire as many of the existing management and operating contractors' staff as they can effectively employ, at their present salary and benefit levels. Moreover, proposals do not specify how responsibility will be divided between DOE and the new contractors or how it will be shared with the existing management and operating contractors. Overseeing new contractors will also require more and better trained staff. Thus far, DOE has largely ignored training because it has focused on selecting the new contractors.

Given these concerns and the systemic nature of DOE's contract management problems, we plan to continue monitoring DOE's contracting through a variety of assignments over the next several years. We will (1) assess the adequacy of DOE's corrective actions in addressing specific problems as well as DOE's overall contract management approach and (2) identify additional actions that may be needed to correct these and other deficiencies in DOE's contracting practices.

Conclusions and Action Needed

DOE's contract management philosophy has put at risk billions of dollars in yearly contractors' services. Spurred by strong congressional oversight and recommendations from GAO, the DOE IG, and others, DOE has begun to make wholesale contract management reforms. Increased audit oversight, new award fee criteria, task order contracting, and strengthened contract clauses are steps in the right direction.

These reforms are directed at giving contractors more incentive to act responsibly while at the same time increasing DOE's oversight of contractors' activities. Changing a contract management approach that has become so ingrained, however, will not be easy. It will take a significant leadership effort, as well as years to implement.

As we change leadership, the new administration has an opportunity to build on the positive directions of the previous administration. Specifically, the new administration needs to continue the increased accountability required of contractors. Also, improved information management systems and technical staff will be necessary to ensure such accountability. Finally, the new administration should

recognize that changes of this magnitude will take long-term commitment and, therefore, sustained leadership to realize. These changes will also require the concerted efforts of DOE's managers, employees, and contractors, as well as continued congressional oversight.

Related GAO Products

Federal Contracting: Cost-Effective Contract Management Requires Sustained Commitment (GAO/T-RCED-93-2, Dec. 3, 1992).

Department of Energy: Better Information Resources Management Needed to Accomplish Mission (GAO/IMTEC-92-53, Sept. 29, 1992).

DOE Management: Impediments to Environmental Restoration Management Contracting (GAO/RCED-92-244, Aug. 14, 1992).

Nuclear Health and Safety: More Can Be Done to Better Control Environmental Restoration Costs (GAO/RCED-92-71, Apr. 20, 1992).

Energy Management: Vulnerability of DOE's Contracting to Waste, Fraud, Abuse, and Mismanagement (GAO/RCED-92-101, Apr. 10, 1992).

Nuclear Health and Safety: Increased Rating Results in Award Fee to Rocky Flats Contractor (GAO/RCED-92-162, Mar. 24, 1992).

Energy Management: Systematic Analysis of DOE's Uncosted Obligations Is Needed (GAO/T-RCED-92-41, Mar. 24, 1992).

Nuclear Weapons Complex: Major Safety, Environmental, and Reconfiguration Issues Facing DOE (GAO/T-RCED-92-31, Feb. 25, 1992).

Nuclear Waste: Weak DOE Contract Management Invited TRUPACT-II Setbacks (GAO/RCED-92-26, Jan. 14, 1992).

Energy Management: DOE Has an Opportunity to Improve Its University of California Contracts (GAO/RCED-92-75, Dec. 26, 1991).

Energy Management: Tightening Fee Process and Contractor Accountability Will Challenge DOE (GAO/RCED-92-9, Oct. 30, 1991).

Energy Management: Contract Audit Problems Create the Potential for Fraud, Waste, and Abuse (GAO/RCED-92-41, Oct. 11, 1991).

Energy Management: DOE Actions to Improve Oversight of Contractors' Subcontracting Practices (GAO/RCED-92-28, Oct. 7, 1991).

DOE Management: Improvements Needed in Oversight of Procurement and Property Management Practices at the Lawrence Livermore National Laboratory (GAO/T-RCED-91-88, Aug. 20, 1991).

DOE Management: DOE Needs to Improve Oversight of Subcontracting Practices of Management and Operating Contractors (GAO/T-RCED-91-79, Aug. 1, 1991).

DOE Management: Management Problems at the Three DOE Laboratories Operated by the University of California (GAO/T-RCED-91-86, July 31, 1991).

