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United States Senate

COMMITTEE ON
HOMELAND SECURITY AND GOVERNMENTAL AFFAIRS

WASHINGTON, DC 20510-6250

May 1, 2017

CHRISTOPHER R. HIXON, STAFF DIRECTOR
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The Honorable Rick Perry
Secretary
U.S. Department of Energy
1000 Independence Ave. SW
Washington, DC 20585

Dear Mr. Secretary:

The Government Accountability Office (GAO) recently released a report regarding the Department of Energy (DOE) and its management of its risk of fraud and improper payments.¹ GAO's review found several weaknesses in DOE's internal controls, including inconsistent invoice reviews and audits, insufficient data necessary for oversight, lack of centralized and detailed policies, and a failure to adopt best practices. I write to request that DOE provide a detailed response regarding how it will address these findings and implement GAO's recommendations.

As the largest civilian contracting agency with 90% of its \$27 billion budget spent on contracts and major capital asset projects, DOE is at increased risk of improper payments and potential fraud. DOE's history of poor contract management is well-documented and ongoing challenges have led to DOE's continued appearance on GAO's High Risk List since 1990.² DOE's questionable management of its fraud risk was recently highlighted when the Department of Justice announced that it reached a \$125 million settlement with contractors at the Hanford site for False Claims Act violations, including billing the government for materials that did not meet nuclear quality standards and using federal funds for lobbying purposes.³ This example provides evidence of DOE's inability to provide sufficient oversight of contracts in order to ensure that taxpayers are getting what they paid for and that federal funds are not being used for improper purchases. DOE relies heavily on contractors to police themselves and it is ironic that much of the fraud that is discovered at DOE, including the activities which led to the \$125

¹ Government Accountability Office, *Department of Energy: Use of Leading Practices Could Help Manage the Risk of Fraud and Other Improper Payments* (GAO-17-235) (Mar. 30, 2017).

² Government Accountability Office, *High Risk Series: Progress on Many High-Risk Areas, While Substantial Efforts Needed on Others* (GAO-17-317) (Feb. 15, 2017).

³ Department of Justice, *United States Settles Lawsuit Against Energy Department Contractors for Knowingly Mischarging Costs on Contract at Nuclear Waste Treatment Plant* (Nov. 23, 2016) (www.justice.gov/opa/pr/united-states-settles-lawsuit-against-energy-department-contractors-knowingly-mischarging).

million settlement, only comes to light because of whistleblowing – considering DOE’s troubled history with regard to protecting its whistleblowers.⁴

Oversight challenges with management of fraud risk and improper payments exist across the DOE complex. DOE does not have consistent or detailed policies that require a review of whether costs are appropriate either before or after invoices are paid. DOE often relies on Management and Operating (M&O) contractors to essentially self-audit and some non-M&O contracts have not been audited in over eight years. There is also a lack of transparency in payments for subcontractor costs. GAO reports that when DOE conducted post-payment invoice reviews between 2012 and 2015, it only sampled 1% of \$437 million in subcontractor costs, leaving a majority of costs unreviewed. Furthermore, much of the data generated by contractors is difficult to reconcile because it is not sufficiently detailed, which is not in line with federal internal control standards. GAO also found that DOE is not using leading practices in its management of fraud risk and improper payments, including the use of data analytics, despite legislation requiring DOE to implement these practices.⁵ DOE’s excuse for this is that it believes its risk of fraud is low despite offering no evidence to support this contention and a history that indicates otherwise. It is apparent that the risk is actually unknown because DOE does not adequately assess or oversee it.

To address these issues, GAO made six recommendations: (1) establish DOE-wide invoice review policies; (2) create a dedicated entity within DOE to oversee fraud risk management activities; (3) conduct risk assessments tailored to each program; (4) develop an antifraud strategy based on these risk assessments; (5) design and implement specific control activities, to include fraud awareness training and use of data-analytics; and, (6) require contractors to maintain sufficiently detailed transaction level cost data. DOE’s response to these recommendations is troubling. As to recommendations 1, 3, 4, and 5 DOE stated that it “concur[ed] in principle,” although it is unclear why it needed this qualifier in order to concur. DOE partially concurred with recommendation 2, indicating that it needed to conduct a cost-benefit analysis to determine if it needed a dedicated entity to oversee fraud risk. As to recommendation 6, DOE did not concur and stated that it does not want to implement requirements that are “more prescriptive than current federal requirements.”

To better understand DOE’s response to GAO’s recommendations, I request that you provide a response to the following questions:

1. Why did DOE state that it concurred “in principle” with some of GAO’s recommendations?
2. How much risk of fraud is DOE willing to tolerate as a matter of course?

⁴ Government Accountability Office, *Department of Energy: Whistleblower Protections Need Strengthening* (GAO-16-618) (July 14, 2016).

⁵ Fraud Reduction and Data Analytics Act of 2015, Pub. L. No. 114-186.

3. How did DOE arrive at the conclusion that its risk of fraud is low?
4. What authorities does DOE rely upon to delegate authority for monitoring fraud risk to contractors, including conducting data analytics and implementation of the Fraud Reduction and Data Analytics Act?
5. Given the significant contract spending at DOE, why does DOE believe it does not need to take a proactive leadership role in adopting best practices to protect taxpayer dollars from fraud?
6. What contract clauses are in place that require contractors to maintain financial management systems and detailed or transaction-level and reconcilable cost data? What contract clauses provide recourse if contractors do not meet these requirements and does DOE believe all of its contractors are in compliance?
7. As to the Hanford site, what steps have been taken to assess contractor data limitations identified by GAO and how will DOE address the issues regarding tracking subcontractor purchases, per-diem payments, holiday purchases, and itemizing dissimilar costs?
8. For those recommendations that DOE concurred with in principle describe the steps taken to implement the recommendations.
9. For recommendation 2, please describe how DOE will conduct a cost-benefit analysis to determine whether it will create or designate an entity to oversee fraud risk.

I request that DOE provide this information on or before **May 19, 2017**.

Thank you for your attention to this matter. Please have your staff contact Sarah Garcia with my Committee staff at (202) 224-2627 with any questions. Please send any official correspondence relating to this request to Amanda_Trosen@hsgac.senate.gov.

Sincerely,



Claire McCaskill
Ranking Member

cc: Ron Johnson
Chairman