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Department of Energy
Washington, DC 20585

OCT 25 2016

Re: Freedom of Information Act Request HQ-2016-01041-F

This is the Office of Inspector General (OIG) partial response to the request for information that you sent to the Department of Energy (DOE) under the Freedom of Information Act (FOIA), 5 U.S.C. § 552. You asked for a copy of the DOE OIG reports identified by the following numbers:

- DOE/IG-0919
- OAS-SR-07-01
- SI-11-27
- S051S042
- S051S022
- IG-0671
- OAS-SR-05-03
- OAS-SR-05-01
- S021S020
- S01IS018
- S99IS022
- S95IS017
- OAS-FS-14-04
- OAS-FS-13-07
- S99IS025
- OAS-SR-10-04
- S04IS002

The OIG has completed the search of its files and located documents responsive to your request. This partial response letter provides the OIG response with respect to all of the requested reports, other than the one identified by the number DOE/IG-0919. A response regarding that requested report will be provided at a later date.

A review of twenty-three (23) responsive documents and a determination concerning their release has been made pursuant to the FOIA, 5 U.S.C. § 552. Based on this review, the OIG determined that certain material has been withheld from the responsive documents pursuant to



subsections (b)(3), (b)(5), (b)(6), (b)(7)(C), and (b)(7)(E) (referred to as Exemptions 3, 5, 6, 7(C), and 7(E) respectively). Specifically the OIG review determined:

- Documents 1, 5, 8 -12, 22, and 23 are being released to you with certain material withheld pursuant to Exemptions 6 and 7(C).
- Documents 2, 4, 20, and 21 are being released to you in their entirety.
- Document 3 originated with the DOE's Office of Intelligence and Counterintelligence (IN). This document has been forwarded to IN for a determination concerning its releasability. IN will respond directly to you concerning the document.
- Document 6 is being released to you with certain material withheld pursuant to Exemptions 3, 5, 6, and 7(C).
- Document 7 is being released to you with certain material withheld pursuant to Exemptions 6, 7(C), and 7(E).
- Document 13 - 19 originated with the DOE's Office of Environmental Management (EM). These document have been forwarded to EM for a determination concerning their releasability. EM will respond directly to you concerning these documents.

If you have any questions about the processing of Documents 3 and 13 -19, you may contact the following:

Mr. Alexander C. Morris, U.S. Department of Energy, 1000 Independence Avenue, SW,
Washington, DC 20585 or on (202) 586-5955

Exemption 3 protects information included in OIG's records specifically exempted from disclosure by another Federal statute; in this case the National Security Act of 1947, 50 U.S.C. § 3024(i)(1). Pursuant to this statute, certain information pertaining to intelligence sources and methods is protected.

Exemption 5 exempts from mandatory disclosure "inter-agency or intra-agency memorandums or letters which would not be available by law to a party other than an agency in litigation with the agency. . . ." Exemption 5 incorporates the attorney-client privilege, which protects confidential communications related to a legal matter for which a client has sought professional advice. The privilege protects a client's disclosure to an attorney, the attorney's opinions regarding the information disclosed, and communications between attorneys regarding the information.

The information withheld under Exemption 5 includes confidential communications between DOE attorneys and DOE staff. Releasing this information could have a chilling effect on the willingness of attorneys to make honest and open recommendations to their clients in the future and harm the integrity of the governmental decision-making process. Therefore, information is being withheld pursuant to the attorney-client privilege.

Exemption 6 protects from disclosure “personnel and medical and similar files the disclosure of which would constitute a clearly unwarranted invasion of personal privacy. . . .” Exemption 7(C) provides that “records or information compiled for law enforcement purposes” may be withheld from disclosure, but only to the extent the production of such documents “could reasonably be expected to constitute an unwarranted invasion of personal privacy. . . .”

Names and information that would tend to disclose the identity of certain individuals have been withheld pursuant to Exemptions 6 and 7(C). Individuals involved in the OIG enforcement matters, which in this case include subjects, witnesses, sources of information, and other individuals, are entitled to privacy protections so that they will be free from harassment, intimidation and other personal intrusions.

In invoking Exemptions 6 and 7(C), we have determined that it is not in the public interest to release the withheld material. In this request, we have determined that the public interest in the identity of individuals who appear in these files does not outweigh these individuals’ privacy interests. Those interests include being free from intrusions into their professional and private lives.

Exemption 7(E) protects information that “would disclose techniques and procedures for law enforcement investigations or prosecutions, or would disclose guidelines for law enforcement investigations or prosecutions if such disclosure could reasonably be expected to risk circumvention of the law.” 5 U.S.C. § 552(b)(7)(E).

The information withheld pursuant to Exemption 7(E) consists of descriptions of a cyber security incident at a DOE site. The redacted information includes computer system configurations and architecture, hardware and software employed at DOE’s sites, tools and services utilized, cyber defense actions, and identification of encryptions used at various DOE’s sites. Disclosure of this information runs the reasonably foreseeable risk of circumventing the law by allowing malicious actors additional information about what tools and techniques to successfully employ against specific DOE sites. Further, the information withheld details potential vulnerabilities which can be used to compromise additional DOE computer systems in the future. Thus, a document is being withheld, in part, under Exemption 7(E) of the FOIA.

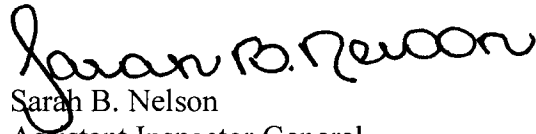
To the extent permitted by law, the DOE, in accordance with Title 10, Code of Federal Regulations (C.F.R.) § 1004.1, will make available records it is authorized to withhold pursuant to the FOIA unless it determines such disclosure is not in the public interest.

As required, all releasable information has been segregated from the material that is withheld and is provided to you. See 10 C.F.R. § 1004.7(b)(3).

This decision may be appealed within 30 calendar days from your receipt of this letter pursuant to 10 C.F.R. § 1004.8. Appeals should be addressed to the Director, Office of Hearings and Appeals, HG-1/L’Enfant Plaza Building, U.S. Department of Energy, 1000 Independence Avenue SW, Washington, DC 20585-1615. You may also submit your appeal by e-mail to OHA.filings@hq.doe.gov, including the phrase “Freedom of Information Appeal” in the subject line.

Thereafter, judicial review will be available to you in the Federal district court either (1) in the district where you reside, (2) where you have your principal place of business, (3) where the Department's records are situated, or (4) in the District of Columbia.

Sincerely,

A handwritten signature in black ink, appearing to read "Sarah B. Nelson". The signature is fluid and cursive, with the first name "Sarah" being more prominent than the last name "Nelson".

Sarah B. Nelson
Assistant Inspector General
for Audits and Administration
Office of Inspector General

Enclosures

Document Number 1



Department of Energy

Washington, DC 20585

March 21, 2005

MEMORANDUM FOR THE SECRETARY

FROM:

Greg Friedman
Gregory H. Friedman
Inspector General

SUBJECT:

INFORMATION: Report on Review of Possible Inappropriate Job Solicitation (S05IS022)

Based upon a request from your office, the Office of Inspector General initiated a review of an

(b)(6),(b)(7) allegation that [redacted] Management, broached the possibility of future employment with [redacted] (b)(6),(b)(7)
(C) [redacted] of Washington Group International. Washington Group International is one of (C)
(b)(6),(b)(7) the entities competing for a contract for which [redacted] is the Source Selection Official. (C)

(b)(6),(b)(7) As part of our review, we interviewed individuals who were identified as potentially having (C)
(b)(6),(b)(7) information relevant to this matter, including [redacted] and [redacted] and [redacted] (b)(6),(b)(7)
(C) [redacted] acknowledged having two telephone conversations within the last several weeks. (C)
(b)(6),(b)(7) However, when interviewed, both [redacted] and [redacted] stated that during their (b)(6),(b)(7)
(C) conversations [redacted] did not solicit employment at Washington Group International. (C)

(b)(6),(b)(7) The source of the original allegation, a person outside the Department of Energy, told us [redacted] had (b)(6),(b)(7)
(C) heard that [redacted] had given [redacted] the impression that [redacted] was seeking employment with (b)(6),(b)(7)
(b)(6),(b)(7) Washington Group International. This person told us that [redacted] had heard this from one of two (b)(6),(b)(7)
(C) individuals at Washington Group International. However, when interviewed, both individuals (C)
(b)(6),(b)(7) denied having made the comment. Further, the original source told us that [redacted] had no first hand (b)(6),(b)(7)
(C) knowledge of the conversation between [redacted] and [redacted], nor did [redacted] have other (C)
(b)(6),(b)(7) evidence to substantiate the allegation. (b)(6),(b)(7)(C) (b)(6),(b)(7)
(C) (C)

Absent any new information, we are concluding our inquiry into this matter. The results of our review were shared with the Department's Assistant General Counsel for General Law.

Please contact me if I may be of any further assistance.

This report is the property of the Office of Inspector General and is for OFFICIAL USE ONLY. Appropriate safeguards should be provided for the report and access should be limited to Department of Energy officials who have a need-to-know. Any copies of the report should be uniquely numbered and should be appropriately controlled and maintained. Public disclosure is determined by the Freedom of Information Act, Title 5, U.S.C. § 552, and the Privacy Act, Title 5, U.S.C. § 552a. The report may not be disclosed outside the Department without prior written approval of the Office of Inspector General.

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Document Number 2

~~OFFICIAL USE ONLY~~



U.S. Department of Energy
Office of Inspector General
Office of Inspections and Special Inquiries

Inspection Report

Concerns Regarding the Department of Energy's Counterintelligence Inspection Program

RELEASE

~~OFFICIAL USE ONLY~~

~~This report is marked as Official Use Only in view of the Official Use Only comments provided to the Office of Inspector General by the Office of Counterintelligence.~~

DOE/IG-0671

January 2005

~~OFFICIAL USE ONLY~~

~~OFFICIAL USE ONLY~~



Department of Energy
Washington, DC 20585

January 18, 2005

MEMORANDUM FOR THE SECRETARY

FROM:

Greg Friedman
Gregory H. Friedman
Inspector General

SUBJECT:

INFORMATION: Inspection Report on "Concerns Regarding the Department of Energy's Counterintelligence Inspection Program"

BACKGROUND

The Office of Inspector General (OIG) recently completed a review of allegations regarding the Department of Energy's (DOE) counterintelligence inspection program (Inspection Program). Specifically, a confidential complainant alleged that: the cost of the Inspection Program was excessive; the Inspection Program lacked Federal management; inspection reports were biased against National Nuclear Security Administration facilities and activities; inspections were not conducted in compliance with Generally Accepted Government Auditing Standards; and, inspection reports were not timely.

The objective of our review was to determine the facts surrounding the allegations. The OIG did not attempt to assess the overall quality of the Inspection Program. This report contains information from documents marked by the program office as "Official Use Only." Accordingly, this report is marked "Official Use Only."

RESULTS OF INSPECTION

We were unable to substantiate the allegations regarding the Inspection Program.

One of the allegations provided to the OIG was that the cost of the Inspection Program was excessive. Because we could not identify a comparable program at another agency, we had no meaningful benchmark against which to compare the cost of the DOE effort. Thus, we were not in a position to opine conclusively on the excessive cost question.

In evaluating the cost issue, however, we found that neither Federal officials nor Pacific Northwest National Laboratory (Pacific Northwest) officials, who were responsible for managing the Inspection Program, could initially provide complete and detailed data on the specific cost of individual inspections. While this complicated our work, it did not affect the conclusions noted above.

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Further, during the course of our review, certain other matters came to our attention and we provide the following observations:

- The use of Pacific Northwest to procure the services to conduct counterintelligence inspections was inconsistent with DOE policy on purchasing by management and operating contractors; and,
- There were philosophical differences between Office of Counterintelligence and Office of Defense Nuclear Counterintelligence officials, resulting in part from the Department's bifurcated counterintelligence program. We believe these differences have the potential to undermine the effectiveness of the overall counterintelligence efforts of the Department.

We made recommendations to management to address the issues raised in this report.

MANAGEMENT REACTION

Management took issue with certain recommendations, observations, and statements in our report. Management's comments are provided in their entirety in Appendix B. Where appropriate, we revised our report based on management comments.

Attachment

cc: Deputy Secretary
Administrator, National Nuclear Security Administration
Under Secretary for Energy, Science and Environment
Director, Office of Counterintelligence
Director, Office of Intelligence
Director, Office of Management, Budget and Evaluation
Chief, Office of Defense Nuclear Counterintelligence
Director, Office of Program Liaison and Financial Analysis (ME-100)
Director, Policy and Internal Controls Management (NA-66)

CONCERNS REGARDING THE DEPARTMENT OF ENERGY'S COUNTERINTELLIGENCE INSPECTION PROGRAM

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INTRODUCTION AND OBJECTIVE

The Office of Inspector General (OIG) recently completed a review of allegations regarding the Department of Energy's (DOE) counterintelligence inspection program (Inspection Program). Specifically, a confidential complainant alleged that: the cost of the Inspection Program was excessive; the Inspection Program lacked Federal management; inspection reports were biased against National Nuclear Security Administration (NNSA) facilities and activities; inspections were not conducted in compliance with Generally Accepted Government Auditing Standards (GAGAS); and, inspection reports were not timely.

The objective of our review was to determine the facts surrounding the allegations. The OIG did not attempt to assess the overall quality of the Inspection Program.

BACKGROUND

Presidential Decision Directive-61 (PDD-61), "U. S. Department of Energy Counterintelligence Program," issued in 1998, required DOE to establish a formal Inspection Program to identify deficiencies in and to improve operations of DOE's counterintelligence functions. Historically, both defense and non-defense counterintelligence activities were managed within the Department by a single, unified counterintelligence office. In accordance with PDD-61, the Office of Counterintelligence (OCI) was created for this purpose, reporting directly to the Secretary of Energy. However, in the FY 2000 National Defense Authorization Act, DOE's counterintelligence operations were bifurcated by the creation of a separate Office of Defense Nuclear Counterintelligence (ODNCI) responsible for NNSA counterintelligence activities. While the Department now has two separate counterintelligence offices, the OCI Director retained responsibility for the Inspection Program both for NNSA and non-NNSA operations. The Inspection Program is administered for the OCI Director by Pacific Northwest National Laboratory (Pacific Northwest), a DOE management and operating (M&O) contractor. Pacific Northwest subcontracts with individual inspectors who conduct the counterintelligence inspections.

**OBSERVATIONS AND
CONCLUSIONS**

We did not substantiate the allegations regarding the Inspection Program. However, we found that:

- Neither Federal program officials nor contractor officials responsible for managing the Inspection Program could initially provide detailed data on the specific costs of the individual inspections conducted under the program. During our review, Pacific Northwest provided changing cost figures regarding the cost of individual inspections.

Although not directly related to the scope of our review, we made the following observations:

- The use of Pacific Northwest to procure the services of inspectors to conduct counterintelligence inspections was inconsistent with DOE policy on purchasing by M&O contractors; and,
- There were philosophical differences between OCI and ODNCI officials, resulting in part from the Department's bifurcated counterintelligence program. We believe these differences have the potential to undermine the effectiveness of the overall counterintelligence efforts of the Department.

**COST OF THE
INSPECTION
PROGRAM**

We could not determine if the costs of the Inspection Program were excessive. We attempted to contrast the costs of the Inspection Program with similar efforts in other agencies. However, we were unable to find a comparable program to serve as a benchmark. Responsible officials advised that the Inspection Program was modeled after the Federal Bureau of Investigation's (FBI) field office inspection program. A senior FBI Inspections Division official identified significant differences between the Inspection Program at DOE and the FBI's program. Therefore, we could not compare the two programs.

