1/26/89 JS (3)

DOE/IG-0271

U.S. Department of Energy
Office of Inspector General

August 1989

Report on

**Audit of the Use of Annual
Appropriations to Fund
Contractors**

IG IG IG IG IG IG IG
IG IG IG IG IG IG IG
IG IG IG IG IG IG IG
IG IG **IG** IG IG IG IG

MASTER

DISCLAIMER

This report was prepared as an account of work sponsored by an agency of the United States Government. Neither the United States Government nor any agency Thereof, nor any of their employees, makes any warranty, express or implied, or assumes any legal liability or responsibility for the accuracy, completeness, or usefulness of any information, apparatus, product, or process disclosed, or represents that its use would not infringe privately owned rights. Reference herein to any specific commercial product, process, or service by trade name, trademark, manufacturer, or otherwise does not necessarily constitute or imply its endorsement, recommendation, or favoring by the United States Government or any agency thereof. The views and opinions of authors expressed herein do not necessarily state or reflect those of the United States Government or any agency thereof.

DISCLAIMER

Portions of this document may be illegible in electronic image products. Images are produced from the best available original document.

memorandum

DATE August 31, 1989

REPLY TO
ATTN OF IG-1

DOE/IG--0271

SUBJECT INFORMATION: Report on "Audit of the Use of Annual
Appropriations to Fund Contracts"

TI89 016693

TO The Secretary

BACKGROUND:

The subject report is provided to inform you of our finding and recommendations and to give you the opportunity to comment. This audit resulted from a request by the President's Council on Integrity and Efficiency (PCIE) for information on year-end spending and administration of annual appropriations.

DISCUSSION:

The purpose of the audit was to determine whether the Department was properly administering the \$80 million a year it receives through annual appropriations. Unused annual appropriations are to be returned to the U.S. Treasury.

Our review showed a need for more specific guidance to the program offices on administration of annual funds. About \$6.5 million had been retained to pay for services received, or to be received, beyond the year for which they were provided. Management generally concurred with our finding and recommendations and agreed to take corrective action.

John C. Layton
Inspector General

Attachment

cc: The Under Secretary
Assistant Secretary, Management and Administration

DISSEMINATION OF THIS DOCUMENT IS UNLIMITED

tb

MASTER

U.S. DEPARTMENT OF ENERGY
OFFICE OF INSPECTOR GENERAL

AUDIT OF THE USE
OF ANNUAL APPROPRIATIONS TO FUND CONTRACTS

Report No.: DOE/IG-0271
Date of Issue: August 31, 1989

Capital Regional Office
Germantown, MD 20874

AUDIT OF THE USE
OF ANNUAL APPROPRIATIONS TO FUND CONTRACTS

TABLE OF CONTENTS

	<u>Page</u>
PURPOSE AND SCOPE OF AUDIT.....	1
BACKGROUND.....	2
RESULTS OF AUDIT.....	3
RECOMMENDATIONS.....	5
MANAGEMENT REACTION.....	6

OFFICE OF INSPECTOR GENERAL
CAPITAL REGIONAL OFFICE
GERMANTOWN, MD 20874

AUDIT OF THE USE
OF ANNUAL APPROPRIATIONS TO FUND CONTRACTS

Audit Report No. DOE/IG-0271

PURPOSE AND SCOPE OF AUDIT

The purpose of this audit was to determine whether annual appropriations (annual funds) were being properly administered by the Department of Energy (Department). Specifically, we wanted to determine whether annual funds were being used to fund contracts beyond the year for which the funds were available. The Department receives more than \$13 billion each year to finance its activities. The majority of this money is received through "no-year" appropriations, which can be retained by the Department until they are spent. About \$80 million each year is received through annual funds, which are restricted to pay for the activities needed in the year for which the funds are provided. Unless specifically authorized by the Congress, annual funds not needed at the end of the year are to be returned to the Treasury.

Our audit included a review of applicable Federal laws, regulations, and Comptroller General decisions. We reviewed nine contracts funded with \$10.7 million in annual funds provided for Fiscal Year (FY) 1986 through FY 1988. Also, we interviewed Office of Procurement and Office of Controller officials, and officials of program offices whose contracts we reviewed.