Nuclear Security: Property Control Problems at DOE's Livermore Laboratory Continue (GAO/RCED-91-141, May 16, 1991).

Nuclear Nonproliferation: DOE Needs Better Controls to Identify Contractors Having Foreign Interests (GAO/RCED-91-83, Mar. 25, 1991).

Nuclear Security: Accountability for Livermore's Secret Classified Documents Is Inadequate (GAO/RCED-91-65, Feb. 8, 1991).

Nuclear Security: DOE Oversight of Livermore's Property Management System Is Inadequate (GAO/RCED-90-122, Apr. 18, 1990).

Hazardous Waste: Contractors Should Be Accountable for Environmental Performance (GAO/RCED-90-23, Oct. 30, 1989).

High-Risk Series

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Farmers Home Administration's Farm Loan Programs (GAO/HR-93-1).

Guaranteed Student Loans (GAO/HR-93-2).

Bank Insurance Fund (GAO/HR-93-3).

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Defense Weapons Systems Acquisition (GAO/HR-93-7).

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The President of the Senate
The Speaker of the House of Representatives

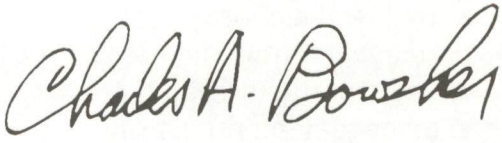
In January 1990, in the aftermath of scandals at the Departments of Defense and Housing and Urban Development, the General Accounting Office began a special effort to review and report on federal government program areas that we considered "high risk."

After consulting with congressional leaders, GAO sought, first, to identify areas that are especially vulnerable to waste, fraud, abuse, and mismanagement. We then began work to see whether we could find the fundamental causes of problems in these high-risk areas and recommend solutions to the Congress and executive branch administrators.

We identified 17 federal program areas as the focus of our project. These program areas were selected because they had weaknesses in internal controls (procedures necessary to guard against fraud and abuse) or in financial management systems (which are essential to promoting good management, preventing waste, and ensuring accountability). Correcting these problems is essential to safeguarding scarce resources and ensuring their efficient and effective use on behalf of the American taxpayer.

This report is one of the high-risk series reports, which summarize our findings and recommendations. It describes the substantial progress that has been made in the management and disposition of seized and forfeited assets by the Department of Justice and the U.S. Customs Service. In a period of about 10 years, Justice and Customs have transformed their problem-ridden seized property programs into more businesslike operations that generate revenues totaling about $900 million annually. This report focuses on the program changes made and highlights those areas where sustained management attention is needed.

Copies of this report are being sent to the President-elect, the Democratic and Republican leadership of the Congress, congressional committee and subcommittee chairs and ranking minority members, the Director-designate of the Office of Management and Budget, the Attorney General-designate, and the Secretary-designate of the Treasury.



Charles A. Bowsher

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Overview

The federal government has had the authority to take property through forfeiture for more than 200 years. It was not until about 1980, however, that it began to apply the asset forfeiture laws as powerful weapons against drug traffickers and other organized crime figures. The number and value of seizures soon grew dramatically. In 1979, the total value of seized property inventories at the Department of Justice and the U.S. Customs Service was $33 million. By 1992, the inventories were valued at $1.9 billion. They now include 16,000 cars; 5,200 real properties; other property (such as planes, boats, jewelry, and antiques) valued at about $360 million; and $550 million in cash.

Initially, Justice and Customs focused more on taking the property away from the criminal and less on managing the property that was taken. But today, property management is an integral part of these agencies' total program operations, and while sustained management attention is still needed and further system modifications may eventually be appropriate, the two agencies now have systems in place to help ensure that their property management programs are run in a businesslike manner.

Problems and Remedies

Following are three examples of major problem areas in which Justice and Customs have made improvements in the past several years.

In July 1982, we reported that seized property was improperly cared for, resulting in a loss of revenue for the United States. The agencies had to pay expenses related to seizure and forfeiture out of money appropriated for salaries and expenses, which gave them little incentive to make use of asset forfeiture laws or properly manage and maintain seized property. Following our recommendation, however, Congress established asset forfeiture funds at Justice and Customs. Proceeds from seizure activities are deposited in these funds and are used to finance program expenses. The funds are self-supporting; in fiscal year 1991, receipts exceeded expenses by more than $715 million.