**FEDERAL
MANAGEMENT**

We found that Federal managers provide direct oversight of the Inspection Program. However, responsible Federal officials could not provide data regarding the specific costs of the individual inspections conducted under the Inspection Program. Also, during our review, Pacific Northwest provided changing cost figures regarding the cost of individual inspections. Under these circumstances, we do not believe that Federal managers have adequate assurance that the costs for the Inspection Program are being properly managed.

When we asked Federal officials for the costs of the individual inspections, they referred us to Pacific Northwest. Initially, Pacific Northwest could not provide detailed cost data for individual inspections. Subsequently, Pacific Northwest provided us different cost data on several occasions between July 2003 and December 2004.

Based upon the latest data provided by Pacific Northwest in December 2004, approximately \$7.8 million was spent on labor and travel costs for specific inspections between the start of the program in 1999 and late 2003, and approximately the same amount was spent on other Inspection Program costs, including overhead costs. The other Inspection Program costs include Pacific Northwest's cost to manage/administer the Inspection Program, which was approximately 9 percent of the yearly total inspection cost. Pacific Northwest officials said that the 9 percent consisted of labor/travel hours associated with managing the project (client interface, monthly/quarterly reports, etc.), and the costs associated with administering the inspector subcontracts.

Using the cost data provided by Pacific Northwest in December 2004, we calculated that approximately \$15.6 million was spent on the Inspection Program between 1999 and late 2003, of which the

average labor and travel costs for a full inspection of a counterintelligence office were approximately \$131,300. However, when a pro rata allocation of the overhead and other Inspection Program costs was added to the labor and travel costs, the total average cost of each inspection was approximately \$262,600.¹ Similarly, special inspections, which are limited scope follow-up inspections conducted when a site receives a rating of marginal or below in any of its activities, had average labor and travel costs of approximately \$75,000, and average total costs of about \$150,000. As an example, the counterintelligence activities at the Oakland Operations Office, which were managed by a Federal official, were inspected on April 15-26, 2002. The counterintelligence inspection team consisted of 6 inspectors, 1 technical advisor, and 2 administrative staff. The labor and travel costs for this inspection were \$192,783. The total cost, including labor, travel, and the pro rata amount, was \$385,566.

In his management comments, the OCI Director provided similar figures for the average cost of individual inspections. He stated that the average full inspection is approximately \$135,924 (unburdened) or approximately \$266,752 (with costs pro rata), while a special inspection is approximately \$76,244 (unburdened) or approximately \$149,628 (with costs pro rata). We could not account for the differences in the inspection costs.

Also, the OCI Director stated that a 48 percent reduction in expenditures from Fiscal Year 2002 (\$3.97 million) to Fiscal Year 2004 (\$2.09 million) demonstrates that the costs of the Inspection Program are being sufficiently managed. Although it appears that management has taken steps to reduce the costs of the Inspection Program, we note that the decrease in expenditures was not solely the result of cost reduction efforts. A Pacific Northwest official stated that the decrease in expenditures was achieved by reducing project management and financial administration time, streamlining administrative processes, decreasing the number of personnel involved in each inspection and decreasing the frequency of inspections from every 2 years to every 3 years for programs rated as Satisfactory. However, we note that the number of sites reviewed decreased from 14 in Fiscal Year 2002 to 9 in Fiscal Year 2004, and the number of inspection reports issued decreased from 11 in Fiscal Year 2002 to 7 in Fiscal Year 2004.

¹ These figures do not include the Headquarters inspection that was conducted during February 10-21, 2003, and March 24-April 4, 2003. The cost of the Headquarters inspection, including labor, travel and the pro rata amount, was approximately \$1,803,600.

BIAS AGAINST NNSA	We did not identify a bias against NNSA-related offices by the Inspection Program. We reviewed a sample of inspection reports for both OCI and ODNCI offices. We noted that the reports were written in a manner that singled out individuals for criticism in both offices. Also, we did not identify a meaningful difference between the ratings given to OCI offices and the ratings given to ODNCI offices.
AUDITING STANDARDS	We found that the Inspection Program is not required to follow GAGAS. GAGAS are standards for Federal auditors contained in the Government Auditing Standards (Yellow Book) promulgated by the Government Accountability Office. PDD-61 required DOE to establish an inspection program for its counterintelligence activities, but did not contain a requirement that the inspection program follow GAGAS. Also, an FBI official advised that the FBI field office inspection program does not follow GAGAS.
TIMELINESS OF REPORTS	We found that inspection reports were typically being issued within 60 days of the site visit. A responsible official told us that early in the Inspection Program reports were issued three to six months after the completion of fieldwork. However, in May 2003, the Inspection Report for the OCI/ODNCI Headquarters inspection stated that reports were being "delivered too late after completion of an inspection." It also stated an objective to issue future inspection reports within 60 days of the end of the site visit. We reviewed a sample of seven inspection reports issued since May 2003, and found that all seven were issued within 60 days of the site visit.
OBSERVATIONS	We observed that the use of Pacific Northwest to procure the services of inspectors to conduct counterintelligence inspections was inconsistent with DOE policy on purchasing by M&O contractors. We determined that under DOE policy, Headquarters offices, such as OCI, are not to subcontract through M&O contractors for services that could be directly contracted by Federal Procurement managers. DOE procurement officials opined that by administering the counterintelligence inspection program, Pacific Northwest was directly supporting a Headquarters mission that was not within the scope of its M&O contract. Although OCI officials advised us that they have explored other procurement options for obtaining support for the Inspection Program, OCI continues to use Pacific Northwest for this purpose. Both DOE procurement and OCI officials opined that it may be more cost effective to procure a support services contract for the inspections program directly through OCI Headquarters.

We also observed that there were philosophical differences between OCI and ODNCI officials, resulting in part from the Department's bifurcated counterintelligence program, which has the potential to undermine the effectiveness of the overall program. We determined that the relationship between the personnel of these two offices was not as collegial, particularly regarding the Inspection Program, as would have been expected given the importance of the Department's counterintelligence efforts and the need for a cooperative effort complex-wide. Within the last year, the Secretary of Energy, the Administrator of NNSA, and the National Counterintelligence Executive expressed concern that the bifurcation of the Department's counterintelligence function could impede efficient counterintelligence activities at DOE. Our observations during this review tended to support this concern, and we believe that the Department should continue its efforts to consolidate counterintelligence activities.

RECOMMENDATIONS

We recommend that the Director, Office of Counterintelligence:

1. In coordination with the Director, Office of Management, Budget, and Evaluation, identify the most appropriate mechanism for procuring support for the counterintelligence inspection program; and
2. Enhance efforts to manage the costs of the counterintelligence inspection program.

**MANAGEMENT
COMMENTS**

Management took issue with certain of the recommendations, observations, and statements in the report. Regarding the first recommendation, management stated that they had undertaken consultations with the Director, Office of Procurement and Assistance Management, to determine if the use of Pacific Northwest to procure services of inspectors to conduct counterintelligence inspections is consistent with DOE policy. Management disagreed with the second recommendation. Management stated that the problems leading to the recommendation were addressed prior to our review. Management's comments are provided in their entirety in Appendix B.

**INSPECTOR
COMMENTS**

Where appropriate, we revised our report to address management's comments. Although management stated that Pacific Northwest had implemented a system for tracking the costs of individual inspections starting in the middle of Fiscal Year 2003, Pacific Northwest officials told us that there had been no attempt to track

individual inspection costs prior to our request for this data. Data provided by Pacific Northwest in response to our request for the cost and staffing levels for individual inspections continually changed during our review. Our report includes the latest data from Pacific Northwest, which was provided in December 2004. We believe the changing cost and staffing figures provided by Pacific Northwest officials confirms our belief that Federal and contractor officials need to enhance their efforts to manage the costs of the Inspection Program.

**SCOPE AND
METHODOLOGY**

As part of our review, we interviewed Federal and contractor DOE and NNSA officials at headquarters and the following field locations: Pacific Northwest National Laboratory, Richland Operations Office, Lawrence Livermore National Laboratory, Livermore Site Office, and Sandia National Laboratory in California. We also reviewed documents relevant to the counterintelligence inspections program and DOE procurement policy.

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

Document Number 4

**Department of Energy**

Washington, DC 20585

October 1, 2004



MEMORANDUM FOR THE SECRETARY

FROM:

Gregory H. Friedman
Inspector General

SUBJECT:

INFORMATION: Special Report on the "Department's
Process for Responding to a Congressional Information
Request" OAS-SR-05-01**INTRODUCTION**

On January 15, 2004, members of the U. S. House of Representatives, Committee on Government Reform, acting under the "Seven Member Rule" (5 U.S.C. 2954), requested that the Department of Energy provide copies of all communications relating to H.R. 6, the Energy Policy Act of 2003, covering the period November 21, 2003, to January 15, 2004. The members requested all written, electronic, or oral communications between the Department or other executive branch officials and industry lobbyists, representatives of trade associations or interest groups, or other persons outside of the executive branch relating to H.R. 6. This request was preceded by a similar request, dated December 22, 2003, from Representatives Henry A. Waxman and John D. Dingell that raised concerns about the Department's compliance with prohibitions against lobbying contained in 18 U.S.C. 1913, to which the Department responded on January 6, 2004. According to Committee members, the Department's initial response did not provide the information requested and they were prompted to make the second request under the "Seven Member Rule." On February 4, 2004, the Department responded to the Committee member's second request for information.

Subsequently, the Ranking Minority Member and 13 other members of the Committee asked the Office of Inspector General to review the veracity and completeness of the response that the Department sent to members of the Committee. Committee members also requested that the Office of Inspector General examine how the Department's response was researched and reviewed. The Office of Inspector General conducted a fact-finding review, the objective of which was to determine the Department's process for developing its February 4, 2004, response to the congressional request for information.

OBSERVATIONS

Responsible officials indicated that the Department followed its normal process when preparing the February 4, 2004, response to the members of the Committee. Officials in the Office of General Counsel (OGC) and the Executive Secretariat (ES) indicated that they took the request seriously and that they expended a good deal of effort to collect



information and respond in a timely manner. However, the Department does not have a requirement to maintain documentation of research efforts completed in response to congressional data requests. Thus, by necessity, our review was based largely on the recollections of officials involved with the response. Those officials explained that, due to the passage of time, they had only limited recollection of the actual procedures performed. They told us that, to the best of their knowledge, they followed their standard practice when responding to this congressional inquiry. As explained, the process in this case: (i) was limited to searches of certain written and electronic communications for high-level Department officials; (ii) did not include inquiries of lower-level officials outside the offices determined to be the most likely to have information responsive to the request, or other executive branch officials; and, (iii) would not have included direct inquiries of all high-level Department officials to determine whether any contacts were made that were not documented in hard copy or electronic files.

Research and Review Process

Officials told us that normally ES serves as the focal point for directing information requests to the appropriate offices for response. In this case, ES directed the request to OGC because it was closely related to the December 22, 2003, congressional request regarding the Department's compliance with the prohibitions against lobbying. According to OGC officials, they received information submitted by various offices and prepared the response that was sent to Committee members on February 4, 2004.

ES and OGC told us that, while they could not recall who made the determination, a decision was made that the Offices of the Secretary; Deputy Secretary; Under Secretary for Energy, Science, and Environment; Assistant Secretary for Congressional and Intergovernmental Affairs; Scheduling and Advance; and ES were most likely to have information responsive to the request. The Department's response to the Committee members identified the offices that were searched for responsive documents. ES and OGC officials indicated that the Committee members' request letter was provided to these offices with either an oral or e-mail request. Officials stated that responding offices would typically search their phone logs, e-mails, correspondence and subject files, and daily calendars. ES and OGC officials also indicated that it was not their general process to provide specific guidance on how to conduct searches. However, OGC officials stated that they discussed with the Office of Congressional and Intergovernmental Affairs what types of records should be searched to respond to this specific congressional request.

Scope of Research and Review Process

According to ES and OGC officials, they routinely make judgments regarding the scope of their research and review process because of the volume of requests the Department receives and the level of effort required to respond to them. They added that searches for information must be made in a manner that provides timely responses. For these reasons, officials acknowledged that they decided to limit their review to the Department elements most likely to have information responsive to the request. In particular, officials who prepared the response advised us that:

- Program offices, such as the Offices of Fossil Energy and Nuclear Energy, were not included in the information search because the request was directed to offices most likely to have contacts on legislative matters.
- Other executive branch officials outside the Department were not asked about their contacts with industry officials because, according to Department officials, such a search would be outside the Department's capabilities and would be logistically unreasonable. They noted, however, that if other executive branch officials had any communications with outside entities regarding H.R. 6 and had "carbon copied" the Secretary, a record of that communication would likely have been identified in the Department's search of its correspondence files.
- The Department's website was not researched because it was publicly available and information about any relevant contacts would already be available to the congressional requesters. Officials asserted that searches of the calendars for the Secretary, Deputy Secretary and Under Secretary should have identified all speeches related to H.R. 6. However, ES and OGC indicated that the subject of a meeting or speech is not always listed on the calendar and that this lack of specificity might account for missing the two secretarial speeches previously identified by Committee members as responsive to questions raised about H.R. 6.
- While those preparing the February 4, 2004, response directly questioned the Deputy Secretary about industry contacts related to H.R. 6, the Secretary and the Under Secretary were not specifically consulted about such contacts. Rather, the Department's response to the committee members was based on a review of hardcopy and electronic files. Finally, officials told us, and available documentation indicated, that none of the offices other than the Assistant Secretary for Congressional and Intergovernmental Affairs reviewed or concurred in the final response to the Committee members' request.
- Contacts with, or initiated by, congressional officials were omitted because OGC decided that the thrust of the request was that the Department possibly had not complied with prohibitions against lobbying and contacts with Congress as set forth in 18 U.S.C. 1913. Additionally, OGC asserted that members of Congress would not always want their contacts with the Department made public. Further, the Department discussed its decision to exclude communications between members of Congress and the Department of Energy related to H.R. 6 in its February 4, 2004, response to the Committee members.

Documentation of Research and Review Process

According to ES and OGC officials, the Department's process does not require that detailed records be maintained supporting the sources that were searched and the specific methodologies used. As a consequence, Department officials involved in the subject search told us that they found it necessary to rely primarily on their recollection regarding the processing of the response to the Committee members. They acknowledged, as well, that their recollections, after the passage of about eight months, may be incomplete. Further, as previously noted, little documentation was available to support the oral descriptions of the process employed in this case. For example, we did not find evidence of complete responses provided to OGC, which would have explained which files were searched and which could have confirmed whether or not relevant contacts had been identified. Documentation to support reported e-mail searches in the Offices of the Deputy Secretary and Under Secretary were not available, and officials we contacted in these offices could not recall searching for any communications related to the request of the Committee members. However, OGC officials advised us that a senior official in the Office of the Deputy Secretary had searched that office for relevant communications in response to the Committee members' request. Additionally, officials could not provide documentation supporting the reported detailed review of the Secretary's calendar since November 21, 2003. While an Office of Scheduling and Advance official recalled searching the Secretary's calendar for information on energy-related contacts, the official could not recall if anything was found.

In summary, as described by OGC and ES, the Department followed its normal process in responding to the Committee members' information request. However, we were unable to independently confirm the described process because of the lack of detailed records and the incomplete recollection of these officials caused by the passage of time.

We discussed the facts contained above with Department officials who prepared the congressional response and included relevant comments, where appropriate. Our review methodology is described in an attachment to this report.

