

U.S. DEPARTMENT OF ENERGY
OFFICE OF INSPECTOR GENERAL

REPORT ON
INSPECTION OF CONCERNS REGARDING DOE'S EVALUATION
OF CHEVRON U.S.A.'S UNSOLICITED PROPOSAL FOR THE
ELK HILLS NAVAL PETROLEUM RESERVE

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Report No: INS-0-98-01
Date Issued: November 17, 1997

Office of Inspections
Washington, DC 20585

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WASHINGTON, DC

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I. INTRODUCTION AND PURPOSE

An allegation was made to the Office of Inspector General (OIG) that the integrity of the Department of Energy's (DOE) unsolicited proposal review process may have been compromised by the actions of a former Deputy Secretary of Energy and his Executive Assistant during the review of an unsolicited proposal received from Chevron U.S.A. Production Company (Chevron) in May 1993. The Chevron unsolicited proposal was for the management and operation of DOE's Elk Hills Naval Petroleum Reserve (Elk Hills), located near Bakersfield, California. Chevron submitted the unsolicited proposal on May 19, 1993.

DOE formally rejected Chevron's unsolicited proposal in May 1995. Although Chevron's unsolicited proposal was eventually rejected by DOE, the complainant specifically alleged that the "sanctity, integrity, and sensitivity" of the unsolicited proposal review process had been breached in meetings during the Fall of 1993 between Chevron officials, the Deputy Secretary of Energy (Deputy Secretary), and his Executive Assistant.

Based on our review of the allegation, we identified the following issue as the focus of our inspection:

Was the DOE review of the Chevron unsolicited proposal handled in accordance with the requirements of DOE Order 4210.9A, "UNSOLICITED PROPOSALS?"

II. SCOPE AND METHODOLOGY

During this inspection, we interviewed the complainant, the former Deputy Secretary, and his Executive Assistant. We also interviewed DOE officials from the Office of the General Counsel (General Counsel), the Office of the Deputy Assistant Secretary for Procurement and Assistance Management (Procurement), and the Office of the Deputy Assistant Secretary for Naval

Petroleum and Oil Shale Reserves (NPOSR), who were involved in evaluating Chevron's unsolicited proposal and in conducting preliminary negotiations with Chevron. We also reviewed applicable regulations and guidance governing unsolicited proposals, including DOE Order 4210.9A, "UNSOLICITED PROPOSALS," dated June 6, 1993. We also analyzed documents contained in DOE's Official File for the "Chevron Unsolicited Proposal." Our inspection activities were conducted during the Summer and Fall of 1995.

This inspection was conducted in accordance with Quality Standards for Inspections issued by the President's Council on Integrity and Efficiency.

III. SUMMARY RESULTS OF INSPECTION

We found that DOE's merit review process for the Chevron unsolicited proposal proceeded in accordance with the requirements of DOE Order 4210.9A, "UNSOLICITED PROPOSALS." However, we also found that administrative deficiencies occurred in the processing of required documents during DOE's review process. Specifically, required conflict of interest and procurement integrity forms were not always completed as required by those DOE officials involved with reviewing and evaluating Chevron's unsolicited proposal. Additionally, the written approval of the Director of the Office of Clearance and Support, which was required for DOE to hold the unsolicited proposal longer than six months, was not obtained in accordance with the time frames specified in the Order for obtaining such approval. As a result, in July 1994, Departmental negotiators requested retroactive approval, effective February 20, 1994, to hold the unsolicited proposal until October 20, 1994.

During an ongoing DOE "merit review and evaluation" of the May 1993 Chevron unsolicited proposal, a former Deputy Secretary and his Executive Assistant met with Chevron representatives. Both the Deputy Secretary and his Executive Assistant were in attendance at the first meeting with Chevron representatives. The Executive Assistant also attended a subsequent meeting with Chevron representatives. These meetings were later the subject of a complaint letter received by the Office of Inspector General. The complainant wrote that these meetings were "clearly inappropriate," and such actions "undercut the integrity of the procurement process and the program office responsible for the operations of Elk Hills." A former Deputy Assistant Secretary for NPOSR, the program office responsible for Elk Hills, also expressed concerns regarding the meetings to his supervisor, and later during this inspection to OIG inspectors, that the integrity of the unsolicited proposal review process had been violated contrary to DOE Order 4210.9A. However, the former Deputy Assistant Secretary for

NPOSr was unable to identify to us a section of the applicable DOE Order which he believed was violated during the unsolicited proposal review process. When we reviewed the applicable Order, we were unable to identify any section of the Order which we believed had been violated when the Deputy Secretary or his Executive Assistant met with Chevron representatives.

We asked DOE Procurement and General Counsel officials involved in the review of the Chevron unsolicited proposal if they viewed the meetings between the Deputy Secretary, his Executive Assistant, and Chevron as being contrary to DOE Order 4210.9A. These officials said they did not view the meetings as being contrary to the Order. Also, our interviews of the Deputy Secretary and his Executive Assistant, and our reviews of their DOE financial disclosure files, did not reveal that they had any financial or personal interests in the outcome of the Chevron unsolicited proposal.

