Post-Hearing Questions for the Record
Submitted to the Honorable Gregory H. Friedman
From Senator Claire McCaskill

"Contract Management by the Department of Energy"
June 27, 2013

1. The Department of Energy is the largest civilian contracting agency, spending nearly 90% of its budget on contracts. Unfortunately, contract management seems to be the Department's biggest weakness. The Department of Energy has been on GAO's high risk list for its contract management for over 20 years.

   Q: What areas of contract management has your work identified as being particularly challenging for the Department?

   For over 10 years, the Office of Inspector General has reported contract management as one of the Department's critical Management Challenges. Although not exclusively, our concerns have centered on developing cost estimates, defining project scopes, and managing contract change proposals and schedule changes. Examples can be found in many of our reports, including:

   - The Department of Energy's K-25 Building Decontamination and Decommissioning Project (DOE/IG-0854);
   - The Management of the Plateau Remediation Contract (OAS-L-13-03); and,
   - Processing of Sodium-Bearing Waste at the Idaho National Laboratory (OAS-L-10-03).

2. The Department of Energy has repeatedly failed to accurately estimate the costs of its major projects.

   Q: What does Environmental Management's (EM's) February 2013 cost estimate guidance require?

   We have not specifically evaluated this guidance.

   Q: Has it been used on any major acquisitions yet?

   As with the previous question, we have not specifically evaluated this matter.

   Q: Are there any independent offices within the Department that consistently review cost estimates?

   Based on our previous work, we know that as part of its mission the Department's Office of Acquisition and Project Management reviews and validates the project performance baselines, to include cost and schedule, of all large construction and environment clean-up

projects prior to the Department's Budget Request to Congress. Prior to reorganization, this work was conducted by the Department's Office of Engineering and Construction Management.

Q: It appears that the Department's cost estimate policy applies only to capital asset acquisition projects and that EM has begun re-classifying many of its projects as non-capital asset acquisitions. Is this a correct characterization, and doesn't this lead to contract cost estimates receiving even less scrutiny?

We are not aware that EM has modified its policy with regard to re-classifying projects as non-capital assets acquisition. Such a change could have a significant impact on cost estimating in the future. Given our historical concern with EM's cost estimating processes, this is an area we will consider for evaluation going forward.

3. Most environmental remediation is concentrated among a few large contractors, who frequently form joint ventures with each other. These contractors refer to themselves as "competimates", meaning that they may be competitors for one project, but joint venture teammates on another. While the Department has stated that it is fortunate to have well-qualified contractors capable of doing the technically complex tasks it demands, contractors outside this circle have complained that the Department is not open to working with new contractors.

   Q: Why does the Department rely on such a relatively small number of large contractors for its major projects?

   Based on our general knowledge, we know that many if not most EM contracts are openly competed and that the competition between proposals is frequently intense. However, from our experience, as your question implies, the number of competing proposals is often quite limited. We have been told that there are a limited number of contractors and/or contractor teams with the specialized expertise to complete the required work.

4. Contractors working at highly contaminated sites often experience unforeseen problems. Many contractors signed contracts that described one set of conditions at the site, only to find completely different challenges once they begin work.

   Q: How often do contractors meet requirements for submitting timely and documented contract change proposals?

   While we cannot provide analytically-based data on frequency, we have reported that EM contractors have often failed to submit contract change proposals which are timely and well documented – specifically, laying out the rationale for the change and a reliable cost estimate. As noted in the testimony, we know this is a core management problem with signification consequences. For example, as described in our audit report *The Management of Plateau Remediation Contract* (OAS-L-13-03), we found that CH2M Hill Plateau Remediation Company had not always met contract and FAR requirements for submitting timely and/or well supported contract change proposal.

Some contractors have stated that documentation cannot be provided because of the uncertainty of the cost of work in the outer years of a contract.

Q: Is this a valid justification?

We have seen some cases where the project's scope of work is difficult to anticipate due to the complexity and scale of the project. Anticipating the scope of work, or impediments to being able to do so in the context of multi-billion dollar EM projects, is of concern. We recognize that in some of these instances, neither the Department nor the contractors can accurately predict the full scope of work needed. Therefore, the complete cost of work in the outer years of these projects could be very difficult to estimate. However, we do not believe that this should be accepted as a blanket excuse for poor contract cost estimates and less-than-robust government validation.

5. One reason that DOE's cost estimates are so poor is because EM has initiated construction of facilities before completing their design, also known as the "design-build" model.

   Q: Besides legacy projects, has the Department discontinued the "design-build" practice?

   As your question suggests, design-build has been a problem which has been widely recognized. To a large extent, it was adopted in the hope of meeting stringent deadlines, which are mandated by legally binding environmental remediation consent agreements. We are not aware of EM's current posture with regard to design-build.

   Q: How frequently have you encountered instances in which EM contracts for major projects without first conducting small scale demonstrations or pilot projects?

   We have encountered a number of examples of instances in which EM contracts for major projects without first conducting small scale demonstration or pilot projects. For example, in our audit report *The Department of Energy's K Basins Sludge Treatment Project at the Hanford Site* (DOE/IG-0848), we reported that the Department allowed its contractor to design and fabricate a sludge treatment and packaging system without first verifying on a small scale the adequacy of the equipment's performance for the intended application. Ultimately, the system was deemed ineffective and was abandoned by the Department. As a result, the Department spent $43 million and invested 3 years of effort without receiving the useful mission performance.

6. Cost-plus contracts require that an agency exercise significant oversight over the contract to ensure that it is paying only for allowable costs. Yet EM refers to its oversight as being "arms-length."

   Q: What does "arms-length" oversight mean?

   In general, this is a theory used by the Department when specific tasks are required and the contractor is held responsible for completing such tasks without day-to-day overly prescriptive Federal oversight. In our view, the contractor should be charged with using its specialized expertise to complete such tasks. The contractor is allowed to use its own specifications and procedures to devise the most efficient and effective way to perform the

work. However, Federal government oversight in the form of validation of contractor claims, verification of actual progress, adherence to recognized metrics, and efforts to hold contractors accountable is still essential.

7. Most of EM's contracts use an award or incentive fee contract, but it does not appear that the fees paid realistically reflect contractor performance.

   Q: How frequently are these fees, or their equivalents, paid despite nonperformance by contractors?

   We have not conducted a comprehensive evaluation of this area.

8. The cost of the Waste Treatment Plant at Hanford has soared from $4.3 billion to $13.4 billion, and the GAO has indicated the cost may rise again. The Department's own guidelines, the DOE 413.3 Series, calls for baseline and requirements changes to be processed individually by the site Program Director and the Acquisition Executive.

   Q: Can you verify that all the Waste Treatment Plant contract modifications were approved in accordance with these guidelines?

   We are not in a position to provide such assurance.

9. The GAO has stated that, in addition to the ultimate cost and completion date for the Waste Treatment Plant, it is concerned whether the plant will ever be successful given that several critical technologies have not been tested and verified.

   Q: Do you agree with the GAO?

   Project failure is always a concern when technologies have not been tested and verified. With regard to the Waste Treatment Plant (WTP), we have identified unresolved issues related to pulse jet mixers and quality assurance issues with inaccessible black cells. In our view, these concerns and other technological concerns render the WTP project risk a possibility which requires active Department of Energy oversight. We are currently doing additional work in this area at the WTP.