We appreciate the cooperation of the Department's staff during this review. If you have any questions regarding the matters discussed in this report, please do not hesitate to contact me.

cc: Deputy Secretary
Under Secretary for Energy, Science and Environment
Assistant Secretary for Congressional and Intergovernmental Affairs
General Counsel
Director, Office of the Executive Secretariat

Attachment

SCOPE AND METHODOLOGY

To accomplish our objective we:

- Reviewed the congressional request dated December 22, 2003, from Congressmen Henry Waxman and John Dingell; and the January 15, 2004, request from members of the Committee on Government Reform;
- Reviewed the Department's responses dated January 6 and February 4, 2004, respectively, from the General Counsel and the January 15, 2004, response from the Acting General Counsel;
- Interviewed officials from the Offices of General Counsel and Executive Secretariat involved in coordinating the response to each request;
- Interviewed officials from the Offices of the Deputy Secretary; Under Secretary for Energy, Science and Environment; Congressional and Intergovernmental Affairs; and Scheduling and Advance to determine the processes they used to respond to the request; and,
- Reviewed documents of communications regarding energy related contacts provided by various offices.

This was a special review of the Department's process for responding to a particular inquiry from congressional sources and did not include tests of internal controls and compliance with laws and regulations applicable to audits.

Document Number 5

**INSPECTION
REPORT
TO
MANAGEMENT**

**LAWRENCE LIVERMORE
NATIONAL LABORATORY
DOMESTIC PARTNER TRAVEL**

S99IS022

DECEMBER 1999



**U.S. DEPARTMENT OF ENERGY
OFFICE OF INSPECTOR GENERAL
OFFICE OF INSPECTIONS**

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INSPECTION OF LAWRENCE LIVERMORE NATIONAL LABORATORY DOMESTIC PARTNER TRAVEL

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Overview

INTRODUCTION AND OBJECTIVE

On February 10, 1999, the Office of Inspector General, U.S. Department of Energy (DOE), initiated an inspection of allegations regarding inappropriate travel by certain employees of the Lawrence Livermore National Laboratory (Livermore). Specifically, information provided to the Office of Inspections alleged that Livermore has inappropriately funded vacations and personal business in conjunction with official travel for 10 employees (five couples) who were identified as domestic partners.

The objective of this inspection was to determine if the five couples employed by Livermore traveled together to the same business locations on the same dates without an appropriate business purpose. Our inspection was conducted from March through August 1999, and included a review of 136 travel expense reports for the 10 Livermore employees, as well as interviews with several of the Livermore travelers and their supervisors concerning the purpose of specific trips and the expenses authorized. We also interviewed Livermore management officials regarding the practices generally used by the Lawrence Livermore National Laboratory in managing, administering, and funding the Livermore travel program.

This inspection report has been prepared in part to accomplish the purposes of the Government Performance and Results Act of 1993 by documenting methods of decreasing waste and improving efficiency in Federally-funded programs. This inspection was conducted in accordance with "Quality Standards for Inspections" issued by the President's Council on Integrity and Efficiency.

**OBSERVATIONS AND
CONCLUSIONS**

Our inspection did not find widespread evidence that the five couples named in the allegations traveled together without an appropriate business purpose, or that vacations and other personal business were inappropriately funded in conjunction with official travel. The five couples included in this inspection traveled together 48 times (for a total of 96 trips) from Fiscal Year 1994 through Fiscal Year 1998. For 93 of the 96 trips reviewed, we found no direct evidence that the business purposes of the trips were inappropriate, or that Livermore inappropriately funded vacations and personal business in conjunction with the official business of these trips.

However, for three of the 96 trips, we did find that the use of Department funds to finance all or part of these three trips was inappropriate, and that recovery of funds is warranted. In the case of two of these trips, a couple employed by Livermore traveled together by car to Colorado to discuss fossils and the human exploration of the planet Mars as part of two independent research projects, and charged their time and travel costs to the Department. In the case of the third trip, a Livermore employee filed a false Traveler's Expense Report and a false Foreign Trip Report which stated that he was on official business in Berlin, Germany, when he was actually on vacation in Southern Germany, Austria, and Italy for a portion of the period claimed.

Details of Findings

Vacation and Personal Business Combined with Official Travel

The 10 Lawrence Livermore National Laboratory employees who were alleged to have combined vacations and personal business with official travel, traveled together a total of 48 times (for a total of 96 trips) from Fiscal Years 1994 through 1998. Generally, the business purpose of these trips included attendance at conferences, programmatic meetings, and invitations to give presentations or talks. We found that for 34 of the 96 trips, the travelers took 113 personal days where vacations and/or personal business were constructed around the official business of the trips, often at locations distant from their temporary duty locations. We note that one couple traveled a total of 25 times together (50 trips), or about one-half of the total trips we reviewed, and took a total of 46 personal days in conjunction with their official travel.

We did not find direct evidence that the five couples named in the allegations traveled together without an appropriate business purpose, or that Livermore inappropriately funded vacations and personal business in conjunction with official travel for 93 of the 96 trips reviewed. For the three remaining trips though, we did find that the use of Department funds to finance all or part of these three trips was inappropriate, and that recovery of funds is warranted.

Independent Research Funded Through Official Travel

One couple traveled together without an appropriate business purpose. Specifically, [REDACTED] at Livermore, traveled by car from Livermore to Fruita, Denver, and Boulder, Colorado, from Sunday, August 9, 1998, through Monday, August 17, 1998, accompanied by their [REDACTED]. [REDACTED] said the official business purpose of traveling to Fruita, Colorado, on August 10 and 11 was to visit the Dinamation International Society. [REDACTED] said that an appointment had been arranged to discuss Livermore technology for gamma labeling of fossils and the use of lasers to remove the rock matrix that surrounds fossils without damaging them. [REDACTED] also said that a visit to the Denver Museum of Natural History on Wednesday, August 12, 1998, was for a similar purpose. [REDACTED] said that Thursday, August 13, through Sunday, August 16, 1998, was spent at the first Mars Society Conference, in Boulder, Colorado, where [REDACTED] made three speeches regarding human settlement of the planet Mars. The two Livermore employees were reimbursed a total of \$2,131 for

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travel-related expenses, and were paid \$8,811 in wages while on this trip. The total cost incurred by Livermore was \$10,942.¹

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The DOE Oakland Contracting Officer for Livermore said that [redacted] was unaware of any DOE programmatic guidance, Laboratory Directed Research and Development Program, Work-For-Others Program, or any other allowable reason for spending DOE funds for fossil or Mars settlement issues. [redacted] said these activities appeared to be independent research work on the part of the travelers. Similarly, a Livermore Deputy Associate Director said that the use of lasers for fossil excavation or gamma labeling technology was not specifically approved at the time of travel by anyone from the Department of Energy.

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Section (e), "Examples of items of unallowable costs," Clause 3.2, "ALLOWABLE COSTS," of the DOE Management and Operating Contract (M&O Contract) with the Regents of the University of California for the Management of the Lawrence Livermore National Laboratory (Contract No. W-7405-ENG-48, effective October 1, 1997) states that the costs of independent research and development, excluding Laboratory Directed Research and Development, are unallowable unless specifically provided for elsewhere in the contract. Our inspection was not able to identify any DOE programmatic guidance, Laboratory Directed Research and Development, or Work-For-Others Program related to this trip. As such, the amount of \$10,942 represents an unallowable cost under the M&O Contract and should be recovered.

Falsification of a Travel Expense Report

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A Livermore employee made a claim of official business on a travel expense report for a portion of a trip that was actually vacation time. Specifically, [redacted] for the Livermore laser program, filed a travel expense report and a trip report, claiming [redacted] was on official business from June 19, 1998, to July 14, 1998, when the evidence shows that [redacted] began a vacation in Germany and Austria on July 11, 1998. Travel documents show that [redacted] traveling with [redacted] at Livermore, attended conferences and meetings in Russia and Berlin, Germany, from June 19, 1998, to Friday,

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¹ This figure was revised from \$7,855 in the draft report to \$10,942 in the final report to reflect Livermore's recalculation of the labor cost using the standard salary, payroll burden, Organizational Personnel Charge, and the Organizational Facility Charge.

July 10, 1998, when the Berlin conference ended. At this point in their trip, [redacted] went on vacation together in Germany, Austria and Italy.

[redacted] told us that [redacted] was on personal leave in Germany, Austria, and Italy beginning July 11, 1998, and that [redacted] was traveling with [redacted] the entire time, and that [redacted] never left [redacted]. [redacted] said that, after their official business at a scientific workshop concluded on July 10, 1998, [redacted] and [redacted] were on "pure vacation," and that no official business was conducted. [redacted] stated that "I am accurate on this." However, on his Traveler's Expense Report, and on a separate Foreign Trip Report, [redacted] claimed that his official business meetings continued in Berlin until July 14, 1998.

[redacted] initially told us that [redacted] never left the suburbs of Berlin during the weekend of July 11 and 12, and that [redacted] had business meetings in Berlin on July 13 and 14. However, after some discussion, [redacted] admitted that [redacted] left Berlin on Friday, July 10, 1998, with [redacted] and traveled with [redacted] to Mittenwald, a town located near the German-Austrian border. [redacted] then said that he drove 690 kilometers (428 miles) from Mittenwald, Germany, back to Berlin on the morning of Monday, July 13, 1998, for a scheduled meeting with the Director of a German institute. [redacted] said after the two hour meeting, [redacted] returned to Mittenwald to join [redacted]. [redacted] said that the driving time from Mittenwald to Berlin was about four to five hours.

However, we note that the one-way driving time from Mittenwald to Berlin is estimated to be seven hours and fifteen minutes as shown on a German travel service document. [redacted] continued to receive per diem until July 15, 1998, and was reimbursed for hotel costs on July 11, 12, and 13.

The [redacted] of the German institute who allegedly met with [redacted] on July 13, 1998, said that [redacted] knows who [redacted] is. The [redacted] said that [redacted] had met with [redacted] during a workshop in Berlin that the [redacted] had chaired during the week of July 6 through July 10, 1998. However, the [redacted] said that [redacted] did not meet with [redacted] after the Berlin workshop concluded on Friday, July 10, 1998. The [redacted] said that after the workshop concluded

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on July 10, 1998, [REDACTED] left Berlin and traveled to Southern Germany to be at home with his family. The [REDACTED] said that [REDACTED] was positive that, after the workshop concluded on July 10, 1998, [REDACTED] did not meet again with [REDACTED]

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A review of [REDACTED] travel expense report shows that \$502.12 in hotel and per diem costs were inappropriately paid and should be recovered. Additionally, an estimated salary adjustment equal to 2 days of salary or \$889 plus benefits, should also be recovered, for a total of \$1,391.

Recommendations

Considering the evidence of inappropriate use of Department funds to finance all or part of these three trips, we recommend the following:

For the Manager, Oakland Operations Office:

Recommendation 1: Take appropriate action to recover \$10,942 in wages and travel expenses for the trip taken by [REDACTED] where Department funds were used to conduct independent research projects.

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Recommendation 2: Take appropriate action to recover an estimated \$1,391 in wages plus benefits and travel expenses for the trip taken by [REDACTED] where [REDACTED] claimed [REDACTED] was in an official business status when, in fact, [REDACTED] was on vacation for a portion of the trip.

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In addition, we are also recommending that appropriate personnel actions be taken against [REDACTED]. Specifically, based on the results of our inspection, we found that [REDACTED] (1) falsified a LLNL Traveler's Expense Report which resulted in reimbursement for expenses that [REDACTED] was not entitled to; (2) falsified a Foreign Trip Report which indicated that [REDACTED] was on official business when in fact [REDACTED] was on personal business for a portion of this trip; and (3) made false and misleading statements to representatives of the Office of Inspector General during the conduct of this inspection in an effort to conceal the true nature of [REDACTED] activities.

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For the Manager, Oakland Operations Office:

Recommendation 3: Consistent with the findings of this report, recommend that Livermore take appropriate personnel action against [REDACTED] in accordance with Section E II.5.2., "Other Corrective Action," of the Lawrence Livermore National Laboratory Personnel Policies and Procedures Manual for falsifying two travel related documents and for providing false and misleading statements to the Office of Inspector General.

Recommendation 4: Direct Livermore to conduct a review of other trips taken by [REDACTED] over the past five years to determine if there are any other instances where [REDACTED] has been inappropriately reimbursed travel related expenses as a result of falsified travel documents, and, if so, take appropriate action to recover these amounts.

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**MANAGEMENT
COMMENTS**

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Recommendation 1: The DOE Oakland Operations Office (Oakland) "concurred in principle" with the finding and recommendation. Livermore's DOE Oakland Contracting Officer said [REDACTED] has decided to issue a "Notice of Intent to Disallow" \$10,942 for inappropriate travel.

Recommendation 2: Oakland "concurred in principle" with the finding and recommendation, stating that Oakland will take appropriate action. Oakland also stated that a referral has been made to the Livermore Office of Investigative Services, who will conduct an investigation regarding the falsification of a travel expense report and that this investigation will be completed by December 31, 1999. Oakland will review the results of the Livermore investigation and make allowability determinations by March 30, 2000.

Recommendation 3: Oakland "concurred in principle" with the finding and recommendation, stating that Oakland agrees with Livermore's proposed action of referring the Office of Inspector General's finding to the Livermore Office of Investigative Services, for Livermore's own investigation of the matter. Oakland stated that Livermore will complete their review by December 31, 1999, and that Oakland will validate Livermore's findings and respond to the Office of Inspector General by March 30, 2000.

Recommendation 4: Oakland concurred with Livermore's proposed action to have the Livermore Office of Investigative Services conduct a review of travel by the subject employee for the past five years. Oakland stated that Livermore will complete their review by December 31, 1999, and that Oakland will validate Livermore's findings and respond to the Office of Inspector General by March 30, 2000.

INSPECTOR COMMENT

We consider management's comments to the recommendations to be responsive.

Document Number 6

INSPECTION REPORT TO MANAGEMENT

**TITLE: "Unauthorized Release of
Internal Report" (S99IS025)**

MAY 1999



**U.S. DEPARTMENT OF ENERGY
OFFICE OF INSPECTOR GENERAL
OFFICE OF INSPECTIONS**

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REPORT OF INSPECTION ON

"UNAUTHORIZED RELEASE OF INTERNAL REPORT"

(S99IS025)

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<u>Observations and Conclusions</u>	2
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INSPECTION REPORT TO MANAGEMENT ON

"Unauthorized Release of Internal Report"

(S99IS025)

OVERVIEW

Introduction and Objective

On March 23, 1999, the Office of Inspector General, U.S. Department of Energy (DOE), initiated an inspection into the facts and circumstances surrounding the unauthorized release to an individual outside DOE of a document entitled "INTERNAL REPORT TO THE SECRETARY, SPECIAL SECURITY REVIEW, PHASE 1, JANUARY THROUGH DECEMBER 1998" (Internal Report). Information from the Internal Report appeared in an article by Mr. Peter Eisler (hereafter referred to as the reporter) published in the March 17, 1999, issue of *USA Today*. The inquiry into the unauthorized release of the Internal Report was requested by the Secretary of Energy in a March 19, 1999, memorandum to the Inspector General.

The Internal Report was prepared by a review team led by [REDACTED] (b)(6),(b)(7)(C) National Security Programs, Sandia National Laboratories (Sandia). Former Secretary of Energy Federico Peña tasked the review team to develop an approach to review and evaluate security roles, responsibilities, and methodologies as they might impact changes in DOE safeguards and security policy and guidance. The review team consisted of members from six DOE sites as well as six Senior Advisors and two consultants.