We did find, however, that administrative deficiencies occurred in the processing of required documents during the unsolicited proposal review process. DOE Order 4210.9A, "UNSOLICITED PROPOSALS," requires those involved in the review of an unsolicited proposal to execute both conflict of interest and procurement integrity forms. Attachment 2 of the Order under "GUIDELINES FOR EVALUATING UNSOLICITED PROPOSALS SUBMITTED TO DOE," states: "All reviewers, whether Federal or non-Federal employees, shall execute an appropriate conflict of interest statement. Further, for acquisition actions, each evaluator shall complete the certification [Procurement Integrity Certification for Procurement Officials] contained [in] . . . this attachment." The conflict of interest form is signed to certify that a reviewer has no conflicting financial or other interest in the unsolicited proposal. The procurement integrity form is signed to certify the reviewer's understanding of the Office of Federal Procurement Policy Act provisions governing the disclosure of proprietary and source selection information.

None of the DOE officials involved in the unsolicited proposal process were made aware of the conflict of interest certification requirement or executed a conflict of interest form. Legal and procurement officials at DOE Headquarters, including the DOE Unsolicited Proposal Coordinator, told us that the conflict of interest forms should have been signed by all persons involved in the unsolicited proposal review. We noted that DOE Order 4210.9A, while providing examples of other types of forms, did not provide an example of a conflict of interest form.

Additionally, two senior DOE officials involved in the review process did not execute the required procurement integrity forms. We were told that the Deputy Secretary and other DOE officials involved in the review process, with the exception of two officials, had executed procurement integrity forms. We confirmed that the then Deputy Assistant Secretary for Gas and Petroleum Technologies had been provided with the procurement integrity form, but failed

to properly execute it by signing and submitting the form. The Deputy Assistant Secretary for Gas and Petroleum Technologies could offer no explanation for why he did not sign and submit the form. The other official was the then Executive Assistant who, although attempts were made to provide him with a procurement integrity form, never processed the form because he said he never received the form, and he was unaware that he should have completed the form.

DOE Order 4210.9A specifies that a written approval from the Director of the Office of Clearance and Support is required for an unsolicited proposal to be held by the Department beyond six months. The Chevron unsolicited proposal was held by DOE for more than six months while DOE officials negotiated with Chevron on matters related to the proposal. We were told by the then Director of the Office of Clearance and Support that the decision to negotiate with Chevron was not documented. Additionally, the written approval of the Director of the Office of Clearance and Support, which was required for DOE to hold the unsolicited proposal longer than six months, was not obtained in accordance with the time frames specified in the Order for obtaining such approval. As a result, in July 1994, Departmental negotiators requested retroactive approval, effective February 20, 1994, to hold the unsolicited proposal until October 20, 1994.

IV. BACKGROUND

Elk Hills Naval Petroleum Reserve

President William Howard Taft designated 38,000 acres at Elk Hills, California, as "Naval Petroleum Reserve Number 1" in 1912 to ensure a secure supply of oil for the U.S. Navy. Approximately 12,000 acres were initially owned by the Standard Oil Company of California, while 26,000 acres were owned by the U.S. Government. Chevron, as successor to Standard Oil Company of California, obtained the first production from an Elk Hills oil well in 1919 and has remained the co-owner of Elk Hills. The initial mission of Elk Hills was to conserve the oil field's reserves for military needs. Chevron operated Elk Hills under negotiated operating agreements or competitive contracts from 1944 to 1975. Elk Hills remained largely inactive until 1976 when commercial sales began.

In 1942, Chevron and the U.S. Navy agreed to enter into a "partnership agreement" known as the Unit Plan Contract (UPC). The UPC was authorized by Congress on June 19, 1944. Under the UPC, the Department of the Navy (Navy) was originally identified as the operator and given the right, either upon the basis of competitive bid or direct negotiation, to select, in its sole discretion, the operator for Elk Hills. Chevron was the operator of Elk Hills for the Navy until 1975. From 1975 to 1985, the contractor for Elk Hills was Williams Brothers Engineering Company of Tulsa, Oklahoma. In 1985, DOE selected Bechtel Petroleum Operations, Incorporated (Bechtel), as the management and

operating (M&O) contractor. Bechtel's M&O contract for Elk Hills, initially in effect until 1990, was extended to September 30, 1996, with the option of an additional extension.

The United States Congress passed the Naval Petroleum Reserves Production Act of 1976 (NPR Act) in response to the early 1970's oil embargo. The NPR Act vested jurisdiction and control of Elk Hills in the Secretary of the Navy. However, this authority was subsequently transferred to the Secretary of Energy on October 1, 1977, by the Department of Energy Organization Act, Public Law 95-91, codified at 42 U.S. Code 7156. Among other requirements, the NPR Act stipulated that the reserves be fully developed and operated at their maximum efficient rate of production. In addition, the NPR Act authorized the sale of oil from the various Naval Petroleum Reserves, including Elk Hills, in a public sale to the highest bidder with revenues deposited in the U.S. Treasury. The NPR Act also provided authority for the Secretary of the Navy, later transferred to the Secretary of Energy, to enter into a contract for the management and operation of the Elk Hills oil field for a five-year period, renewable at the Secretary's option, for an additional five-year period. Furthermore, both the NPR Act and the UPC require the owners to periodically redetermine how the ownership percentages are to be divided. During our inspection, the U.S. Government owned about 78 percent of Elk Hills and Chevron, as co-owner, owned about 22 percent.