Beginning in the mid-1980s, we reported that millions of dollars in seized cash was being held unnecessarily in agency vaults and safe deposit boxes before being deposited in designated U.S. Treasury accounts. This prevented the federal government from obtaining economic benefits from the money and increased the

administrative costs and risks of holding the cash. In 1987, Justice and Customs established policies to minimize the delay and have since established systems for overseeing seized cash operations.

We first reported in 1977 that the asset forfeiture programs were operating without sufficient program information to make informed management decisions. Congressional oversight was also hampered by the lack of reliable information. Justice and Customs have since made considerable progress in establishing systems to produce reliable inventory data.

Open or Emerging Issues

Now that major operational problems relating to the management and disposition of seized and forfeited assets have been identified and corrective actions have been initiated, sustained oversight is needed to see these problems through to resolution.

In addition, the incoming Attorney General and Secretary of the Treasury should continue to pursue a recent initiative involving consolidation. In 1991, we reported that the two agencies could reduce their program administration costs by about 11 percent annually by consolidating the

management and disposition of their noncash seized property inventories. The recommended consolidation has not yet taken place, but the two agencies have agreed to a pilot program.

Interest in the asset forfeiture programs is now broadening to include the question of whether the agencies are applying the asset forfeiture laws appropriately and effectively. Adequate safeguards are needed to ensure that federal agencies do not become overzealous in their use of the asset forfeiture laws or too dependent on the funds derived from seizures. The system must include appropriate checks and balances; otherwise, asset forfeiture programs run the risk of being seriously curtailed. The first in a series of congressional hearings on this issue took place in September 1992. We expect to do considerable work on it in the future.

Seized and Forfeited Assets

The government seizes property for violations of law and regulation and takes title to that property through either an administrative or judicial process, depending on the type and value of the property, the violation for which it was seized, and whether a bond has been posted. Posting a bond automatically requires that the forfeiture be done through a judicial process. Anyone having a legal interest in the seized property has the option of posting a bond.

After forfeiture, noncash property may be sold, put into official use, or shared with state and local law enforcement agencies participating in the seizure. Forfeited cash and the proceeds from the sale of noncash properties may also be shared with state and local law enforcement agencies.

The federal government has had the ability to take property through forfeiture for more than 200 years, although this was rarely done before the 1980s. Beginning about 1980, the number and value of seizures started growing dramatically as law enforcement agencies began relying more heavily on forfeiture as a means of fighting drug traffickers and other organized crime figures. In addition, in 1984 the Comprehensive Crime Control Act expanded

the federal government's seizure authority and established funds to finance the management and disposition of seized and forfeited assets. More recently, the asset forfeiture laws were expanded to cover crimes associated with money laundering and financial institutions-related offenses. Collectively, these changes have resulted in the value of Justice's and Customs' seized property inventories growing from $33 million in 1979 to $1.9 billion in 1992.

This explosive growth in the asset forfeiture programs resulted in a nightmare for the seizing agencies. Before the mid-1980s, they were either unmotivated to take, or unable to gain, control of the asset management side of their programs. Most of what they did was reactionary. They did not have effective means for dealing with the management problems associated with the ever-increasing amount of property and money seized. The agencies were, in essence, victims of their own success—the more successful they became in employing asset forfeiture as a law enforcement tool, the larger their problems grew in managing and disposing of the assets.

During the late 1980s and early 1990s, the programs matured, and the agencies gained

more control. Accomplishing this, however, was no easy task because it involved changing their organizations' cultures. What was once viewed as a by-product of a law enforcement responsibility is now viewed as an integral part of overall operations.

Some of the more significant changes affecting property management and disposition are highlighted in the following sections. While these changes have made a tremendous difference in the management and disposition of seized properties, we believe the agencies have one more major hurdle that needs to be overcome. That hurdle involves consolidating the management and disposition of noncash seized properties in one agency. Recently, Justice and Customs agreed on a plan to begin testing the merits of consolidation, but continued oversight will be necessary to complete the consolidation effort. Continued oversight is also needed to address some of the other corrective actions that have been initiated.