The document was marked with the following warning: "UNCLASSIFIED CONTROLLED NUCLEAR INFORMATION, NOT FOR PUBLIC DISSEMINATION." Unauthorized dissemination of Unclassified Controlled Nuclear Information (UCNI) is subject to civil and criminal sanctions under Section 148 of the Atomic Energy Act of 1954, as amended (AEA) (42 USC 2168). This statute is implemented through a regulation, 10 C.F.R. Part 1017, and DOE Order 471.1. Any person who violates any regulation or order of the Secretary issued under 42 USC 2168 with respect to the unauthorized dissemination of information shall be subject to a civil penalty, not to exceed \$100,000 for each such violation; and subject to a criminal penalty, under Section 223 of the AEA (42 USC 2273), of \$5,000 and/or two years imprisonment.

The objective of this inspection was to determine who was responsible for the unauthorized release of the Internal Report to an individual outside DOE.

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

Observations and Conclusions

~~We were~~ unable to conclusively determine who released the Internal Report outside DOE. Thirty original copies of the Internal Report were printed by Sandia on January 21, 1999. These original copies were distributed at DOE Headquarters, the Albuquerque Operations Office, and Sandia. We determined that at least 31 additional copies of the Internal Report were reproduced. We also determined that in excess of 125 DOE and DOE contractor employees had access to the Internal Report, but this number could be substantially higher because of the large number of copies available throughout the Department. We interviewed over 60 DOE and DOE contractor employees, including the principals and key senior staff of the DOE offices that received an original copy of the Internal Report. Everyone interviewed denied releasing the Internal Report outside the Department of Energy.

The results of our inspection, based on extensive interviews, document searches, and reviews of telephone records, do not provide conclusive evidence as to the individual, or individuals, who inappropriately released the Internal Report. There were indications, however, that the Internal Report was released by someone within, or closely connected to, the Office of Nonproliferation and National Security (NN). Specifically, the *USA Today* article included information from two issue papers that were prepared by the Office of Safeguards and Security (NN-51), and we found no evidence that these two issue papers were ever distributed outside NN prior to publication of the article. Further, [redacted] Office of Public Affairs said the reporter told [redacted] that he had copies of DOE internal tracking sheets for annual reports to the President on the status of safeguards and security at domestic nuclear weapons facilities for 1994 through 1997. DOE officials believed the documents in question were internal tracking sheets used by the Office of Security Affairs (NN-50), the Office of the Assistant Secretary for Nonproliferation and National Security (NN-1), and the Office of the Executive Secretariat. We determined that the NN-50 and NN-1 tracking sheets would not normally leave NN; and the Executive Secretariat tracking sheet would normally only pass between NN and the Office of the Executive Secretariat.

Using information available through DOE's Office of Chief Information Officer, we examined all outgoing and selected incoming telephone records for the periods associated with the release of the Internal Report. We determined that four telephone calls were made from telephones assigned to [redacted] Office of Safeguards and Security (NN-51), to the reporter's direct office phone number from January 1998 until publication of the article. These phone calls are notable since [redacted] told us in two interviews that [redacted] had no recollection of ever having spoken to the reporter prior to publication of the article. Two telephone calls were placed to the reporter's direct office phone number on January 22, 1998 and January 23, 1998. On January 23, 1998, the Deputy Secretary issued a memorandum to DOE Heads of Departmental Elements announcing that [redacted] would be heading a team to review and evaluate DOE security. Two additional telephone calls were placed to the reporter 12 and 13 days, respectively, before the article was printed in March 1999. A complete discussion of all Departmental telephone calls to the reporter just prior to the publication of the article are presented in the "Details of Finding" section of this report.

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(C) Finally, in a memorandum dated March 18, 1999, [redacted] Office of Security Affairs, stated that [redacted] had received information that indicated that the unauthorized release of the Internal Report may have come from within the Office of Security Affairs or the Office of Safeguards and Security.

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DETAILS OF FINDING

Printing and Distribution of the Internal Report

On January 21, 1999, 30 original copies of the Internal Report were printed by Sandia in Albuquerque, New Mexico. Twelve of the original copies were hand delivered to DOE Headquarters and provided to certain attendees at a January 25, 1999, DOE Security Council (Council) meeting. Eleven copies were hand delivered to Sandia's office in Washington, D.C., and seven copies remained at Sandia in Albuquerque, New Mexico, and were distributed to individuals at Sandia who participated in the review and to the Manager of the Albuquerque Operations Office.

The Council is chaired by the Under Secretary of Energy. At the January 25, 1999, meeting of the Council, the Internal Report was provided to officials from the Offices of Nonproliferation and National Security; Defense Programs; Environmental Management; Field Management; and Environment, Safety and Health. The Under Secretary advised the recipients that the document was very sensitive and must be tightly controlled. Recipients of the Internal Report were to prepare comments on the report and provide their comments to the Under Secretary.

Prior to the Council meeting, the Manager, Albuquerque Operations Office, was provided a copy of the Internal Report. The Director, Office of Counterintelligence, was also provided a copy of the Internal Report subsequent to the Council meeting. Certain members of the review team that prepared the Internal Report and the Senior Advisors to the review team were also provided copies.

We determined that the Internal Report was widely distributed within DOE. In excess of 125 DOE and DOE contractor personnel had access to either original or reproduced copies of the Internal Report. In addition to the 30 original copies of the Internal Report, we are aware of 31 reproduced copies that were made. The Office of Nonproliferation and National Security reproduced at least 25 copies; and the Office of Environmental Management and the Albuquerque Operations Office reproduced three copies each. Twenty-one of the 25 copies reproduced within the Office of Nonproliferation and National Security have been destroyed by the Office of Safeguards and Security.

Documentation in the Possession of USA Today

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(C) Just prior to publication of the article, the reporter called [redacted] Office of Public Affairs. According to [redacted] the reporter said he was working on an article and had in his possession a copy of the Internal Report, internal DOE memoranda, and DOE internal tracking reports which showed that DOE was late in providing annual reports to the President on the status of safeguards and security at domestic nuclear weapons facilities for 1994

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through 1997. When the article appeared in *USA Today*, the Office of Security Affairs, NN-50, determined that information from two issue papers prepared by the Office of Safeguards and Security, NN-51, was also quoted in the article. [REDACTED]

Information Included in the *USA Today* Article

The *USA Today* article, entitled "Feds sought 19 nuke probes: Agency cites 'alarming' security lapses," quoted information contained in a letter from [REDACTED] to the Secretary of Energy that transmitted the Internal Report. The transmittal letter was included as part of the Internal Report. The entire document, including the transmittal memorandum, was stamped UCNI. (b)(6),(b)(7) (C)

[REDACTED] as follows: "There has been an alarming increase of instances where nuclear weapons design, intelligence and other national defense information has been either compromised or placed at risk" and "some of the cases involve 'disclosures of classified and/or sensitive unclassified information, including potential nuclear computer codes, to foreign nationals'" The article [REDACTED] (b)(3):50 U.S.C. § 3024(i)(1)

[REDACTED] stating that "Other problems noted in the briefing material and other internal reports obtained by *USA Today* include a backlog of 4,000 'reinvestigations' that need to be done on DOE personnel whose security clearances are beyond their five-year re-examination date."

Distribution of the Two Office of Safeguards and Security Issue Papers

Although several officials told us they thought the two issue papers were forwarded to the Office of the Secretary, we were unable to confirm that the issue papers were distributed outside the Office of Nonproliferation and National Security prior to publication of the article. Office of Security Affairs documentation showed that [REDACTED] NN-50, hand-carried the issue papers to the Office of the Assistant Secretary for Nonproliferation and National Security (NN-1). However, [REDACTED] could not specifically recall providing the issue papers to NN-1. NN-1 officials did not recall ever seeing or receiving the issue papers; and there was no record of the issue papers in the NN-1 correspondence tracking system. In addition, the Office of Congressional, Public, and Intergovernmental Affairs and the Office of Executive Secretariat had no record of having received the issue papers; and [REDACTED] who coordinates all briefing materials for the Secretary, did not recognize the issue papers and had no record of having received them. (b)(6),(b)(7) (C)

It should be noted that the article contained inaccurate information that was not widely distributed. Specifically, the article included the following statement: the "Department of Energy (DOE) requested at least 19 FBI investigations last year after internal reviews indicated classified or sensitive information was leaked, stolen or compromised at U.S. nuclear weapons plants and laboratories." [REDACTED]

(b)(6),(b)(7) which (b)(6),(b)(7) in June 1998. (b)(6),(b)(7) told us that this is the only issue paper (b)(6),(b)(7) that cited the 19 FBI investigations because the number of FBI investigations cited was not (b)(6),(b)(7) accurate. After (b)(6),(b)(7) said (b)(6),(b)(7) realized that the actual number of (b)(6),(b)(7) FBI investigations was 12 but never notified anyone of this discrepancy. In fact, (b)(6),(b)(7) recently (b)(6),(b)(7) determined that only eight incidents were actually referred to the FBI. (C)

Distribution of Internal Tracking Sheets

(b)(6),(b)(7) As noted previously, just prior to the publication of the article, the reporter called (b)(6),(b)(7) and told (b)(6),(b)(7) among other things, that he had copies of DOE internal tracking sheets for annual (b)(6),(b)(7) reports to the President on the status of safeguards and security at domestic nuclear weapons (C) facilities for 1994 through 1997. Officials we interviewed said they believed that the documents the reporter had were internal tracking sheets used by NN-1, NN-50, and the Office of Executive Secretariat. We determined that the NN-1 and NN-50 tracking sheets would not normally leave NN; and the Office of Executive Secretariat tracking sheet would normally only pass between NN and the Office of the Executive Secretariat.

Office of Security Affairs Memorandum on Release of Security Information

(b)(6),(b)(7) (b)(6),(b)(7) informed us that (b)(6),(b)(7) initially believed that the unauthorized release of the Internal (C) Report occurred from within the Office of Security Affairs, which includes the Office of Safeguards and Security. The day after the article appeared, (b)(6),(b)(7) issued a memorandum (b)(6),(b)(7) to all Federal and contractor employees in these two offices stating that (b)(6),(b)(7) had "received (b)(6),(b)(7) information that indicates that a person or persons working in the Office of Security Affairs or (C) the Office of Safeguards and Security may have released, or caused to be released, internal drafts and other information concerning the Department's security operations to persons outside the Department with no official need to know of this information." However, in an interview with (b)(6),(b)(7) (b)(6),(b)(7) said (b)(6),(b)(7) was no longer sure that the information was leaked from (b)(6),(b)(7) organization, but (b)(6),(b)(7) acknowledged that the reporter's possession of the issue papers and the (C) internal tracking sheets did seem to point to NN.

(b)(5),(b)(6),
(b)(7)(C)

(b)(5),(b)(6),
(b)(7)(C)

(b)(5),(b)(6), (b)(7)(C) had employees sign a statement that read: "I hereby attest to my understanding fully my responsibilities, under law and Department of Energy regulation and directives, to protect classified, controlled, proprietary and sensitive information entrusted to me."

OIG Interviews of DOE and DOE Contractor Employees

The Office of Inspector General interviewed more than 60 of the DOE and DOE contractor employees who had received either an original or reproduced copy of the Internal Report or who had access to a copy of the Internal Report. This included principals or key senior staff of the organizations that received an original copy of the Internal Report, including the Office of Nonproliferation and National Security; the Office of Defense Programs; the Office of Environmental Management; the Office of Environment, Safety and Health; the Office of Field Management; the Office of Counterintelligence; the Albuquerque Operations Office; and Sandia. Everyone interviewed denied releasing the Internal Report to any individual(s) or entity(ies) outside the Department of Energy or its contractors. In addition, everyone interviewed who acknowledged having access to the two issue papers denied releasing the issue papers to any individual(s) or entity(ies) outside the Department of Energy or its contractors. We found no evidence during the course of these interviews that anyone outside the Office of Nonproliferation and National Security had ever seen these issue papers prior to publication of the article.

OIG Review of Telephone Records

DOE, through the Office of the Chief Information Officer, had access to the telephone numbers for incoming and outgoing calls on assigned cellular phones and for outgoing calls from assigned desk phones. Records of all telephone calls made from Germantown and Forrestal Government desk phones, from June 1998 to April 1999, were reviewed to determine whether any calls were made to the reporter's direct phone number at *USA Today*. We also examined records of all Government issued cellular calls made by certain DOE employees who had access to the Internal Report and issue papers during the same time period.

A review of the June 1998 to April 1999 phone records showed that 10 calls were placed to the reporter's direct phone number at *USA Today* prior to March 17, 1999. Seven calls were from DOE's Office of Public Affairs, one call was from the Office of the Under Secretary, and two calls were from phones assigned to [REDACTED] One call was made from [REDACTED] (b)(6),(b)(7)(C) desk phone on March 4, 1999, at 6:19 p.m. The call lasted about 3.5 minutes. Another call was made to the reporter on March 5, 1999, at 10:22 a.m. from the cellular phone assigned to [REDACTED] (b)(6),(b)(7)(C) The call originated from Reston, Virginia, and lasted approximately two minutes. These calls were placed to the reporter 12 and 13 days, respectively, before the *USA Today* article was published.

Based on the results of a review of these phone records, we also obtained the desk and cellular phone records for [REDACTED] (b)(6),(b)(7)(C) for January 1998 to May 1998. A review of these records showed that two calls, of approximately one minute each, were made from [REDACTED] (b)(6),(b)(7)(C) cellular phone to the reporter's direct phone number at *USA Today* on January 22, 1998, and January 23, 1998. On January 23, 1998, the Deputy Secretary had issued a memorandum to DOE Heads of Departmental Elements announcing that [REDACTED] (b)(6),(b)(7)(C) [REDACTED] review and evaluate DOE security.

(b)(6),(b)(7)
(C)

Calls to the Reporter from the Office of Public Affairs and the Office of the Under Secretary

(b)(6),(b)(7)
(C) Individuals in the Office of Public Affairs made seven calls to the reporter just prior to (b)(6),(b)(7)
(C) publication of the article. On March 11, 1999, [redacted] placed two calls to the reporter. One call lasted 18 seconds, and the other call lasted almost four minutes. [redacted] also called the reporter four times on March 16, 1999. The first call lasted 14 seconds; the second call lasted almost 9 and one-half minutes; the third call lasted almost 5 minutes; and the fourth call lasted 33 seconds. [redacted] Office of Public Affairs, also placed a call to the reporter on March 16, 1999. This call lasted approximately one and one-half minutes.

(b)(6),(b)(7)
(C) [redacted] said these calls were all pursuant to official business and [redacted] did not provide the (b)(6),(b)(7)
(C) reporter with information from the Internal Report, the issue papers, or the internal tracking sheets. [redacted] also said that [redacted] saw a cover of the Internal Report prior to the article but that [redacted] did not have a copy of the report itself nor the two issue papers and the internal tracking sheets until after the article was published. [redacted] said [redacted] has never had access to the Internal Report or the issue papers. (b)(6),(b)(7)(C)

(b)(6),(b)(7)
(C) The phone records also showed that the [redacted] phone was used to place a 22-second call to the reporter on March 16, 1999. [redacted] did not recall this telephone call but [redacted] said it might have been related to an official interview about safeguards and security issues that the reporter was scheduled to have with [redacted]. The interview occurred on March 17, 1999. (b)(6),(b)(7)
(C)

Interviews of [redacted]

(b)(6),(b)(7)
(C) In an initial interview with [redacted] on March 24, 1999, prior to the Office of Inspector General's receipt of the Department's telephone records, [redacted] said [redacted] did not recall having any conversations with the reporter and that calls [redacted] receives from the press are usually referred to DOE's Office of Public Affairs. Further, [redacted] denied discussing the (b)(6),(b)(7)
(C) Internal Report with anyone outside NN or its contractors. Based on our review of the telephone records we obtained, [redacted] was interviewed again on April 14, 1999. [redacted] again said [redacted] had no recollection of having talked to the reporter prior to our March 24, 1999, interview with [redacted]. However, [redacted] said that within a couple of days after the (b)(6),(b)(7)
(C) March 24, 1999 interview, [redacted] called the reporter. [redacted] advised us that the reporter would confirm that [redacted] was not the source who had provided the reporter with the Internal Report. (b)(6),(b)(7)
(C) The telephone call made to the reporter after [redacted] initial interview does not appear on the DOE telephone records. [redacted] was asked again if [redacted] had any conversations with (b)(6),(b)(7)
(C) the reporter before this call. [redacted] replied "not particularly." [redacted] said [redacted] receives calls from the press all the time, and [redacted] almost always refers these calls to DOE's Office of Public (b)(6),(b)(7)
(C) Affairs. [redacted] further said that there have been times that [redacted] has had regular talks with (b)(6),(b)(7)
(C) the press, but they have not been with the *USA Today* reporter. When asked if [redacted] had ever sent the reporter any information over a facsimile machine, [redacted] replied "not that I (b)(6),(b)(7)
(C) remember."