As the Bechtel M&O contract was approaching its expiration, DOE received an unsolicited proposal for the operation of Elk Hills from Chevron. Chevron's unsolicited proposal was received on May 19, 1993, and was titled "To Reduce Costs, Extend Economic Life and Increase Ultimate Recovery at the Naval Petroleum Reserves in California." Chevron's unsolicited proposal claimed that by making several operating improvements, Elk Hill's operating costs could be reduced by an estimated \$37 million annually. Chevron made their unsolicited proposal as co-owner of Elk Hills, and noted that, as a co-owner, Chevron was required by the UPC to operate Elk Hills without a fee. The Chevron unsolicited proposal was received by the DOE Unsolicited Proposal Coordinator at DOE Headquarters on May 19, 1993, and was then forwarded to the Office of the Deputy Assistant Secretary for NPOSR for a preliminary review in accordance with DOE Order 4210.9A, "UNSOLICITED PROPOSALS."

Following a favorable preliminary review, an evaluation of the proposal was conducted. This evaluation developed into direct negotiations with Chevron which continued until the Summer of 1994. By the Summer of 1994, DOE was considering obtaining competition for the management and operation of Elk Hills and negotiations with Chevron had stopped. On May 22, 1995, Chevron was notified by letter that DOE was no longer considering their proposal. The 1996 National Defense Authorization Act mandated the sale of Elk Hills. On October 6, 1997, DOE accepted a bid of \$3.65 billion in cash from Occidental Petroleum Corporation for the Government's share of the Elk Hills Reserve.

Closing of the transaction is expected to occur prior to the statutorily mandated deadline of February 10, 1998.

DOE Order 4210.9A

DOE Order 4210.9A, "UNSOLICITED PROPOSALS," dated January 6, 1993, sets forth the DOE policy, controls, and procedures for processing unsolicited proposals. The provisions of this Order apply to all written submissions to the Department on the initiative of the submitter for the purpose of obtaining a contract from the Department. Per Paragraph 4 of the Order, the Department follows the policy stated below with regard to unsolicited proposals:

"Present and future needs of the Nation demand the involvement of all resources in exploring alternative energy sources and technologies. To achieve this objective, it is DOE policy to encourage external sources of unique innovative methods, approaches, and ideas by stressing submission of unsolicited proposals for Government support."

DOE Order 4210.9A essentially establishes a two-phase process for receipt and review of unsolicited proposals. Following the receipt of an unsolicited proposal, a preliminary review is conducted. If the preliminary review is favorable, an objective merit review and evaluation is conducted. These two phases are discussed in more detail below.

Paragraph 10.b. of the Order encourages technical discussions between Department personnel and prospective submitters prior to the submission of unsolicited proposals. The actual processing of an unsolicited proposal begins when an unsolicited proposal is received by the Department and is subsequently forwarded to the Unsolicited Proposal Coordinator in DOE's Office of Clearance and Support. Upon receipt, the unsolicited proposal is logged and assigned an unsolicited proposal number, after which it is forwarded to the appropriate program or staff office for review. The appropriate program or staff official is to complete a preliminary review of the unsolicited proposal within 30 days of receipt to determine the existence of any immediately identifiable impediments to the funding of the unsolicited proposal.

Paragraph 10.d. sets forth the procedures for preliminary reviews of unsolicited proposals, including the identification of impediments to funding the proposal. Such impediments include the following: a lack of programmatic interest; failure to demonstrate a unique or innovative method, approach or idea; lack of funds for support; substantial duplication of known research; recent, current or planned solicitation; or existence of a program opportunity notice.

The preliminary review and other phases of the proposal review, are to be conducted in accordance with 48 Code of Federal Regulations, Chapter 1, subpart 15.5, Section 15.506-1, "Receipt and initial review." In summary, this regulation provides that, before initiating a comprehensive review, if the agency

point of contact does not have sufficient information to determine whether the unsolicited proposal meets specified requirements, then the point of contact shall provide the offeror an opportunity to submit the required data. Following the preliminary review, the Order states that submitters shall be notified of the review's results.

Following a favorable preliminary review, the program or staff official is to designate at least three additional qualified individuals to perform an objective merit review and evaluation of the proposal. The merit review and evaluation should normally be completed within six months of proposal receipt. If the objective and evaluation merit review and evaluation is favorable, and if the proposal is to be accepted, a justification for acceptance of an unsolicited proposal shall be prepared by the reviewing program office in accordance with applicable DOE procedures, the Department of Energy Acquisition Regulation, and the Federal Acquisition Regulation.