Special Funds Established to Pay Asset Forfeiture-Related Expenses

In July 1983, we reported that property was not properly cared for after it was seized, resulting in lost revenue for the government. We reported that the seizing agencies had little incentive to properly manage and

maintain seized property. They had to pay expenses related to the seizure and forfeiture out of money appropriated for salaries and expenses. If seized property was forfeited and sold, agencies could recover seizure- and forfeiture-related expenses from sales proceeds. If the property was not forfeited, or if costs exceeded whatever proceeds were realized, the seizing agencies had to divert money from other law enforcement operations to cover these costs.

We recommended that the Congress enact legislation establishing special funds to pay asset forfeiture-related expenses. In 1984, such legislation was enacted, establishing asset forfeiture funds in the Department of Justice and the U.S. Customs Service. This change removed the budgetary disincentive to the aggressive use of forfeiture as a weapon in the war against crime. Proceeds from seizure activities are deposited in these funds and are used to finance program expenses such as those incurred in the care, custody, and disposal of seized and forfeited assets; payments of liens and mortgages; and purchases of evidence and rewards for information related to asset seizure. These funds have always operated on a self-supporting basis—that is, each year fund receipts have exceeded expenses. For fiscal

year 1991, receipts exceeded expenses by more than $715 million.

Year-end surpluses in Customs' fund are transferred to the general fund of the Treasury. Year-end surpluses in Justice's fund have historically been used for other law enforcement purposes, such as building prisons or hiring more U.S. Attorney office personnel, or transferred to a special forfeiture fund under the control of the Director of the Office of National Drug Control Policy. On October 6, 1992, the President signed into law a bill replacing the Customs fund with a Treasury-wide forfeiture fund. The newly created Treasury fund was basically modeled after the Department of Justice's forfeiture fund.

Improved Seized Cash Management

Beginning in the mid-1980s, we reported on several occasions that millions of dollars in seized cash was being held unnecessarily in agency vaults and safe deposit boxes before being deposited into designated U.S. Treasury accounts. We reported that the deposit delays prevented the government from obtaining economic benefits from the idle cash and increased the administrative costs and risks in handling, storing,

accounting for, and safeguarding the cash from theft and abuse.

In late 1986 and early 1987, we reviewed 129 seized cash cases involving about $39 million and found deposit delays in 107, or 83 percent, of the cases. We considered a delay to occur if the money was not deposited within 14 days after forfeiture or 14 days after a decision that it was no longer necessary to hold the cash as evidence. The deposit delays varied from 2 days to almost 5 years.

We reported that there were several causes for the delays, including the lack of a national policy on seized cash management. In addition, the agencies lacked information necessary to oversee and monitor seized cash operations.

In 1987, Justice and Customs established policies designed to minimize the unnecessary holding of cash. Their policies stressed the need to promptly identify and deposit all seized cash not needed as evidence. Furthermore, agency policies discouraged retaining seized cash for evidence unless it was absolutely critical to the case.

Both agencies have also established systems for overseeing and monitoring seized cash operations. These systems, along with the new policies, have led to major improvements in managing seized cash. However, aggressive monitoring of seized cash may be necessary for some time to help ensure compliance with established cash management policies. For example, the Department of the Treasury's Office of Inspector General recently reported that Customs was not depositing seized cash in a timely manner. In response, the Assistant Commissioner, Commercial Operations, issued a memo reminding employees that seized cash is to be deposited unless there is documentation in the file from the appropriate U.S. Attorney's office stating that the cash is needed as evidence and should not be deposited.

Improved Management Information and Financial Reports

The lack of reliable program information has been a major contributor to program deficiencies. For many years, the asset forfeiture programs operated without sufficient information necessary to make informed management decisions. Congressional oversight was also hampered by the lack of reliable information.

Major improvements have been made in this area by both Justice and Customs. Additionally, both agencies have embarked upon ambitious efforts to further improve their information systems. These efforts are, however, long term and require sustained oversight.