(b)(6),(b)(7)(C)

(b)(6),(b)(7)(C)

Document Number 7



U.S. Department of Energy
Office of Inspector General
Office of Audit Services

Special Inquiry Report to the Secretary

Selected Controls over Classified Information at the Los Alamos National Laboratory

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OASISIR-07-01

November 2006

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Department of Energy
Washington, DC 20585

November 27, 2006

MEMORANDUM FOR THE SECRETARY

FROM:

Greg Friedman
Gregory H. Friedman
Inspector General

SUBJECT:

INFORMATION: Special Inquiry on "Selected Controls over
Classified Information at the Los Alamos National Laboratory"

INTRODUCTION AND BACKGROUND

You asked that the Office of Inspector General examine the circumstances surrounding a recent incident at the National Nuclear Security Administration's Los Alamos National Laboratory concerning the possible compromise of classified data. Your request focused on what the Department of Energy and its contractors did or did not do to protect classified information, specifically, the steps that were taken to ensure that only properly qualified individuals had access to such information. This memorandum summarizes our findings in this matter. Because of cyber security and Privacy Act considerations, detailed findings are provided in a non-public attachment to this memorandum.

On October 17, 2006, Los Alamos County Police responded to a call at the home of a former employee of a Los Alamos National Laboratory subcontractor. During a subsequent search of that residence, police seized a computer flash drive that contained apparent images of classified documents from the Laboratory. Also found were several hundred pages of what appeared to be Laboratory documents with classified markings. The Federal Bureau of Investigation was notified and immediately began a separate review of this matter, which continues as of this date. Further, Laboratory and Departmental personnel have been involved in a number of related fact-gathering efforts. These matters have been widely publicized in local media.

Against this backdrop, the Office of Inspector General initiated a review to address the concerns raised in your letter. As part of this effort, we interviewed over 80 Departmental, Laboratory, and subcontract personnel; reviewed relevant security and cyber security guidance and procedures; and, examined numerous other documents.

OVERVIEW OF FINDINGS

We found that the security framework relating to this incident at Los Alamos was seriously flawed. Specifically, our review disclosed that:

1. In a number of key areas, security policy was non-existent, applied inconsistently, or not followed;
2. Critical cyber security internal controls and safeguards were not functioning as intended; and,
3. Monitoring by both Laboratory and Federal officials was inadequate.

~~ATTACHMENT TRANSMITTED CONTAINS~~

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Cyber security has been an area of particular interest at Los Alamos due, in part, to well-publicized prior security incidents. In 1999, the then Secretary of Energy accepted a new plan for cyber security at Los Alamos – commonly referred to as the *Nine-Point Plan* – as a result of a high profile compromise of classified data. This plan specifically directed that safeguards be implemented to prevent the migration of classified information to unclassified systems. In a subsequent Secretarial initiative, called the *Six Further Enhancements to DOE Cyber Security*, both contractor and Federal officials were directed to take action to reduce the cyber security threat posed by insiders. In 2004, to address additional weaknesses in this area, the Director of the Laboratory ordered a lengthy, security stand-down to address and resolve such concerns. That shutdown, according to the U.S. Government Accountability Office, delayed important national security work at a significant monetary cost to the taxpayers. Based on the problems we observed, clearly these efforts were not entirely successful and additional improvements are needed.

The physical and intellectual data that resides at the Los Alamos National Laboratory reflects its preeminent national security mission. Yet, our review of matters related to the most recent incident identified a cyber security environment that was inadequate given the sensitivity of operations at the Laboratory. This was especially troubling since the Department and the National Nuclear Security Administration have expended tens of millions of dollars upgrading various components of the Laboratory's security apparatus, including vast expenditures on cyber security. In fact, the cyber security events described previously were among the factors that caused the Department to recompute the contract to operate Los Alamos. While significant procedural weaknesses were evident, human failure, whether willful or not, was the key component in this matter. In our report, we identified a number of specific actions associated with the latest series of events that were in contravention of recognized security policies and procedures.

Our detailed report also includes specific recommendations to strengthen security policy and procedures at both the Department and the Laboratory. On June 1, 2006, Los Alamos National Security LLC assumed responsibility as the operator of the Los Alamos National Laboratory. Many of these recommendations require specific contractor actions to address the weaknesses noted in our special inquiry. In this context, the Department needs to hold the new contractor accountable for the reforms needed to ensure a secure cyber security environment at Los Alamos. Further, we concluded that the lessons learned from this incident should be applied throughout the Department of Energy complex.

Attachment

cc: Deputy Secretary
Administrator, National Nuclear Security Administration
Chief of Staff

**SELECTED CONTROLS OVER CLASSIFIED INFORMATION AT THE
LOS ALAMOS NATIONAL LABORATORY**

**SPECIAL INQUIRY ON SELECTED CONTROLS OVER CLASSIFIED
INFORMATION AT THE LOS ALAMOS NATIONAL LABORATORY**

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SELECTED CONTROLS OVER CLASSIFIED INFORMATION AT THE LOS ALAMOS NATIONAL LABORATORY

EXECUTIVE SUMMARY

BACKGROUND

The Los Alamos National Laboratory (LANL) is operated by Los Alamos National Security, LLC for the Department of Energy's National Nuclear Security Administration (NNSA). Its more than 10,000 employees support various national security-related research and development activities. These efforts range from ensuring the safety and reliability of the Nation's nuclear stockpile and preventing the proliferation of weapons of mass destruction, to protecting the Nation from terrorist attacks. To support its mission, the Laboratory manages highly sensitive nuclear materials and classified information. Classified areas and processing facilities pervade much of the site, with over 2,700 separate classified operations, including 139 vault-type rooms. Safeguarding information and materials requires that the Laboratory establish and maintain effective security controls. Security, both physical and cyber, has been a long-standing concern at the Laboratory.

(b)(6),(b)(7)
(C)

On October 17, 2006, evidence obtained during a drug-related investigation in the Los Alamos community revealed that classified information had been diverted from the Laboratory. Local law enforcement officers seized a flash drive containing classified data, as well as a large number of classified documents, from [REDACTED]

(b)(6),(b)(7)
(C)

[REDACTED] Because of the seriousness of these issues, and in response to a request by the Secretary of Energy, the Office of Inspector General initiated a review to determine whether the Department and the Los Alamos National Laboratory had adequately protected classified information in this instance and to examine the circumstances surrounding [REDACTED]

(b)(6),(b)(7)
(C)

(b)(6),(b)(7)
(C)

RESULTS OF REVIEW

Our review revealed a serious breakdown in core Laboratory security controls. In many cases, Laboratory management and staff did not enforce existing safeguards or they did not provide the attention or emphasis necessary to ensure a secure cyber environment. Some of the policies were conflicting and were applied inconsistently. In other cases, necessary controls had not been developed or implemented. We also found shortcomings in security policy formulation and monitoring activities by Federal officials. In short, these findings raised serious concerns about the Laboratory's ability to protect both classified and sensitive information systems.

We also noted that the NNSA failed to follow-up on issues relating to [REDACTED]

(b)(6),(b)(7)
(C)

(b)(6),(b)(7)
(C)

The diversion of classified material had a potentially serious impact on national security. As reported in various press accounts, [REDACTED]

(b)(6),(b)(7)
(C)

(b)(6),(b)(7)
(C)

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(b)(6),(b)(7)
(C)

[REDACTED] appears to have made a conscious decision to disregard the security training to which [REDACTED] was exposed, override existing internal security controls, and inappropriately remove classified material from the Laboratory. While the control problems we identified were serious and created an environment in which the diversion could occur, the clear violations of security procedures by [REDACTED] appear to have been the root cause of the unauthorized removal of the classified material. These events are the subject of an on-going investigation by the Federal Bureau of Investigation, the results of which may ultimately provide additional information that should be considered in determining corrective actions. Notwithstanding the investigative effort, our review found that a number of safeguards designed to protect classified information at LANL were not working as intended.

Classified Network and Computer Security Controls

The Los Alamos National Laboratory had developed policies designed to protect classified information. However, in many instances these policies and procedures were ineffective. For example:

(b)(6),(b)(7)
(C)

(b)(6),(b)(7)
(C)

(b)(6),(b)(7)
(C)

- Ports that could have been used to inappropriately migrate information from classified computers to unclassified devices and computers had not been disabled. LANL management acknowledged that this vulnerability was not limited to the area in which [REDACTED] was working but also existed in a number of other classified computing facilities;
- [REDACTED] was provided with direct physical access to classified computers and devices, and was granted computer privileges that were not required for the performance of [REDACTED] duties; and,
- Program and security officials permitted the introduction of computers and peripherals (scanners and a printer) into a classified computing environment even though they were not approved. Such devices could have been used to compromise network security.

These cyber security weaknesses resulted from control and management failures at multiple levels. In particular, we noted that policies designed to protect classified information were non-existent, not enforced or were inadequate. For example, the Los Alamos National Laboratory failed to:

- Enforce, in all cases, controls designed to prevent the migration of classified data to unclassified systems;
- Develop policies requiring system administrators to take advantage of readily available means to physically secure classified computers; and,
- Ensure that incompatible functions were segregated and that related compensating controls were in place and operating as intended.

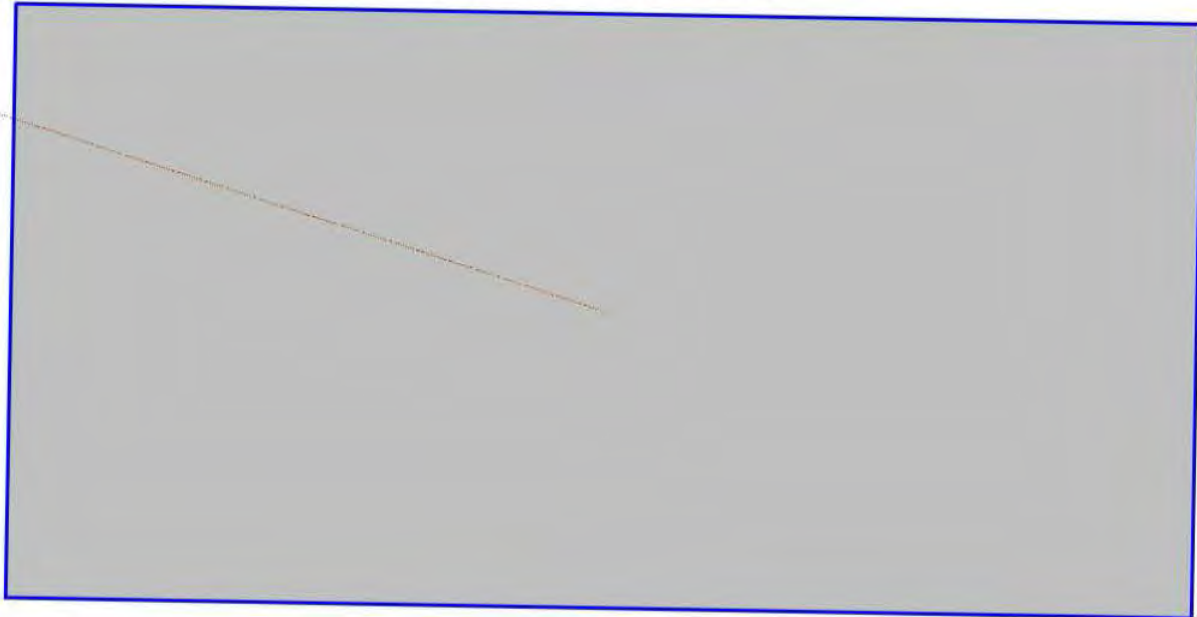
We also found other weaknesses that limited the effectiveness of the Laboratory's classified information system protection program and may have contributed to the diversion of the classified information in this case. For example, Federal review of the Laboratory's classified

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information systems was not as aggressive as it should have been. Also, we found that some of the Laboratory's policies for procuring classified information support services and for developing and administering system security plans were conflicting and inconsistent. Further, Federal policy design and implementation issues regarding mixed media vulnerabilities (mingling classified and unclassified computers and/or storage devices) were not adequately addressed and could have implications for the entire Department of Energy complex.

Security Clearance Process

(b)(6), (b)(7)
(C)



On-Going and Needed Corrective Actions

After discovery of the incident, management officials at various levels of the Department and at LANL launched an effort to identify and correct control deficiencies that caused or contributed to the unauthorized removal of classified information. The Deputy Secretary issued a memorandum directing that each laboratory and Federal facility operating a classified computer system conduct an immediate and thorough examination of the adequacy of its practices and procedures to ensure that classified information is properly protected. LANL officials also reported that they had taken actions designed to increase the security over classified information, including securing open ports. Based on our preliminary review, we believe these steps could, if properly implemented, help resolve many of the problems we found. However, additional action is necessary. Consequently, we made a number of specific recommendations designed to: (i) increase the protection of classified information at LANL and other Departmental facilities; and, (ii) improve the integrity of the security clearance investigation and evaluation process.

DETAILED RESULTS OF REVIEW

Introduction and Scope

(b)(6),(b)(7)(C) During September 2005, LANL began a project to scan classified documents and create an electronic archive that could be searched by weapons developers and researchers. To accomplish this, the Laboratory tasked an existing subcontractor with providing some of the hardware needed for the project (scanners) and the labor to actually perform the scanning and indexing of the classified material. [REDACTED] one of the subcontractor's employees, performed the majority of the scanning and indexing of documents in a vault-type room (VTR) in one of LANL's classified facilities. This VTR contained a classified removable electronic media (CREM) library, a large classified document storage system, a number of rack-mounted (b)(6),(b)(7)(C) classified computers, and various other classified and unclassified peripherals and devices (See Appendices 1 and 2). The project on which [REDACTED] worked, one of the 95 separate archiving efforts in progress at LANL, was completed in August 2006. (b)(6),(b)(7)(C)

On October 17, 2006, the Los Alamos Police seized a flash drive containing classified information and a number of classified documents [REDACTED] during a drug-related investigation. Subsequent analysis of the seized material revealed that it constituted a portion of the material involved in the scanning project and had been diverted from the Laboratory. Because of the seriousness of the diversion, the Secretary of Energy requested that the Office of Inspector General initiate a review to determine whether the Department and the Los Alamos National Laboratory had adequately protected classified information in this instance and to examine the circumstances surrounding the [REDACTED] (b)(6),(b)(7)(C)

(b)(6),(b)(7)(C) [REDACTED] In response to the request, we:

- Reviewed Department of Energy and Los Alamos National Laboratory policies and procedures governing cyber and physical security over classified information at the Laboratory;
- Examined the personnel security adjudication process as it pertained to [REDACTED] (b)(6),(b)(7)(C)
- Interviewed over 80 federal and contractor officials;
- (b)(6),(b)(7)(C) • Reviewed [REDACTED] personnel security file and record of clearance adjudication;
- Conducted a physical observation of the VTR in question; and,
- Performed limited tests of general controls over classified information systems security at the Laboratory.