If the proposal is to be funded, the appropriate Departmental official forwards the proposal, along with appropriate supporting documentation, to the appropriate procurement office for award. The Order states that a submitter shall be notified of DOE's final decision to accept or reject an unsolicited proposal.

Certification Requirements of DOE Order 4210.9A

Attachment 2 of DOE Order 4210.9A requires that reviewers complete a conflict of interest statement, and a Procurement Integrity Certification for Procurement Officials. The Order states that "All reviewers, whether Federal or non-Federal employees, shall execute an appropriate conflict of interest statement." Also, for acquisition actions, each reviewer must complete a "Procurement Integrity Certification for Procurement Officials."

Paragraph 10.f. establishes time frames for DOE's review of unsolicited proposals. This paragraph specifies that "Final action on unsolicited proposals shall take place within 6 months of receipt." For DOE to hold an unsolicited proposal longer than the time frame specified in the Order, Paragraph 10.f. requires that the Director of the Office of Clearance and Support certify in writing his or her approval.

V. RESULTS OF INSPECTION

UNSOLICITED PROPOSAL REVIEW PROCESS

Issue: Was the DOE review of the Chevron unsolicited proposal in accordance with the requirements found in DOE Order 4210.9A, "UNSOLICITED PROPOSALS?"

Based on the interviews conducted, records and other data we reviewed, we found that DOE's review process for the Chevron unsolicited proposal proceeded in accordance with the requirements of DOE Order 4210.9A, "UNSOLICITED PROPOSALS." However, we found administrative deficiencies in the processing of required documents during DOE's review process. None of the DOE officials involved in the unsolicited proposal process were made aware of a conflict of interest certification requirement or executed a conflict of interest form. Additionally, two senior DOE officials involved in the review process did not execute the required procurement integrity forms. Additionally, the written approval of the Director of the Office of Clearance and Support, which was required for DOE to hold the unsolicited proposal longer than six months, was not obtained in accordance with the time frames specified in the Order for obtaining such approval. As a result, in July 1994, Departmental negotiators requested retroactive approval, effective February 20, 1994, to hold the unsolicited proposal until October 20, 1994.

The unsolicited proposal review process officially began on May 19, 1993, when Chevron submitted an unsolicited proposal to operate Elk Hills. After a preliminary review of the unsolicited proposal, DOE appointed a team to evaluate Chevron's unsolicited proposal (Evaluation Team). Following the evaluation, DOE commenced preliminary negotiations with Chevron regarding the Elk Hills operating agreement. However, by the Summer of 1994, DOE began to consider competing the management and operation of Elk Hills and negotiations with Chevron were stopped. Subsequently, competition was sought through a November 1994 Commerce Business Daily (CBD) notice.

The governing requirements for the DOE unsolicited proposal review, as well as the details of Chevron's unsolicited proposal submission and DOE's review process, are discussed in the following sections.

Chevron's Unsolicited Proposal Submission and Preliminary Review

In 1992, a DOE Elk Hills official and a Chevron official informally discussed the possibility of Chevron once again managing and operating Elk Hills. Chevron subsequently submitted an unsolicited proposal to DOE on May 19, 1993, for the operation of Elk Hills. DOE then initiated a preliminary review in accordance with the process identified in DOE Order 4210.9A, "UNSOLICITED PROPOSALS." Under this process, a preliminary review is conducted by the appropriate program office, within a 30-day time period, to determine the existence of any immediate impediments to funding the proposal.

According to the DOE Elk Hills Site Manager, about a year prior to Chevron submitting its proposal, he and a senior Chevron official discussed the pending expiration of the Bechtel contract and the possibility of Chevron once again managing and operating Elk Hills. The Elk Hills Site Manager told us that, after

this discussion, he learned that Chevron was in the process of drafting a proposal for submission to DOE.

On May 19, 1993, Chevron submitted their unsolicited proposal entitled "To Reduce Costs, Extend Economic Life and Increase Ultimate Recovery at the Naval Petroleum Reserves in California." Chevron's proposal claimed that, by making several operating improvements, the company could, among other predicted benefits, reduce Elk Hill's operating costs by an estimated \$37 million annually. Chevron made the proposal as co-owner of Elk Hills, and noted that, as a co-owner, Chevron was required by the Unit Plan Contract to operate Elk Hills without a fee. Upon receipt, the DOE Unsolicited Proposal Coordinator processed the Chevron unsolicited proposal in accordance with the provisions of DOE Order 4210.9A, "UNSOLICITED PROPOSALS." The Chevron unsolicited proposal was then forwarded to the Office of the Deputy Assistant Secretary for Naval Petroleum and Oil Shale Reserves (NPOSR), the applicable program office, for a preliminary review.

The preliminary review team found no immediate impediment to preclude DOE's acceptance of the Chevron unsolicited proposal. Our review of DOE documents associated with the unsolicited proposal review found that a DOE procurement official described the Chevron proposal as having "unique aspects related to Chevron avoidance of fees." Chevron was notified of the preliminary review team's favorable finding on June 2, 1993.