Beginning with our first report on asset forfeiture in 1977, we have reported on many occasions the need to improve program information. Also, a 1983 Department of Justice internal report, which addressed the management of seized assets departmentwide, stated that forfeiture operations were conducted without the information needed to monitor, oversee, or evaluate the initiative and recommended that Justice ensure the availability of useful asset seizure and forfeiture case tracking and inventory data. Only recently, however, have Justice and Customs been able to put systems in place that provide them with the information necessary to make data-driven decisions. For many years, Justice and Customs had to scramble to meet their information needs.

With the number of seizures growing exponentially in the early 1980s, the agencies had to move quickly to establish even the

most rudimentary information systems. Responding to this need, the U.S. Marshals Service—the custodian for seized property within the Department of Justice—purchased personal computers, which were used primarily for inventory control. The intention was to use these computers in the short term while a needs assessment was done and a more sophisticated system put in place. Because of budget constraints and other program priorities, however, the new system was slow in coming. It was not until 1987 that the Marshals Service issued a request for proposals for the design and installation of a new system, and it was not until 1991 that the new system was fully operational in all Marshals Service districts.

Establishing a system capable of producing reliable inventory data fulfilled only part of Justice's and Customs' information needs. Financial and other management information, such as case tracking data, is needed to effectively manage the asset forfeiture program. To satisfy this need, Justice embarked on a major effort to develop an information system that would be used by all federal agencies participating in Justice's asset forfeiture program. As envisioned, this system would tie together asset forfeiture personnel in over 640

locations throughout the United States. It would replace the many incompatible systems now being used by the various seizing agencies. A prototype of the system has been developed and demonstrated to several user groups. Implementation is expected in 1993.

Customs took a different path to fulfill its need for inventory information. Customs awarded a contract for the nationwide management of its seized property inventory and as part of that contract required that the contractor develop a seized property information system. That system was put in place in early 1987 and remained virtually under the exclusive control of the contractor for the duration of the contract, which ran until 1991. At the conclusion of the contract, the system was turned over to Customs. At that time, Customs made a number of system improvements, including documenting the system and adding edit checks, and began to integrate its management and accounting systems. As of September 1992, those efforts were still under way. Customs has also begun an effort to completely redesign its seized property case tracking system. This effort is expected to take about 4 years.

It will be some time before Justice's and Customs' seized property information systems are state-of-the-art. The agencies, however, have made considerable progress in improving seized property information and have efforts under way to make other substantive improvements. However, without sustained oversight these efforts may flounder, especially in times of tight budgets. It is critically important that these efforts not be sidelined but rather receive the attention they deserve.

Accounting system weaknesses have also been a particularly troublesome issue for both Justice and Customs. Given the nature of the seized property programs, we have recommended since 1987 that Justice and Customs annually produce audited forfeiture fund financial statements. Such statements would help instill a more businesslike discipline in program operations and make apparent other information shortcomings. Justice started producing such statements beginning with its fiscal year 1989 operations and Customs with its fiscal year 1990 operations. In addition, legislation was enacted in 1990 that should ensure continued production of such statements.

Faster Forfeiting of Uncontested Cash Seizures

In 1989 and again in 1990, we reported that millions of dollars in seized cash was being forfeited through the judicial system even though no one was contesting the forfeiture. At the time of our review, the law required that all cash seizures over $100,000 be forfeited judicially. We reported that this requirement delayed forfeiture, added an unnecessary burden on the district courts, and contributed to inefficient use of U.S. Attorney resources. We recommended that the law be changed so that all uncontested cash seizures could be forfeited administratively, regardless of amount.

That recommendation was implemented in 1990. The seizing agencies reported that this change in law has resulted in seized cash being forfeited much faster without affecting individual due process rights. Contested cases continue to be resolved judicially.

Agreement to Test Feasibility of Consolidating Property Management and Disposition

In 1991, we reported that program administration costs could be reduced by about 11 percent annually if Justice and Customs consolidated the postseizure management and disposition of their noncash seized property inventories. We also reported that additional savings would likely accrue from lower vendor costs due to

economies of scale. The recommended consolidation has not yet taken place, but the two agencies have agreed to a pilot test.