Classified Network and Computer Security Controls

Our examination disclosed that while the Los Alamos National Laboratory had developed policies designed to protect classified information, in many instances they were not effective in preventing serious security weaknesses. We identified deficiencies related to mixed media vulnerabilities, unneeded access to computing resources, as well as the failure to operate within classified information system accreditation boundaries.

Migration of Classified Information

Following a major security compromise in 1999, the then Secretary of Energy ordered LANL and other similarly situated facilities to implement controls and protections to make it physically impossible to migrate classified information to unclassified systems and devices. While LANL had taken action to disable a number of devices, in a significant number of instances, it did not deactivate open computer ports that could be used to circumvent such controls. In the particular VTR to which [redacted] was assigned, none of the ports, in the classified rack-mounted computers that could be used to copy classified data, had been disabled or secured. Our review disclosed that [redacted] had been granted access to all of the open and unsecured USB and high speed serial (firewire) ports on the classified computers [redacted] used for scanning. Such access would have permitted [redacted] to create CREM by copying classified information to high capacity and easily concealable devices such as flash and portable hard drives. Information gathered by Laboratory line management officials immediately following the seizure of [redacted] flash drive further disclosed that open ports that could be exploited existed in many of the over 2,700 classified work environments in the LANL complex.

(b)(7)(E)

Our examination also disclosed that mixed media weaknesses in the same VTR could have permitted the transfer of classified information to unclassified networks and/or systems. We found that at least one unclassified, standalone-computer had active and accessible USB and firewire ports and also had access to the Laboratory's yellow network – used for processing sensitive but unclassified information – and to the Internet.

(b)(7)(E)

(b)(7)(E)

[redacted] While forensic examination of all computers in the VTR had not been completed by the time we concluded our review, analysts told us [redacted] classified information to the standalone unclassified computer's hard drive, transferred it LANL's unclassified network, or uploaded such information to the Internet.

(b)(6),(b)(7)
(C),(b)(7)(E)

(b)(7)(E)

(b)(7)(E)

Access to Resources

In spite of controls and specific guidance by NNSA to the contrary, [redacted] was granted access to a classified high-speed network printer even though not required by [redacted] job. Among other measures, the Laboratory developed safeguards designed to ensure that classified information and computer resources are adequately protected. For example, Information Systems Security Officers (ISSO) (and/or their alternates) are, among other responsibilities, required to ensure that user access is appropriate. In this case, however, that control was not effective. While the [redacted] did not believe that [redacted] needed to print documents, [redacted] practice was to provide printer access to all users regardless of their duties. LANL contracting, program, and subcontractor officials we spoke with stated that the subject's duties were confined to scanning and indexing documents and that [redacted] had no reason to and should not have been granted authority to print documents.

(b)(6),(b)(7)
(C)
(b)(6),(b)(7)
(C)

(b)(6),(b)(7)
(C)

LANL officials confirmed through forensic analysis that [redacted] had been granted access to the printer that was allegedly used for production of the hard-copy classified documents

(b)(6),(b)(7)
(C) ultimately seized from [redacted] residence. Co-workers told us that because of the location of the printer (Appendix 1) and the high ambient noise level in the VTR, they could not hear the printer operate and that the subject could have printed classified documents without being detected.

(b)(6),(b)(7)
(C) The [redacted] who originally set up the scanning operation also permitted [redacted] and other co-workers to physically access the classified computers contained in the VTR even though they were not authorized to perform systems administration tasks. As noted by the Laboratory's [redacted] such practices endanger security and are specifically prohibited. Despite these risks, workers in the VTR were permitted routine access to the unlocked racks to reset classified computers and various devices when needed. While the current [redacted] indicated (b)(6),(b)(7) that [redacted] did not permit such access, [redacted] explained that [redacted] was assigned other duties and would not (b)(6),(b)(7) have known whether these individuals continued to access the unlocked classified computer (C) racks during the 50 percent of the time [redacted] estimated [redacted] was away from the VTR. (b)(6),(b)(7)
(C)

Operating Within Accreditation Boundaries

(b)(6),(b)(7)
(C) LANL officials also permitted the subcontractor to introduce unapproved devices into the VTR in which [redacted] worked even though they were not included in the accredited security plan and could have compromised the classified network. Although the sequence or timing of events could not be established with certainty, we confirmed that at some point during the scanning and archiving project that began in September 2005, the subcontractor responsible for the project introduced three of its own scanners into the VTR. While these items were called for (b)(6),(b)(7) in the subcontract task plan, they were not addressed in the system security plan and, as such, (C) never received authority to operate from Federal accrediting officials. The [redacted] (b)(6),(b)(7) [redacted] stated that while [redacted] did not think that the particular scanner [redacted] (C) installed posed a security risk, [redacted] did not perform any tests on it, notify superiors prior to installing it, or modify the security plan to include it – all actions specifically required by LANL policy.

In addition to the scanning devices, we also identified several unclassified computers and other peripherals that were present in the VTR but had not been included in its security plan. The most significant of these devices was the previously described classified high-speed printer to which the subject was inappropriately provided access. That printer was capable of double-side (b)(6),(b)(7)(C) printing – the format for many of the hard copy classified documents seized during the [redacted] investigation – and was connected to the Laboratory's classified network. Several other devices – an apparently unused (but still operational) unclassified computer and an additional government-owned scanner – were also present in the VTR, but had not been included on the latest security plan. As with the subcontractor-owned scanners, omission from the plan effectively prevented security officials from evaluating the impact of these peripherals. As a result, they were never reviewed by Laboratory classified computer security officials or approved for operation by Federal accrediting officials.

The accreditation issues we identified are parallel to problems that we identified during our annual *Evaluation Report on the Department's Unclassified Cyber Security Program – 2006* (DOE/OIG-0738, September 2006). Additionally, our Draft Audit Report on *The Department's Certification and Accreditation of Information Systems*, issued for comment on September 25,

2006, found that hardware inventories included in security plans were inadequate for various programs and sites. As noted in guidance published by the National Institute of Standards and Technology (NIST), accurate inventories are a key initial step in determining what system elements are exposed to security risks.

Structural Control and Implementation Weaknesses

These cyber security weaknesses resulted from control and management failures at multiple levels. In particular, we noted that policies designed to protect classified information were not enforced or were inadequate. For example, the Los Alamos National Laboratory had not:

- Taken adequate action, in all cases, to enforce controls designed to prevent the migration of classified data to unclassified systems;
- Developed policy requiring system administrators to take advantage of readily available means to physically secure classified computers; and,
- Ensured that incompatible functions were segregated and related compensating controls were in place and operational.

Migration Vulnerabilities

Although LANL had developed policies designed to prevent the unauthorized transfer of classified information to unclassified media or devices, the policies and procedures were not properly implemented and were not always effective. The [REDACTED]

(b)(6),(b)(7)
(C)

[REDACTED] and various members of [REDACTED] staff recognized that open ports in mixed media environments posed a risk and that they "should have paid better attention" to ensuring that policies designed to prevent migration of classified systems were enforced. [REDACTED]

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(b)(6),(b)(7)
(C)

(b)(6),(b)(7)
(C)

[REDACTED] explained that in many situations – such as in [REDACTED] own office – action had been taken to secure ports by covering them with tamper-indicating tape and, in some other environments, ports had been disabled through software controls. In response to our inquiry, [REDACTED]

(b)(7)(E)

(b)(7)(E)

While network engineering officials and others within the LANL Chief Information Officer's organization expressed concerns with open ports and problems with managing tamper-indicating devices, a Laboratory-wide solution was never developed or deployed. As evidenced by a series of e-mail exchanges between members of a "diskless computer discussion group" during the March-April 2006 timeframe (with copies provided to the NNSA's Los Alamos Site Office), group members responsible for configuring computers were concerned that a common technical solution to "address the control of USB/Firewire ports" in mixed media environments had not been developed. In discussing the security challenges associated with modern, multi-port computers, one member of the group recognized that it "would be a simple matter to plug some recording device into one of these open ports and write to it."

LANL management officials acknowledged, during security briefings related to the discovery of the diversion of classified information, that the actions to disable USB ports in mixed media environments had not been completely effective in the past. They noted that after the recent diversion of classified information they had identified a number of environments where ports

remained accessible. As part of its remediation effort initiated after the current problem was discovered, Laboratory management reported that it had required each user to re-review classified information security requirements, had secured virtually all vulnerable USB ports, and had directed that all flash drives be collected and controlled. We were unable to verify in the available timeframe that the actions described by management had actually been completed.

Security of Rack-Mounted Computers

LANL also failed to take advantage of readily available security measures that, in this case, would most likely have prevented the unauthorized removal of the electronic classified material found on the seized flash drive. A senior laboratory management official told us that as part of its initiative to secure CREM following a major security event in 2002, they had acquired locking racks that were to be used to secure most rack-mounted classified computer systems. Although uncertain of the timing, that official explained that at some point the decision was made that these rack mounted systems did not contain CREM and that there was no need to secure them if they were located in vaults or VTRs. Both computer security and management officials that we consulted at the Laboratory informed us that securing these racks would have denied access to the enabled USB ports in the VTR in question and that such action could have prevented the download of the diverted classified information (See Appendix 2). After discussing this issue with Laboratory management officials, these officials indicated that they have now directed that all classified computer racks be locked regardless of their location.

Segregation of Incompatible Functions

The assignment of incompatible functions by LANL to a single individual might have contributed to the unauthorized removal of classified information in this case. As specified by NNSA policy, "...measures must be implemented to ensure the management, control, and separation of security critical functions." In this case, however, LANL did not always provide for such separation, and provided a single individual with unfettered authority to override safeguards designed to protect classified systems. For example, the original [REDACTED] [REDACTED] granted physical access to classified computers to unauthorized individuals, including [REDACTED] and several of [REDACTED] co-workers. The successor [REDACTED] was also provided with the same authority and overrode controls designed to prevent peripherals that were not owned by the government and/or had not been evaluated for security impacts from being introduced into the classified computing environment. Essentially, these individuals were given the authority to supervise and approve their own actions. The [REDACTED] actions were particularly important in this case because these actions may have desensitized co-workers to [REDACTED] presence in and around the classified computer racks – a situation that could have permitted [REDACTED] to complete the alleged insertion and removal of the flash drive from the classified computer without detection.

Because of the extent to which ISSOs are assigned as system administrators in other organizations, the same or similar problems may exist at a number of other LANL facilities.

When initially queried, the Laboratory's [REDACTED] [REDACTED] could not easily determine how many individuals were serving in dual-role capacities. [REDACTED] explained that line managers selected and appointed the ISSOs, that ISSOs were authorized to appoint alternates in

(b)(6),(b)(7)
(C) some areas, and that the only way [] could quantify the incompatible assignment issue was to put out a data call. Although the data collection effort had not been concluded at the time our field work was completed, we did learn that, with about 80 percent of organizations reporting, 62 percent of the individuals identified could be in the position of supervising their own work.

(b)(6),(b)(7)
(C) While the Laboratory's [] indicated that [] was (b)(6),(b)(7)
(C) aware of the benefits of segregation of duties in preventing or detecting security problems involving insiders, [] did not believe that regulations required such separation and stated that (b)(6),(b)(7)
(C) funding was insufficient to accommodate it. [] explained that the Laboratory interpreted the Department's *Classified Information Systems Security Manual* (DOE M 471.2-2 of August 3, 1999) as not requiring that the ISSO and the system administrator functions be separated for protection levels such as those employed at LANL. We found, however, that the cited manual is inconsistent with current NNSA guidance. The Department's Manual also does not comport with guidance established by the NIST and the Office of Management and Budget (OMB) that stress the need for separation of incompatible functions, and, when such separation is not practical, the requirement to employ strong compensating controls.

Compensating Controls

(b)(6),(b)(7)
(C) While the Laboratory developed a mechanism designed to help ensure that the actions of those (b)(6),(b)(7)
(C) who administer classified information systems were appropriate, it was not effective and potentially contributed to the unauthorized removal of classified material. Every ISSO is (b)(6),(b)(7)
(C) charged with the responsibility of ensuring that actions of their alternates are appropriate and consistent with existing policy. After detailing the management and review role expected of (b)(6),(b)(7)
(C) those in [] position, [] stated that [] was unable to properly fulfill [] duties because [] workload was just too large. [] indicated that [] was responsible for a classified (b)(6),(b)(7)
(C) network that spanned 22 square miles, serving about 150 active users. As such, [] told us [] was forced to delegate virtually all of the ISSO functions to Alternate ISSO/System (b)(6),(b)(7)
(C) Administrators who he believed to be inexperienced in the requirements of administering and securing classified networks. [] indicated that [] was only able to visit the particular VTR in (b)(6),(b)(7)
(C) which [] was working infrequently; was completely unaware of the scanning project; did not perform testing or reviews of controls during those visits; and, that [] had not detected (b)(6),(b)(7)
(C) any of the particular control overrides we identified.

LANL management indicated that it tried to compensate for segregation of duty problems by requiring the participation of others in the testing of security plans. Computer security officials indicated that other system administrators, often from different organizations, participated in testing security plans to determine their viability. While they conceded that the same individual that prepared the plans was sometimes responsible for testing, they also stated that from two to five separate individuals experienced in systems administration were often involved in testing. In this instance, however, the compensating control was not effective in that the other testers involved in a June 2006 test did not identify mixed media vulnerabilities, problems associated with the omission of peripherals from the security plan, or the introduction of subcontractor-owned and other equipment. LANL relied completely on this compensating control and did not require its Classified Information Systems Security Manager, charged with reviewing security plans and submitting them to Federal officials for accreditation, to visit locations to verify that both plans and testing were appropriate.

Contributing Factors

We also found other weaknesses that, in our opinion, limited the effectiveness of the Laboratory's classified information system protection program and contributed to the unauthorized diversion of classified information in this case. These included inadequate Federal review and inspection of the Laboratory's classified information systems; conflicting and inconsistent policy for procuring classified information support services and for adequately maintaining system security plans; and, Federal policy design and implementation issues that could have implications for the entire Department of Energy complex.

Federal Management and Review Activities

The failure of Federal security officials to perform verification activities may have adversely affected the classified security climate at the Laboratory and contributed to the recent removal of classified material. The Los Alamos Site Office (LASO) performed a number of management activities; however, it did not complete needed field activity reviews of the Laboratory's classified information systems. Accrediting officials at LASO told us that they placed a great deal of emphasis on reviewing security plans and accrediting systems, but because of resource constraints, they were unable to perform physical inspection of systems to validate that the plans were accurate and were being enforced.

During Fiscal Years 2005 and 2006, LASO officials reported that they had only 1.5 full time equivalents available for review of contractor systems and that they simply did not have time to visit system locations. Our current observations at LASO are consistent with findings we issued in connection with our *Evaluation Report on the Department's Unclassified Cyber Security Program - 2006* (DOE/IG-0738, September 2006), in which we expressed our view that NNSA site offices did not adequately manage cyber security by ensuring that contractors implemented NIST and OMB cyber security requirements. In response to our 2006 finding, NNSA indicated that it did not concur with our view and noted that existing mechanisms were sufficient to meet requirements. Following the incident under review, LASO officials told us that they had reevaluated resource allocations in this area and planned to begin a series of field activity reviews in the near future.