Evaluation Team's Merit Review and Evaluation

Following conclusion of the preliminary review, an Evaluation Team was established to conduct an objective merit review and evaluation of Chevron's unsolicited proposal. In a memorandum dated June 28, 1993, the Chairman of the Chevron Unsolicited Proposal Evaluation Team established the Evaluation Team. The Evaluation Team consisted of DOE procurement and legal representatives, as well as DOE representatives from the Elk Hills Site, NPOSR, and the Office of Fossil Energy. Subsequent to a July 8, 1993, "kick-off" meeting, the Evaluation Team began its review and evaluation which was targeted for completion within the six-month time frame specified by DOE Order 4210.9A. On October 26, 1993, during the Evaluation Team's ongoing evaluation of Chevron's proposal, Chevron representatives met with the former Deputy Secretary to discuss their proposal. During an October 28, 1993, DOE Evaluation Team meeting, the Deputy Secretary's meeting with Chevron officials was discussed. On November 17, 1993, also during the evaluation process, the then Executive Assistant to the Deputy Secretary met with Chevron representatives regarding their proposal. The Deputy Secretary was briefed on January 4, 1994, on the Evaluation Team's progress. The role of these meetings in the proposal review process is discussed in more detail below.

October 26, 1993, Chevron Meeting with the Deputy Secretary

On October 26, 1993, Chevron representatives met with the Deputy Secretary to discuss Chevron's unsolicited proposal. The meeting, which occurred during DOE's ongoing review and evaluation of Chevron's unsolicited proposal, was characterized on the Deputy Secretary's schedule as a "drop-by" meeting. Attendees at the meeting included the Executive Assistant to the Deputy Secretary, the former Deputy Assistant Secretary for NPOSR, a Chevron vice-president, a Chevron program director and a Chevron federal relations representative. The Deputy Assistant Secretary for NPOSR told us that during this meeting the Deputy Secretary expressed his intentions to accept the proposal. However, the Executive Assistant told us that the Deputy Secretary was only expressing approval of the proposal's concepts. The Deputy Secretary told us that, while he did not specifically recall the meeting, he was always careful not to promote one vendor over another during any proposal discussions. He did recall, however, that Chevron's proposal contained cost savings and an approach to operating Elk Hills that coincided with Departmental goals and contract reform initiatives.

DOE Evaluation Team Meeting on October 28, 1993

DOE Evaluation Team members met on October 28, 1993. Minutes of this meeting indicate that the Deputy Assistant Secretary for NPOSR discussed the Deputy Secretary's October 26, 1993, meeting with Chevron. The then Director of the Office of Clearance and Support told us he attended the October 28, 1993, meeting at which the Deputy Assistant Secretary for NPOSR said that during the October 26, 1993, meeting, the Deputy Secretary authorized stopping the evaluation process and the beginning of direct negotiations with Chevron.

The Deputy Assistant Secretary for NPOSR told us he was concerned that the Deputy Secretary's October 26, 1993, meeting with Chevron representatives violated the integrity of the proposal review process and violated provisions of DOE Order 4210.9A. The Deputy Assistant Secretary for NPOSR said he discussed these concerns during the October 28, 1993, meeting and was advised by the then Director of the Office of Clearance and Support, and also the Special Assistant to the Deputy Assistant Secretary for Procurement and Assistance Management, to document his concerns. However, when we spoke with these officials they said that their advice to the Deputy Assistant Secretary for NPOSR was not to document his concerns but to document, in a "decision paper," the Deputy Secretary's verbal authorization to stop the evaluation process and begin direct negotiations with Chevron. These two officials told us they did not want to stop the evaluation process based solely on an undocumented verbal authorization from the Deputy Secretary.

Chevron's Meeting with Executive Assistant on November 17, 1993

During the evaluation process, the Executive Assistant to the Deputy Secretary met with a Chevron program official and a Chevron federal relations representative on November 17, 1993. The Executive Assistant to the Deputy Secretary told us that he could not specifically recall what had been discussed at this meeting. In a memorandum dated November 19, 1993, the Deputy Assistant Secretary for NPOSR notified his supervisor, the Acting Assistant Secretary for Fossil Energy, of his personal concern that it was inappropriate for the Executive Assistant to meet with Chevron representatives while the evaluation process was underway.

Extension Granted

On November 19, 1993, at the conclusion of the original six-month period, the then Director of the Office of Clearance and Support provided written approval for DOE to hold Chevron's proposal until February 20, 1994. This approval was granted in response to a request from the Chairman of the Evaluation Team for additional time to evaluate Chevron's unsolicited proposal.

Evaluation Team Meeting with the Deputy Secretary on January 4, 1994

On January 4, 1994, the Deputy Secretary was given a progress briefing by the Evaluation Team. A senior Evaluation Team member told us the Evaluation Team provided the Deputy Secretary with an alternative operating agreement they had prepared for Elk Hills based on their revisions to Chevron's proposal. The senior Evaluation Team member said the Deputy Secretary had agreed with the terms of the team's alternative operating agreement. However, soon after the meeting, the senior Evaluation Team member said the Deputy Assistant Secretary for NPOSR told him that the Deputy Secretary had "flip flopped" and rejected the alternative operating agreement. When we spoke to the Deputy Secretary, he said that he could not recall the details of this briefing. According to members of the Evaluation Team, including the Elk Hills Site Manager, it was shortly after this briefing that direct negotiations with Chevron regarding an operating agreement began. The senior Elk Hills contract official on the Negotiation Team told us the Deputy Secretary intervened in the unsolicited proposal review process by assigning the Office of Fossil Energy's Business Sector Manager for Oil and Gas to begin direct negotiations with Chevron.