Given the similarities in Justice's and Customs' seized property programs, consolidation makes sense. Both agencies seize similar types of assets, and those assets are generally located in the same geographic areas. However, under the current operating structure, each agency maintains separate and distinct programs for managing and disposing of its property. Justice, through the Marshals Service, contracts directly with vendors that provide the service. Customs has a nationwide contractor that provides custodial services either directly or through subcontracts with other vendors.

In April 1992, the Marshals Service and Customs signed a memorandum of understanding to test consolidation beginning in October 1992. The Marshals Service will manage both agencies' real property, and Customs will manage the agencies' vessels. The agencies will manage vehicles, with the location and number of vehicles being the determining factor in which agency handles them. After 1 year, the agencies will conduct a cost analysis and evaluation of the pilot test. We see this pilot

project as a positive step forward. However, sustained management attention and support will be necessary to see this effort through; otherwise, problems that might be encountered along the way have the potential of derailing the project.

Following this consolidation theme, in July 1992 we recommended that Justice and Customs develop mutually agreeable guidelines for asset sharing and jointly develop policies and procedures and assign responsibilities for federal oversight of asset sharing. In fiscal year 1991, Justice shared more than $287 million and Customs shared $95.2 million with state and local law enforcement agencies that assisted the federal government in making seizures.

Under current guidance, Justice and Customs allow different uses of shared proceeds. Officials in some state and local agencies find the guidance vague and confusing. A recent Justice Management Division study concluded that more practical guidance and oversight mechanisms were needed to ensure that state and local agencies comply with federal guidance on using shared proceeds. Both Justice and Customs agreed with our recommendations and plan to work together to develop clearer

asset-sharing guidelines and to develop oversight policies and procedures, including assigning responsibilities for federal oversight of asset sharing.

More Informed Seizures Being Made

In September 1987, we reported that the failure to obtain title searches on real properties before seizure often resulted in seizures with very low or nonexistent defendant equity. We recognize that there are cases—such as crack houses and clandestine labs—in which, for law enforcement reasons, it is desirable to seize properties with little or no defendant equity. However, seizures that are designed to financially punish a violator should only be made when it can be shown there is something of value to be forfeited. Otherwise, the seizure may end up costing the government more than it hurts the violator.

As Justice's asset forfeiture program has grown and more emphasis has been given to its management, title searches, which identify legal owners and encumbrances, have been done on a more regular basis.[1] The need for, and importance of, title searches has been stressed to the seizing agencies

[1]About 98 percent of the real property seizures are made by Justice.

through increased Justice oversight of seizure activities and guidance to the field as well as through training. In recent discussions, Justice officials indicated that very few real properties are now being brought into inventory without first having had a title search. For cases in which the investigation would be jeopardized by doing a title search before seizure, Justice's policy is to do one immediately after seizure. Justice officials also acknowledged that some of their earlier less-than-ideal seizures remained in inventory. Justice's Executive Office of Asset Forfeiture is currently incorporating these new preseizure planning policies into a soon to be issued directive entitled "Guidelines for Pre-seizure Planning." That directive is expected to be issued by the end of 1992.

Conclusions and Action Needed

Seized property management today is very different from what it was just a few years ago. Congress and the press have recognized the improvements as evidenced by the dramatic decrease in the number of congressional hearings and news items relating to poor property management practices.

Notwithstanding improved property management practices, the seized property programs remain highly visible and are subjected to continued scrutiny. The focus today, however, is not on property management but rather on how the asset forfeiture laws are being used. The first in a series of planned hearings on this subject was held on September 30, 1992, by the Legislation and National Security Subcommittee, House Committee on Government Operations.

Concerns have been raised about agencies becoming overzealous in their use of the asset forfeiture laws or too dependent on the funds derived from such seizures. The new Attorney General and Secretary of the Treasury need to ensure that adequate safeguards are in place to help prevent such developments. A system with proper checks and balances must be in place; otherwise,

the asset forfeiture programs risk being seriously curtailed. Our future work will focus more heavily on these aspects of the asset forfeiture programs. We will also continue monitoring property management activities.

Related GAO Products

Asset Forfeiture: Improved Guidance Needed for Use of Shared Assets (GAO/GGD-92-115, July 16, 1992).