Problems with the timely completion of classified information system inspections may have also been a factor in conditions we identified. Except for an annual review conducted by a senior cyber security specialist from its Service Center, NNSA relied on the Office of Independent Oversight, Office of Health, Safety and Security to conduct detailed reviews of LANL's classified information systems. Although normally completed once every two years, this inspection had not been performed for about four years because of a variety of factors. Office of Independent Oversight officials told us that a significant portion of the delay was caused by the security stand down at LANL in 2004, a moratorium placed on reviews during the period that the contract was transitioned from the University of California to Los Alamos National Security, LLC (LANS), and, finally, their participation in a number of Site-Assisted Visits as part of the Department's Cyber Security Revitalization Plan. It should be noted that the Office of Independent Oversight began a previously scheduled review of LANL's classified information systems at about the same time the diversion of classified information was discovered.

Security Planning and Acquisition Policy Issues

We found conflicting direction regarding what items to include in security plans, a factor that may have impacted cyber security at LANL. For example, the Laboratory's [REDACTED]

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(b)(6),(b)(7)
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[REDACTED] told us that a [REDACTED] from the NNSA Service Center had directed that peripheral devices not be included in security plans. Based on

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(b)(6),(b)(7)
(C)

that direction, [REDACTED] advised ISSOs to only include peripherals if their cost was equal to or more than the property accountability threshold for the Laboratory. In contrast, LANL's [REDACTED]

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(b)(6),(b)(7)
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[REDACTED] told us that all peripherals except for small items that had no memory or ability to read or write information – items such as a mouse or keyboard – were to be included, and their impact evaluated, in security plans. The Federal official [REDACTED]

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(C)

[REDACTED] indicated that [REDACTED] had "heard something about" the direction regarding peripherals but had not verified the direction or evaluated its impact. The NNSA Service Center official to whom the statement regarding peripherals was attributed told us that [REDACTED] had not provided such guidance.

(b)(6),(b)(7)
(C)

A lack of knowledge of policy regarding the introduction of equipment following completion of security plans could also have impacted classified information systems security at some of the 104 similarly situated VTRs located across LANL. As identified in LANL guidance, ISSOs are required to update security plans and seek reaccreditation whenever significant changes to the configuration of a system occurred. When queried as to why the security plan for the VTR in

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which [REDACTED] worked was not updated when new devices or systems were introduced, the

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(C)

[REDACTED] told us that the Laboratory has no specific

policy regarding events that could trigger the requirement to update security plans. [REDACTED] relied on individual ISSOs to make their own determination as to what is significant and whether an

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(C),(b)(7)(E)

(b)(7)(E)

update was required, and, as we noted earlier, it was not [REDACTED]

[REDACTED] We observed that the Laboratory had issued policy in August 2002, which specifically described events that would trigger a change to security – several of which appeared to be directly applicable in this case.

Inconsistent and conflicting policy regarding the acquisition of computer support services also impacted security in classified computing environments at the Laboratory. For the task under which the classified scanning took place (as well as for a number of others), procurement officials required that the subcontractor furnish peripherals such as scanners and software. This requirement was incorporated into the task even though the NNSA Policy Letter (NAPS) governing classified computer security and the local classified system security plan for the VTR in question specifically prohibited the connection of non-government owned equipment to the classified local area network. Several months before our review, LANL issued a policy inconsistent with the NAPS in that it permitted the use of non-government property if it was properly reviewed and sanitized upon removal.

Federal Policy Design Issues

Our review disclosed at least one particularly significant instance where classified computer policies had not been developed or properly formalized. After a major breach involving the removal of classified material from LANL in 1999, the then Secretary of Energy directed that

safeguards be developed and implemented to prevent the migration of classified data to unclassified systems and decrease the potential for insiders to exploit security vulnerabilities. This direction specifically required that organizations "establish requirements that place stringent controls on computers and work stations, including controls on ... ports that could be used to download files." While ordered and implemented for the three laboratories under the cognizance of the then Albuquerque Operations Office, the requirement was never included in the Department's or the NNSA's cyber security policy. Despite efforts by the Department's Chief Information Officer and various working groups chartered by that organization, this and other policies related to national security systems, including many of those required by the Federal Information Systems Security Management Act (FISMA), have yet to be incorporated in Department policy.

A senior official with the Office of Independent Oversight indicated that [redacted] organization had reported on the Department's failure to update its classified computer security policy. As noted in its *Report on the Status of the Department of Energy's Information Security Program for National Security Systems* (September 2006), issued to satisfy FISMA evaluation requirements, the Office of Independent Oversight reported that policies for protecting national security systems had not been updated since 1999 and were seriously out of date. The inspectors concluded that policy weaknesses contributed to a number of FISMA implementation vulnerabilities that could, if not corrected, endanger classified systems. Most notably, [redacted] (b)(6),(b)(7)(C) (b)(7)(E)

Cyber Security Program Implementation Issues

Laboratory officials, including the Director and his senior staff, informed us that they were committed to providing a multilayered defense against both internal and external parties that may wish to damage computer systems or compromise information. While these officials indicated that they have recently strengthened their resolve to achieve this goal in response to the recent diversion of classified information, they identified what they believed to be significant structural issues that have frustrated their efforts in this regard. Specifically, during the transition of the operating contract from the University of California in mid-2006, LANS identified cyber security as a preexisting condition, one that they lacked the resources to address in the short run.

(b)(6),(b)(7)(C)

The preexisting condition related to cyber security, one of several identified during the contract transition phase, was based primarily on the fact that the University of California had not implemented most of the NNSA cyber security implementing guidance. The Laboratory's [redacted] (b)(6),(b)(7)(C) indicated that funding was insufficient to implement the majority of NNSA's cyber security requirements as specified in the NAPS, and provided information that indicated that only a small fraction of those requirements had been implemented to date. In addition to the preexisting condition identified prior to contract transition, LANL also told us that planned funding reductions could further impact their ability to safeguard classified information. On September 27, 2006, the Laboratory Director, in a joint letter with the Directors of the Lawrence Livermore and Sandia National Laboratories, reiterated his concern that a forthcoming 30 percent reduction in cyber security funding would endanger both unclassified and classified

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(C)

information systems. NNSA's [REDACTED] told us that efforts were underway to identify additional funding for cyber security at the national defense laboratories.

Ongoing Reviews and Corrective Actions

Management officials at various levels of the Department and at LANL promptly launched an effort to identify and correct control deficiencies that caused or contributed to the unauthorized removal of classified information. The Deputy Secretary also issued a memorandum directing that each laboratory and Federal facility operating a classified computer system conduct an immediate and thorough examination of the adequacy of its practices and procedures to ensure that classified information is properly protected. LANL officials also reported that they had taken actions designed to secure open ports and increase security over classified information. To facilitate this work and provide technical assistance, the Department's Chief Information Officer told us that his office had commissioned a study to identify and evaluate the relative strengths and weaknesses of the various hardware and software methods of securing computer ports and is working to update classified cyber security policy.

National Security Impacts

The seriousness of the theft or diversion of classified material could have a significant impact on U.S. national security. If exploited, such information could be used to damage critical facilities and disrupt Government operations. For this event in particular, the full extent of damage or dispersion of the classified material removed by the alleged perpetrator may never be fully known. [REDACTED]

(b)(7)(E)

(b)(7)(E)

RECOMMENDATIONS

Although a number of cyber security initiatives are underway, we concluded that the Department needs to reemphasize its commitment to cyber security. In addition, to address the weaknesses described in our report, we recommend that the Under Secretary for Nuclear Security/Administrator of National Nuclear Security Administration, working with the Chief Information Officer and the Chief Health, Safety and Security Officer, complete the following detailed actions, all of which may have applicability across the complex:

1. Ensure that classified cyber security policies and implementing instructions are updated to address noted deficiencies;
2. Disable unneeded active USB and other system ports that could permit the unauthorized diversion or theft of classified information;
3. Secure classified computer racks;

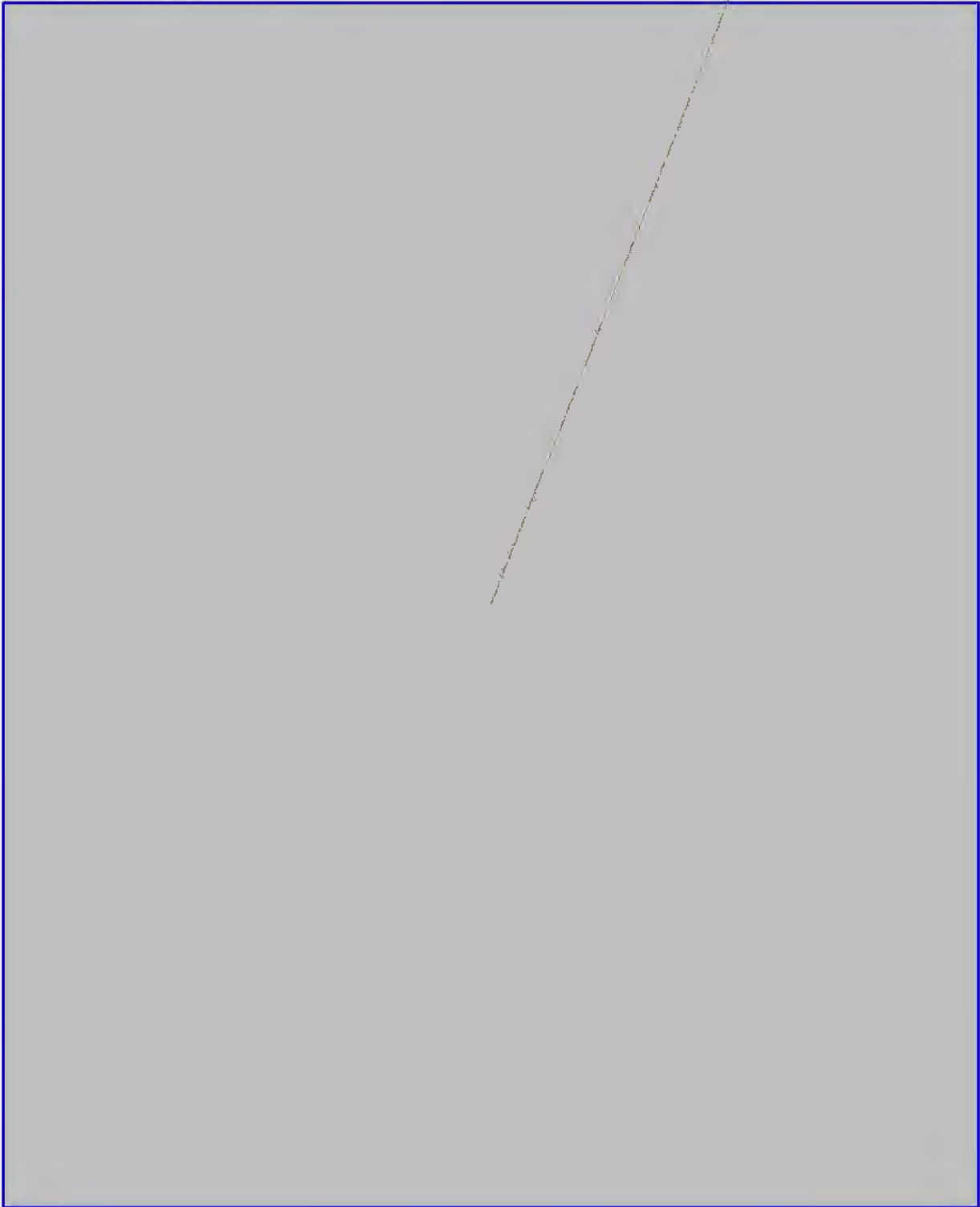
4. Ensure that incompatible duties (supervision and actual performance of tasks) are not performed by the same individual;
5. Limit classified computer access and privileges to those who specifically require it;
6. Require that classified information security plans be complete and accurate, be updated for changes, and that accreditations are obtained prior to operation;
7. Conduct both contractor and Federal reviews and physical inspections of systems prior to granting authority to operate, and periodically throughout the accreditation period;
8. Reevaluate cyber security funding, using a risk-based approach; and,
9. Review activities by Federal and contractor management and staff to determine whether administrative action is appropriate.

To further reduce risks at LANL and other Department facilities, we recommend that the Under Secretary for Nuclear Security/Administrator, National Nuclear Security Administration:

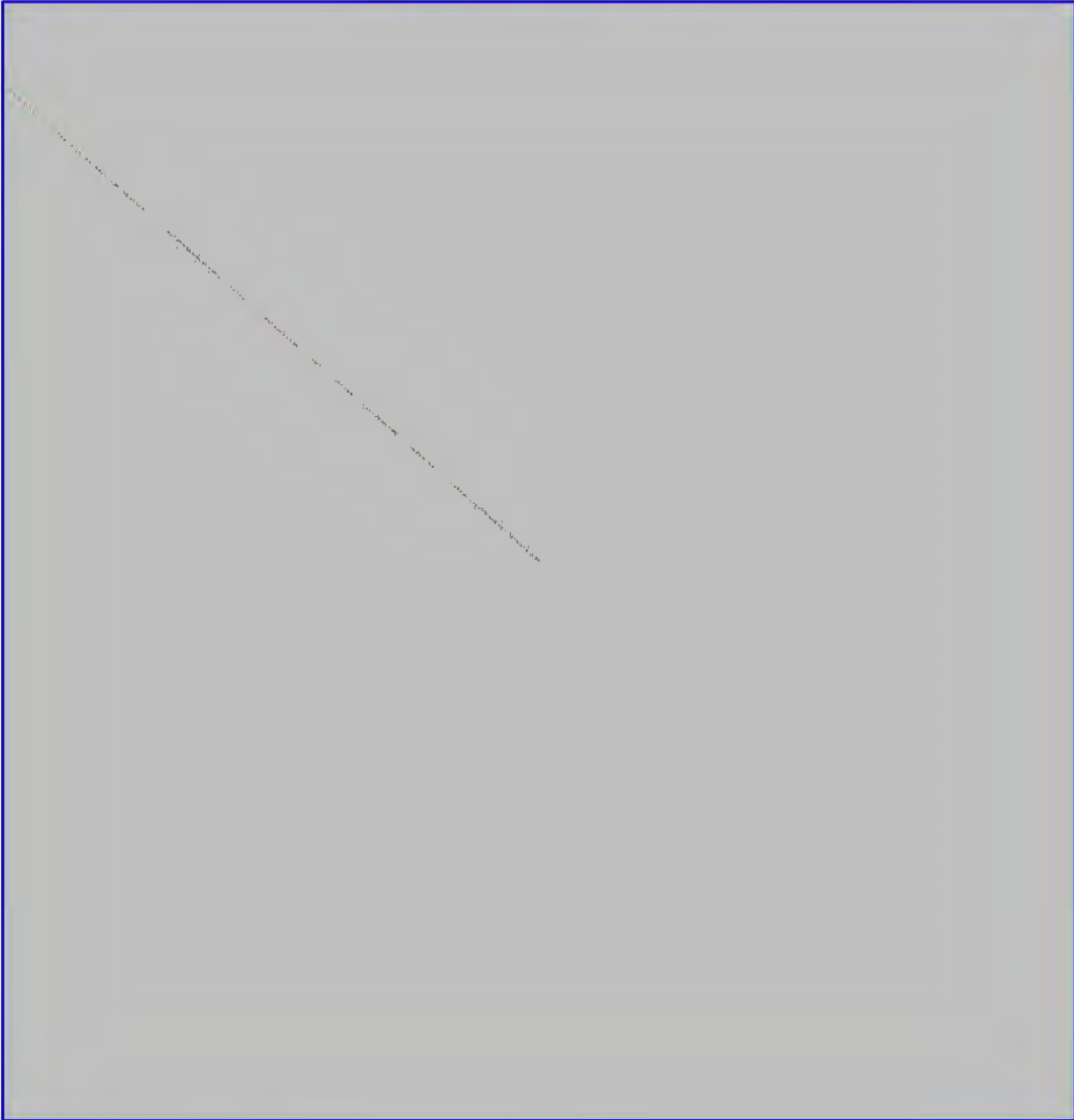
10. Monitor on-going classified cyber security efforts to ensure that all needed corrective actions are tracked to resolution;
11. Share the lessons learned in this case with each of the Department's facilities; and,
12. Coordinate with the Chief Health, Safety and Security Officer, Office of Independent Oversight to ensure that a follow-up inspection to validate the efficacy of each corrective action and the overall viability of LANL's classified cyber security protection program is performed. In addition, evaluate inspection protocols to ensure that the vulnerabilities cited in this report are tested periodically.