The audit was conducted at Headquarters in Washington, D.C., and Germantown, MD, between September 21, 1988, and May 15, 1989. The review was made in accordance with generally accepted Government auditing standards, which included tests of internal controls and compliance with laws and regulations to the extent necessary to satisfy the scope of audit.

Since our review was limited, it would not necessarily disclose all material internal control weaknesses that may exist. However, in our opinion, the inadequate administrative controls over annual funds, if not corrected, should be reported in the year-end assurance memorandum on internal controls.

The exit conference was held on August 16, 1989, with representatives of the Office of Assistant Secretary for Management and Administration.

BACKGROUND

The President's Council on Integrity and Efficiency has performed several Governmentwide audits on year-end spending and the proper administration of annual funds, and this audit stemmed from a part of that effort. Although the audit covered all contract types, we found problems only with administering annual funds used to procure services.

The Comptroller General of the United States has rendered numerous decisions regarding the availability of annual funds to pay for services received by the Government. Comptroller General decisions have generally held that most service-type contracts are considered severable (meaning that the need for that service expires at the end of a fiscal year) and must be paid with funds provided for the year those services are rendered. For example, where technical and management assistance services are provided and no final product is delivered, the services are considered severable. Therefore, annual funds provided in one fiscal year cannot be used to pay for technical and management assistance services received in a succeeding year. 60 Comp. Gen. 219 (1981).

By contrast, service-type contracts that require a final product to be delivered are nonseverable (a single undertaking). Services needed to deliver the product can be paid with annual funds provided from the fiscal year the contract was signed, even though a portion of the services may be received in a following year. For example, a contract signed in FY 1984 to complete a study and provide a final report to the Congress was considered a single undertaking; therefore, FY 1984 annual funds could be used to pay for services received in FY 1985 to complete the study. 65 Comp. Gen. 741 (1986).

RESULTS OF AUDIT

In five of the nine contracts reviewed, the Department used or retained annual appropriations provided in one year to pay for services received in a succeeding year on severable contracts. This practice is contrary to the intent of Federal regulations governing the use of annual funds and the authority provided by the appropriations. The practice occurred because the Department did not have specific and clear procedures for administering annual funds. As a result, \$6.5 million of the \$10.7 million in annual funds reviewed had been used or retained to pay for services received in a year other than that for which the funds were provided.

Use of Annual Appropriations

A summary of the five contracts on which \$6.5 million of annual funding was either improperly used or retained to pay for severable services received -- or to be received -- beyond the year for which funds were provided follows:

- o Contract 1. An estimated \$757,000 of FY 1988 annual funds had been used to pay for computer facilities management support services received in FY 1989.
- o Contract 2. About \$720,000 in FY 1986 through FY 1988 annual funds had been used or retained in FY 1987 through FY 1989 to pay for printing services received or to be received in years subsequent to those for which the funds were provided.
- o Contract 3. Some \$1 million in FY 1986 through FY 1988 annual funds had been used or retained in FY 1987 through FY 1989 to pay for technical and analytical support services received in years subsequent to those for which the funds were provided.
- o Contract 4. About \$174,000 of FY 1988 annual funds had been retained beyond the fiscal year to pay for FY 1989 technical and analytical services.
- o Contract 5. About \$1.9 million of FY 1988 annual funds had been retained past September 30, 1988, to pay for FY

1989 litigation support services. Also, \$1.8 million of FY 1987 funds had been retained past September 30, 1987, to pay for FY 1988 services.

Appropriation Requirements

The bona fide need rule, one principle of appropriations law, states that annual funds can only be used to pay for the needs of the fiscal year for which they were provided. Title 31 U.S.C. 1502 states that an appropriation or fund provided for a definite period is available only for payment of expenses properly incurred during that period or to complete contracts properly made and obligated within that period.

The Comptroller General of the United States has authority to render legal decisions on the availability of appropriations. The decisions are binding on the executive branch of the Federal Government and are also used as guidance by Federal agencies in interpreting and applying appropriations law. We used the previously mentioned Comptroller General decisions and others to determine whether the Department had been properly using annual funds to pay for contract services. 87-2 Comp. Gen. 128 (1987), 60 Comp. Gen. 223 (1977), 33 Comp. Gen. 90.