Although DOE Order 4210.9A does not require any specific written approval to begin direct negotiations with a proposal submitter, the Order does require the preparation of adequate written records pertaining to proposal reviews. We believe, due to the authorities vested in the Director of the Office of Clearance and Support by the Order, that the written approval of the Director should be

obtained prior to the commencement of direct negotiations between the Department and the submitter of an unsolicited proposal.

Negotiation Team

The Evaluation Team found several areas for further negotiation in the Chevron unsolicited proposal. As a result, members of a Negotiation Team were recommended on February 3, 1994, and were appointed on March 1, 1994. The Negotiation Team subsequently began negotiations with Chevron in Bakersfield, California. However, written approval to hold Chevron's unsolicited proposal expired on February 20, 1994. At this point, the Deputy Assistant Secretary for NPOSR voiced concerns to the then Acting Assistant Secretary for Fossil Energy regarding the unsolicited proposal process. The negotiation activities and the details of the concerns are discussed below.

The Deputy Assistant Secretary for NPOSR recommended members for the Negotiation Team in a February 3, 1994, memorandum to the Acting Assistant Secretary for Fossil Energy. The members recommended for the Negotiation Team included two DOE Elk Hills senior managers, two DOE officials of the Office of the Deputy Assistant Secretary for NPOSR, two officials from the DOE General Counsel's office, and a DOE procurement representative.

The Acting Assistant Secretary for Fossil Energy appointed the Negotiation Team members on March 1, 1994. The Acting Assistant Secretary for Fossil Energy notified the Deputy Secretary of the selections by memorandum on the same date. The appointed Negotiation Team included the recommended team, with the addition of the Office of Fossil Energy's Business Sector Manager for Oil and Gas.

The Team subsequently began negotiations with Chevron at Bakersfield. These negotiations addressed such areas as future DOE involvement at Elk Hills, applicability of DOE Orders and other Federal regulations for the "commercial operations" at Elk Hills, and the validity of Chevron's projected cost savings. These negotiations were originally to be led by the DOE Elk Hills Site Manager. However, we were told the negotiations were essentially "taken over" by the Office of Fossil Energy's then Deputy Assistant Secretary for Gas and Petroleum Technologies, who had attended the negotiations as an "observer," and the Business Sector Manager for Oil and Gas. During the negotiations, operating terms for Elk Hills were never agreed upon.

The handling of the proposal, to this point, resulted in the Deputy Assistant Secretary for NPOSR voicing concerns to his supervisor, the then Acting Assistant Secretary for Fossil Energy. On April 6, 1994, the Deputy Assistant Secretary for NPOSR forwarded a memorandum to the Acting Assistant Secretary for Fossil Energy, outlining his concerns regarding the review of the

proposal. This memorandum addressed the possibility of impropriety regarding the meetings between the Deputy Secretary, the Executive Assistant to the Deputy Secretary, and Chevron officials.

The Deputy Assistant Secretary for NPOSR stated to Office of Inspector General inspectors that these meetings specifically violated DOE Order 4210.9A, but was unable, when offered a copy of the Order, to identify a specific citation for the section of the Order allegedly violated. We reviewed the Order and found no indication that the Order was violated through meetings with Chevron representatives by the Deputy Secretary, or the Executive Assistant to the Deputy Secretary. We asked DOE Procurement and General Counsel officials involved in the review of the Chevron unsolicited proposal if they viewed the meetings between the Deputy Secretary, his Executive Assistant, and Chevron as being contrary to DOE Order 4210.9A. These officials said they did not view the meetings as being contrary to the Order. Also, our interviews of the Deputy Secretary and the Executive Assistant, and our reviews of their DOE financial disclosure files, did not reveal that they had any financial or personal interests in the outcome of the Chevron unsolicited proposal.

Competition For the Elk Hills M&O Contract Considered by DOE

By the Summer of 1994, DOE was considering obtaining competition for the management and operation of Elk Hills and negotiations with Chevron had stopped. During a meeting regarding the Chevron unsolicited proposal, the Secretary of Energy expressed an interest in competing the contract for operating Elk Hills. Subsequently, a Commerce Business Daily (CBD) notice was published announcing DOE's interest in competing the Elk Hills operation. On May 22, 1995, Chevron officials were notified that DOE was no longer considering their proposal. The existing operating contractor, Bechtel Petroleum Operations, Inc., received an extension to their contract in July 1995. These events are described in more detail in the following section.