Asset Forfeiture: U.S. Marshals Service Internal Control Weaknesses Over Cash Distributions (GAO/GGD-92-59, May 8, 1992).

Asset Forfeiture: Customs Reports Improved Controls Over Sales of Forfeited Property (GAO/GGD-91-127, Sept. 25, 1991).

Asset Forfeiture: Noncash Property Should Be Consolidated Under the Marshals Service (GAO/GGD-91-97, June 28, 1991).

Asset Forfeiture: Need for Stronger Marshals Service Oversight of Commercial Real Property (GAO/GGD-91-82, May 31, 1991).

Asset Forfeiture: Opportunities for Savings Through Program Consolidation (GAO/T-GGD-91-22, Apr. 25, 1991).

Asset Forfeiture: Opportunities to Improve Program Administration (GAO/T-GGD-91-16, Mar. 13, 1991).

Oversight Hearings on Asset Forfeiture Programs (GAO/T-GGD-90-56, July 24, 1990).

Asset Forfeiture: Legislation Needed to Improve Cash Processing and Financial Reporting (GAO/GGD-90-94, June 19, 1990).

Asset Forfeiture: Helping Finance the War on Drugs (GAO/GGD-90-01VR, Oct. 1989).

Profitability of Customs Forfeiture Program Can Be Enhanced (GAO/T-GGD-90-1, Oct. 10, 1989).

Asset Forfeiture: An Update (GAO/T-GGD-89-17, Apr. 24, 1989).

Asset Forfeiture Programs: Progress and Problems (GAO/T-GGD-88-41, June 23, 1988).

Asset Forfeiture Programs: Corrective Actions Underway But Additional Improvements Needed (GAO/T-GGD-88-16, Mar. 4, 1988).

Seized Conveyances: Justice and Customs Correction of Previous Conveyance Management Problems (GAO/GGD-88-30, Feb. 3, 1988).

Real Property Seizure and Disposal Program Improvements Needed (GAO/T-GGD-87-28, Sept. 25, 1987).

Asset Forfeiture Funds: Changes Needed to Enhance Congressional Oversight (GAO/T-GGD-87-27, Sept. 25, 1987).

Millions of Dollars in Seized Cash Can Be Deposited Faster (GAO/T-GGD-87-7, Mar. 13, 1987).

Drug Enforcement Administration's Use of Forfeited Personal Property (GAO/GGD-87-20, Dec. 10, 1986).

Customs' Management of Seized and Forfeited Cars, Boats, and Planes (Testimony, Apr. 3, 1986).

Improved Management Processes Would Enhance Justice's Operations (GAO/GGD-86-12, Mar. 14, 1986).

Better Care and Disposal of Seized Cars, Boats, and Planes Should Save Money and Benefit Law Enforcement (GAO/PLRD-83-94, July 15, 1983).

Asset Forfeiture: A Seldom Used Tool in Combatting Drug Trafficking (GAO/GGD-81-51, Apr. 10, 1981).

Drugs, Firearms, Currency, and Other Property Seized by Law Enforcement

Agencies: Too Much Held Too Long (GAO/GGD-76-105, May 31, 1977).

High-Risk Series

Lending and Insuring Issues

Farmers Home Administration's Farm Loan Programs (GAO/HR-93-1).

Guaranteed Student Loans (GAO/HR-93-2).

Bank Insurance Fund (GAO/HR-93-3).

Resolution Trust Corporation (GAO/HR-93-4).

Pension Benefit Guaranty Corporation (GAO/HR-93-5).

Medicare Claims (GAO/HR-93-6).

Contracting Issues

Defense Weapons Systems Acquisition (GAO/HR-93-7).

Defense Contract Pricing (GAO/HR-93-8).

Department of Energy Contract Management (GAO/HR-93-9).

Superfund Program Management (GAO/HR-93-10).

NASA Contract Management (GAO/HR-93-11).

Accountability Issues

Defense Inventory Management (GAO/HR-93-12).

Internal Revenue Service Receivables (GAO/HR-93-13).

Managing the Customs Service (GAO/HR-93-14).

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Asset Forfeiture Programs (GAO/HR-93-17).

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