Need for Better Controls Over Annual Appropriations

We reviewed existing Departmental funds control and accounting policies and procedures and found that, although annual funds were defined, guidance to program offices on how to properly administer these funds was not clear and specific. The Office of the Deputy Assistant Secretary for Financial Management and Controller (Controller) is primarily responsible for establishing policy for administration of funds. The Department's policies and procedures appeared to focus more on proper administration of no-year appropriations, which is understandable since the Department receives over 99 percent of its funds through no-year appropriations. These policies delegate the authority to obligate funds to program offices. The contract obligations cited in this report were controlled by program officials.

Determining proper administration of annual funds can be complex and often must be decided on a case-by-case basis. We recognize that absolute control over these funds does not lie solely within the Controller's Office, but must include the cooperation of Procurement and the various program offices. Nevertheless, appropriations law must be strictly followed. Specific Departmental policy and procedures and the Comptroller General decisions would provide the needed guidance for proper administration of annual funds.

Impact of Current Practices

The lack of specific procedures for administering annual funds resulted in program offices incorrectly using and retaining \$6.5 million on the five contracts cited in this report. The full impact however could be greater, since the Department uses annual appropriations every year to fund some of its service contracts.

RECOMMENDATIONS

1. We recommend that the Deputy Assistant Secretary for Financial Management and Controller and the Deputy Assistant Secretary for Procurement and Assistance Management work with the appropriate program officials to:

- a. Make adjustments as necessary to the annual funds used on the contracts cited in this report to ensure compliance with appropriations law.
- b. Review the use of annual funds on all other active contracts and agreements and make necessary adjustments to ensure compliance with appropriations law.
- c. Ensure that the bona fide need rule is followed when using annual funds on future contractual documents.

2. We recommend that the Deputy Assistant Secretary for Financial Management and Controller expand existing procedures in DOE Orders 2200.4 and 2200.5 to ensure compliance with annual appropriation requirements.

MANAGEMENT REACTION

On May 23, 1989, the Office of the Deputy Assistant Secretary for Financial Management and Controller provided comments on a draft of this report. Management generally concurred with the finding and recommendations. Management's comments are summarized below with auditor responses.

Management Comment. On Recommendation 1.a., management agreed to make appropriate accounting adjustments.

Auditor Comment. Management's actions should meet the intent of our recommendation.

Management Comment. Management concurred with Recommendation 1.b. and plans to identify contracts financed with annual funds and coordinate with responsible program offices to adjust these contracts as needed by September 30, 1989. Recommendation 1.c. was added after the draft report on which management commented. Management verbally indicated concurrence with this recommendation.

Auditor Comment. Management's planned actions are considered responsive to the recommendation.

Management Comment. Management concurred with Recommendation 2. and has forwarded, for Departmental coordination, revised accounting policies and procedures which would become part of DOE Order 2200.5. Management stated that implementation of these policies should begin in 4 to 6 months, at which time appropriate changes would be made to DOE Order 2200.4.

Auditor Comment. Management's plans to implement the draft procedures in DOE Order 2200.5 and revise DOE Order 2200.4 are considered responsive to the recommendation.

Management Comment. Management felt that the statement "we found problems only with administering annual funds used to procure services" was not accurate. Management stated that one contract for printing cited in the report was not a "service" contract, but it did not believe that this statement impacted the content or intent of the recommendations in the report.

Auditor Comment. The Comptroller General, in rendering decisions on the use of annual funds, consistently refers to printing as "services" vs. "goods," which may or may not be severable depending on whether the contract requires a specified deliverable product. See 59 Comp. Gen. 386, 23 Comp. Gen. 370, 23 Comp. Gen. 82, et cetera. Therefore, we believe that this contract is a "service" contract.

Office of Inspector General

UNITED STATES
DEPARTMENT OF ENERGY
WASHINGTON, D.C. 20585

OFFICIAL BUSINESS
PENALTY FOR PRIVATE USE, \$300
16_13

DO NOT MICROFILM
COVER