The Secretary of Energy met with the Assistant Secretary for Fossil Energy, the DOE General Counsel, and others on August 16, 1994, to discuss the Chevron unsolicited proposal. In this meeting, the Secretary expressed an interest in competing the contract for operating Elk Hills. We were told by those involved with the negotiations that the Secretary's comments in this meeting effectively ended the negotiations with Chevron. In a September 13, 1994, meeting with the Assistant Secretary for Fossil Energy and the Deputy Assistant Secretary for NPOSR, the Elk Hills Site Manager was tasked with preparing a CBD notice. This task was subsequently delegated to the DOE Elk Hills Contracts and Financial Management Division.

The CBD notice, announcing DOE's interest in competing Elk Hills' operation, was published on November 4, 1994. The notice sought expressions of interest

from companies that would consider competing for the operating contract at Elk Hills. The CBD Notice also announced that the Department was giving consideration to Chevron's unsolicited proposal. The Department sought to determine if qualified commercial entities, in addition to Chevron, were interested in participating in a competitive process for the operation of Elk Hills. We were told by a DOE official in the Elk Hills Contracts and Financial Management Division that approximately 17 companies expressed an interest in operating Elk Hills.

On May 22, 1995, Chevron was notified by letter that DOE was no longer considering their proposal. The letter from the Assistant Secretary for Fossil Energy stated the following:

“As you know, your proposal to become the operator of the Elk Hills field is no longer being considered by the Department of Energy. The Administration has determined that it would be in the best interest of the Nation to sell the DOE interest in the Elk Hills field to private industry by the end of FY 97 and, if unsuccessful in that effort, to continue to operate the field under a government corporation.”

The existing operating contractor, Bechtel Petroleum Operations, Inc., received a contract extension in July 1995 based on a provision in the National Defense Authorization Act of 1995. Specifically, this contractual modification extended Bechtel's contract for a term of 14 months, through September 30, 1996, with an option to extend the contract for an additional ten months. This extension provided for continued contractual coverage of the Elk Hills operation during Congressional consideration of the future options, including the possible sale of the Elk Hills field. The 1996 National Defense Authorization Act mandated the sale of Elk Hills. On October 6, 1997, DOE accepted a bid of \$3.65 billion in cash from Occidental Petroleum Corporation for the Government's share of the Elk Hills Reserve.

Conclusions

We reviewed DOE Order 4210.9A and found no indication that the Order was violated through meetings with Chevron representatives by the former Deputy Secretary, or the then Executive Assistant to the Deputy Secretary. We asked DOE Procurement and General Counsel officials involved in the review of the Chevron unsolicited proposal if they viewed the meetings between the Deputy Secretary, his Executive Assistant, and Chevron as being contrary to DOE Order 4210.9A. These officials said they did not view the meetings as being contrary to the Order. Also, our interviews of the Deputy Secretary and the Executive Assistant, and our reviews of their DOE financial disclosure files, did not reveal

any financial or personal interests in the outcome of the Chevron unsolicited proposal.

ADMINISTRATIVE DEFICIENCIES

We found that the review of the Chevron unsolicited proposal proceeded in accordance with DOE Order 4210.9A. However, we found administrative deficiencies in the processing of required documents during the review process. DOE Order 4210.9A requires those involved in proposal reviews to execute conflict of interest and procurement integrity forms. None of the officials involved in the proposal process executed a required conflict of interest form. Additionally, two senior DOE officials involved in the review process did not execute the required procurement integrity form. Further, timely written approval from the Director of the Office of Clearance and Support was not obtained once the proposal was held beyond the six-month time frame specified in the Order.

Required Forms Not Executed

The required conflict of interest form was not executed by any official involved in the Chevron unsolicited proposal review, including the former Deputy Secretary, the then Executive Assistant to the Deputy Secretary, or any of the Evaluation and Negotiation Team members. Legal and procurement officials at DOE Headquarters, including the DOE Unsolicited Proposal Coordinator, told us that the conflict of interest form should have been signed by all those involved in the unsolicited proposal review. An NPOSR program office employee, who was responsible for having the appropriate forms signed by the reviewers during the review, told us that no one involved with the Chevron unsolicited proposal review had signed a conflict of interest form or noticed the requirement in DOE Order 4210.9A to execute such forms. We noted that DOE Order 4210.9A, while providing examples of other types of forms, did not provide an example of a conflict of interest form. Procurement officials were unable to locate a copy of the required conflict of interest form during our inspection fieldwork. When we discussed this with the DOE Headquarters Procurement official responsible for the content of this Order, he said that the Order needed revision to include the appropriate example.

We were told that the Deputy Secretary and other DOE officials involved in the review process, with the exception of two officials, had executed the required procurement integrity form. This concern was one raised in the previously discussed April 6, 1994, memorandum from the Deputy Assistant Secretary for NPOSR to the Acting Assistant Secretary for Fossil Energy. The two officials mentioned were the then Deputy Assistant Secretary for Gas and Petroleum Technologies, and the Executive Assistant to the Deputy Secretary. We confirmed that the Deputy Assistant Secretary for Gas and Petroleum Technologies had been provided with the procurement integrity form, but had

failed to properly execute it by signing and submitting the form. The Deputy Assistant Secretary for Gas and Petroleum Technologies could offer no explanation for why he did not sign and submit the form.

With respect to the Executive Assistant, the individual responsible for having the procurement integrity forms signed by DOE reviewers during the Chevron unsolicited proposal review told us that two attempts were made to obtain the Executive Assistant's signed procurement integrity form. This individual, a secretary in the Office of Fossil Energy (Fossil Energy secretary), told us that she personally delivered the procurement integrity form to the Executive Assistant's secretary in an attempt to obtain the signature of the Executive Assistant on the form. When the form was not returned, the Fossil Energy secretary told us that, rather than follow up with the Executive Assistant's secretary, she raised the issue with the Office of Fossil Energy's Business Sector Manager for Oil and Gas. The Fossil Energy secretary told us that the Business Sector Manager promised to speak to the Executive Assistant about signing the form. The Business Sector Manager told us he did not recall having a conversation with the Fossil Energy secretary concerning this issue. The form was never returned to the Fossil Energy secretary and she told us that she did not follow up further. The Executive Assistant told us that his staff was responsible for bringing to his personal attention items requiring his signature. He also said he never saw the procurement integrity form and was unaware that he should have completed the form.

Timely Written Approval Not Obtained

DOE Order 4210.9A specifies that written approval of the Director of the Office of Clearance and Support is required when an unsolicited proposal is to be held by the Department beyond six months. The Chevron unsolicited proposal was held by DOE for more than six months while DOE officials negotiated with Chevron on matters related to the unsolicited proposal.

As previously stated, on November 19, 1993, at the conclusion of the original six-month period, the then Director of the Office of Clearance and Support provided written approval for DOE to hold Chevron's proposal until February 20, 1994. On July 21, 1994, the Director was presented with, and approved, a retroactive request for written approval to extend Chevron's unsolicited proposal beyond February 20, 1994. This request, from a member of the Negotiation Team, made reference to the "evaluation period" and requested that the Director approve an extension from February 20, 1994, the expiration date of the first extension beyond the original six-month period, until October 20, 1994. However, we note that, at the time of the July 21, 1994, request for written approval to extend the evaluation, direct negotiations with Chevron had already commenced.

VI. RECOMMENDATIONS

We recommend that the Deputy Assistant Secretary for Procurement and Assistance Management:

1. Revise DOE Order 4210.9A, "UNSOLICITED PROPOSALS," to include an example of a Conflict of Interest form, and take appropriate actions to ensure that this form and the Procurement Integrity Certification form are completed at the appropriate times during future unsolicited proposal reviews.
2. Revise DOE Order 4210.9A, "UNSOLICITED PROPOSALS," to require written approval by the Director of the Office of Clearance and Support to stop an unsolicited proposal evaluation and to begin direct negotiations with the submitter of the proposal.
3. Ensure that advance written approval, as specified by DOE Order 4210.9A, is provided by the Director of the Office of Clearance and Support, should the need arise to hold future unsolicited proposals beyond the allowed six-month time frame.

VII. MANAGEMENT COMMENTS

A management official with the Office of the Deputy Assistant Secretary for Procurement and Assistance Management reviewed a draft of this report and concurred with Recommendation 1. Management advised that, during our inspection, DOE Order 4210.9A was revised and republished as DOE Order 542.2. In conjunction with the new Order, management commented that the "Manual for Processing Unsolicited Proposals Submitted to the Department of Energy" was published June 5, 1997. Management responded that "The Manual, DOE M 542.2-1, includes an example of both the Conflict of Interest form and the Procurement Integrity Certification form, as recommended." However, management suggested that "the Program Unsolicited Proposal Liaison Officers would be the appropriate individuals to undertake that responsibility." We consider the action and suggestion by management to be responsive to Recommendation 1.

With respect to Recommendation 2, management concurred in principle and commented:

"We do not believe that it is appropriate for the Director of the Office of Management Systems (formerly the Office of Clearance and Support) to stop a proposal and direct negotiations. That is, no negotiations should be held until the proposal is accepted; discussions are appropriate in order to better understand the proposal. The procurement office which

will ultimately execute the contractual vehicle, should assume responsibility for directing negotiations to begin at the appropriate time and should provide such direction in writing. If any negotiations had occurred during the review, the procurement office may either continue those negotiations or repudiate them. The Director, Office of Management Systems, lacks the insight into the discussions underway during the course of a review, such that the Director would be unable to make an informed decision.

We will revise the Order accordingly by September 30, 1998.”

We consider the planned action and suggestion by management to be responsive to Recommendation 2.

With respect to Recommendation 3, management commented that, during our inspection, DOE Order 4210.9A was revised (as DOE O 542.2) to require the Unsolicited Proposals Coordinator to reject a proposal for which a final decision has not been made within 12 months of receipt, absent an approved extension of the review period beyond six-months. Management advised that the intent of this revision was “to place a positive duty on the program office to conduct the reviews and respond accordingly within the established time frames.” We consider this action to be responsive to Recommendation 3.

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