On June 1, 2006, Los Alamos National Security LLC assumed responsibility as the operator of the Los Alamos National Laboratory. Many of the recommendations, noted above, require specific contractor actions to address the weaknesses noted in this report. In this context, the Department needs to hold the new contractor accountable for the reforms needed to ensure a secure cyber security environment at Los Alamos.

Security Clearance Process

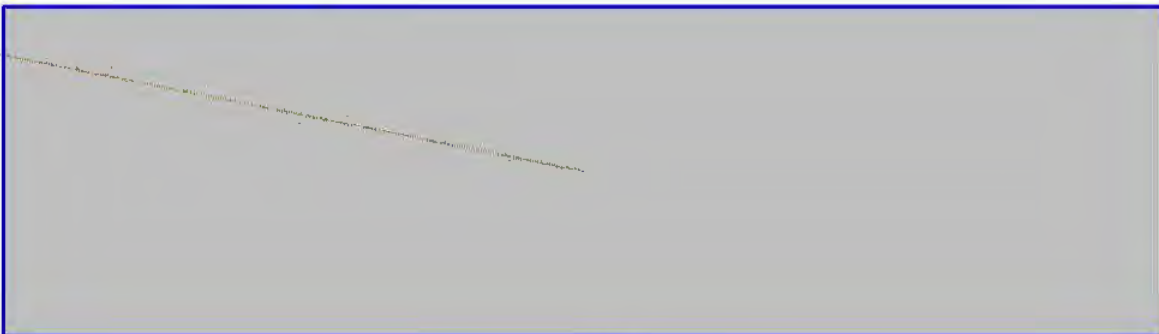


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RECOMMENDATIONS

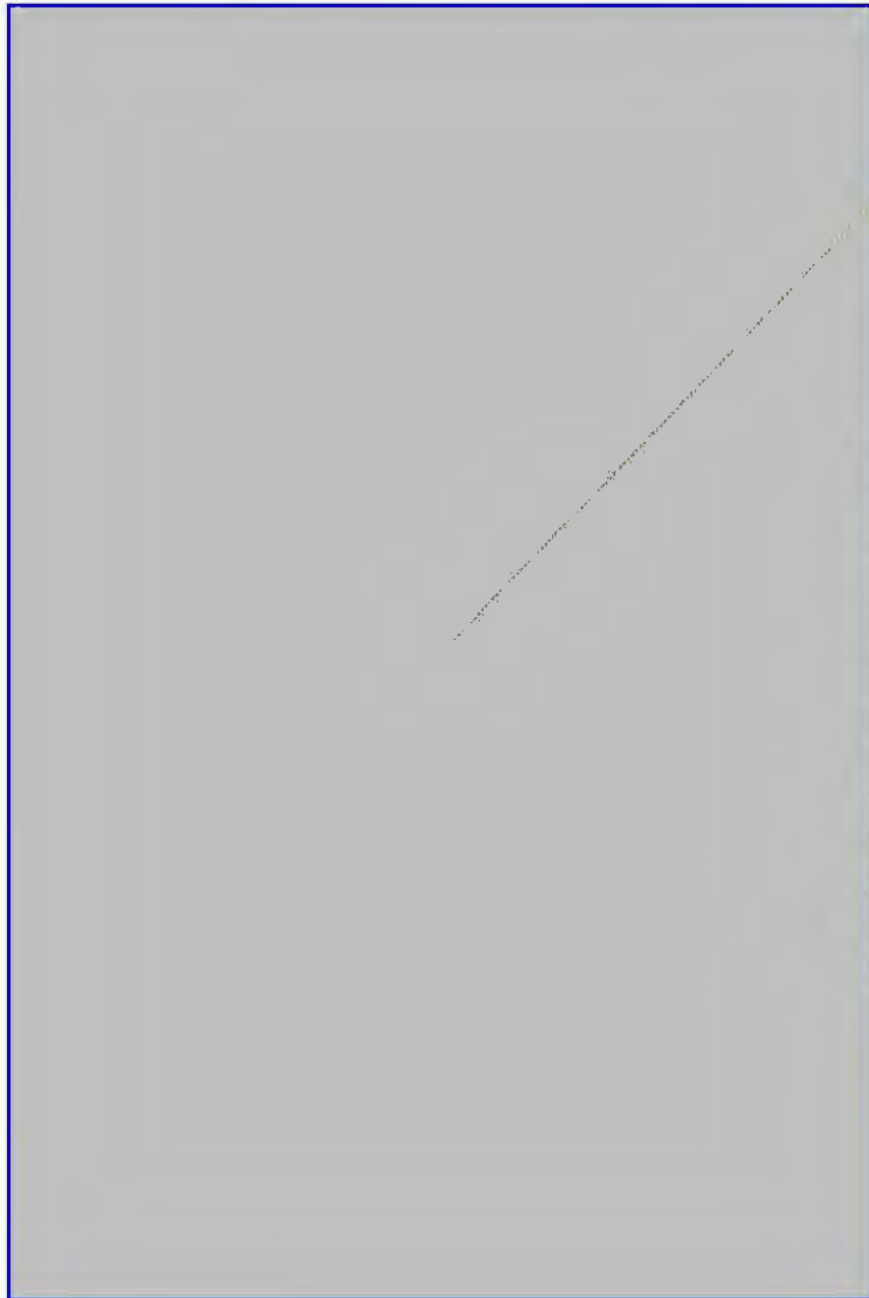
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APPENDIX I

DIAGRAM OF VAULT-TYPE ROOM



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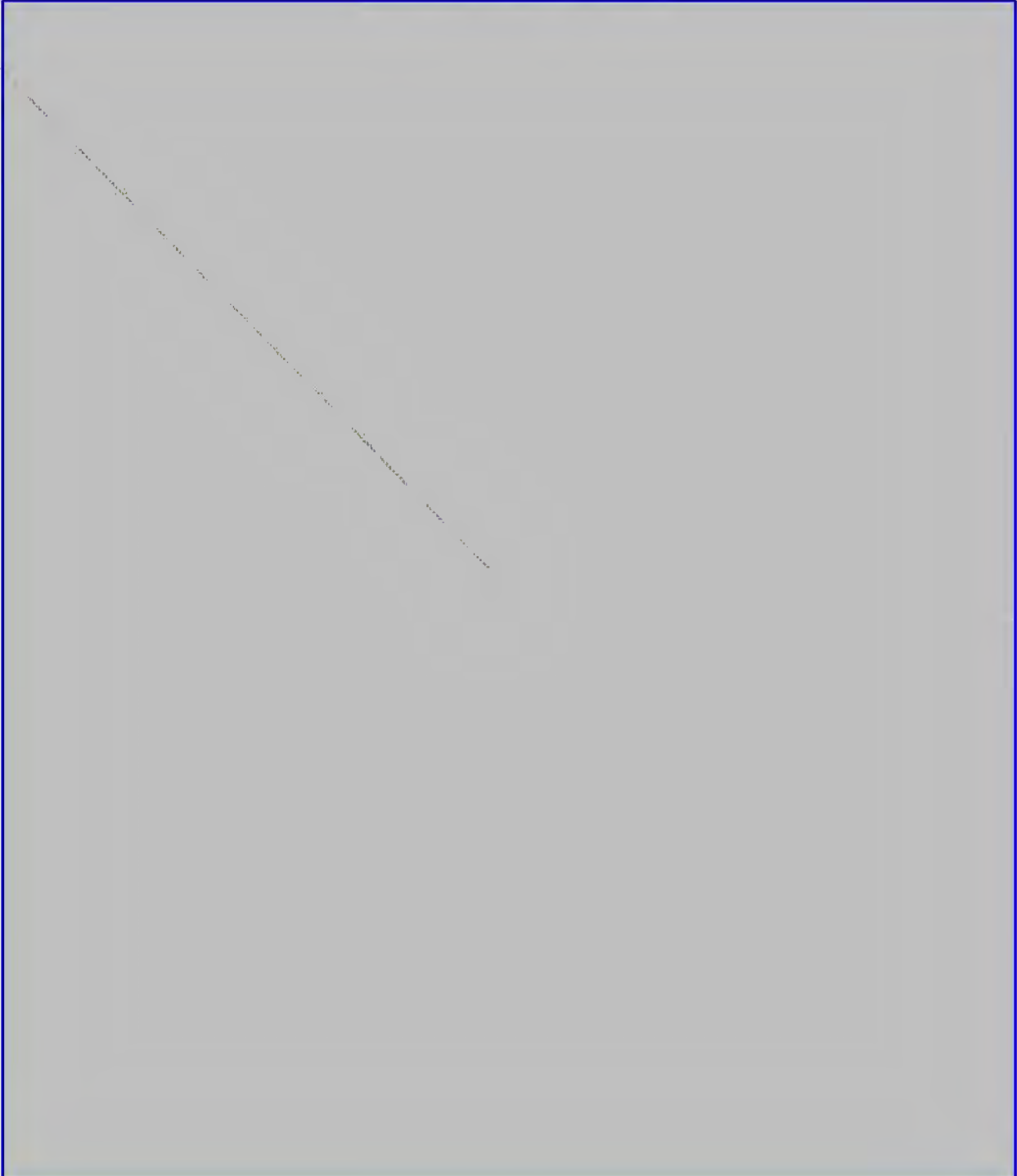
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APPENDIX 2

RELATED PHOTOGRAPHS

(b)(7)(E)



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APPENDIX 3

PRIOR REPORTS

- *Audit Report on the Department of Energy's Fiscal Year 2006 Consolidated Financial Statements* (OAS-FS-07-02, November 2006). Vulnerabilities and weaknesses continued to exist in the Department's network and information systems for access and other security controls. Specifically, the National Nuclear Security Administration (NNSA) failed to ensure that Federal, Departmental, and NNSA cyber security requirements, policies, and controls were always properly implemented by field organizations and facilities contractors. Program officials had not ensured that facility operating contracts were modified to incorporate all Federal cyber security requirements. Further, many systems' certifications and accreditations (C&A) had not been performed, lacked essential elements such as independent testing of the effectiveness of security controls, or were not adequately documented. In addition, certain sites incorrectly used an overly broad grouping or "enclave" approach to completing the C&A of their systems. Vulnerabilities and weaknesses continued to exist in access and other security controls, which increased the risk that malicious destruction, alteration of data, or unauthorized processing could occur.
- *Evaluation Report on the Department's Unclassified Cyber Security Program - 2006* (DOE/IG-0738, September 2006). The evaluation identified continued deficiencies in the Department's cyber security program that exposed its critical systems to an increased risk of compromise. The report cited weaknesses in the following areas: systems inventory, system certifications and accreditations, contingency planning, physical and logical access controls, configuration management, and change controls. Problems occurred, at least in part, because Departmental organizations had not always ensured that Federal requirements, Department policies, and cyber security controls were adequately implemented and conformed to Federal requirements, most notably by field organizations and facility contractors. NNSA site officials indicated that they were required to comply with NNSA cyber security policy, as opposed to meeting NIST requirements. Accordingly, no NNSA site had fully implemented the NNSA cyber security policy. In fact, many NNSA field sites were permitted to follow a less thorough certification and accreditation process that did not incorporate all NIST or NNSA requirements. As a result, the Department's information systems, networks, and the information they contain remain at risk of compromise.
- *Special Inquiry Report Relating to the Department of Energy's Response to a Compromise of Personnel Data* (OIG Case No. I06IG001, July 2006). The inquiry found that a hacker had exfiltrated a file containing the names and social security numbers of 1,502 Federal and contractor employees working at NNSA's Service Center in Albuquerque, New Mexico. Neither the employees affected nor appropriate officials were properly notified about the compromise until about ten months after the successful intrusion had been detected. In addition, there was a lengthy delay in the Department's completion of an impact assessment on the intrusion. The Department's handling of this matter was largely dysfunctional and the operational and procedural breakdowns were caused by questionable managerial judgments; significant confusion by key decision makers as to lines of authority, responsibility, and

accountability; poor internal communications, including a lack of coordination and a failure to share essential information among key officials; and, insufficient follow-up on critically important issues and decisions. Additionally, the Department lacked clear guidance on procedures for notifying employees when personnel data is compromised. The bifurcated organizational structure of NNSA within the Department complicated the situation.

- *Inspection Report on Badge Retrieval and Security Clearance Termination at Sandia National Laboratory – New Mexico* (DOE/IG-0724, April 2006). Sandia National Laboratory's internal controls were not adequate to ensure that, in accordance with applicable policies and procedures, security badges assigned to terminating Sandia and subcontractor employees were retrieved at the time of departure or that security clearances of terminating Sandia and subcontractor employees were terminated in a timely manner. Specifically, from the same sample of 182 employees, 47 did not have complete Security Termination Statements, as required. Thus, there was no assurance these individuals had received the required Security Termination Briefing at the time of their termination. Given the similarity of the findings at the three National Laboratories reviewed, senior Department management should consider taking broader action within the Department to ensure that all Department sites are adequately addressing the areas of badge retrieval and security clearance termination. These areas are critical to the Department's program to control access to sensitive and classified information and facilities.
- *Audit Report on the Department of Energy's Fiscal Year 2005 Consolidated Financial Statements* (OAS-FS-06-01, November 2005). Network and information system security weaknesses continue to be identified at sites and the frequency and severity of those weaknesses remained consistent with prior year findings. The Department recognizes these weaknesses and has classified cyber security as a significant issue in its *Federal Managers' Financial Integrity Act* assurance statement for fiscal year 2005. Significant improvements are still needed in the areas of password management, configuration management, and restriction of network services. These findings remain open as of the issuance of the *Audit Report on the Department of Energy's Fiscal Year 2006 Consolidated Financial Statements* (OAS-FS-07-02, November 2006).
- *Inspection Report on Security and Other Issues Related to Out-Processing of Employees at Los Alamos National Laboratory* (DOE/IG-0677, February 2005). The Los Alamos National Laboratory (LANL) directly employed about 7,500 University of California employees, of which approximately 800 terminate their employment each year. LANL out-processing procedures were not followed by more than 40 percent of the 305 terminating employees included in the selected sample during the period under review. Consequently, Property Administrators, Classified Document Custodians, and Badge Office personnel frequently did not receive timely notification that employees were terminating. Given this and the results of additional sampling, there was no assurance that, prior to departure, LANL terminating employees turned in security badges, completed the required Security Termination Statement, or had their security clearances and access authorizations to classified matter and/or special nuclear material terminated in a timely manner.

- *Inspection Report on Internal Controls over Personal Computers at Los Alamos National Laboratory*, (DOE/IG-0656, August 2004). An interim inspection report (DOE/IG-0597, April 2003) on the same subject documented internal control weaknesses regarding LANL computers, particularly classified and unclassified laptop computers, including accountability and accreditation issues. This follow-on report identified continuing internal control weaknesses that undermined confidence in LANL's ability to assure that (1) computers are appropriately controlled and safeguarded from loss or theft and (2) computers used to process and store classified information are controlled in accordance with existing property management and security requirements. Specifically, a number of classified desktop computers were not entered into the LANL property inventory, as required, and some were not assigned a property number. In addition, LANL's listing of classified desktop and laptop computers was not completely accurate, and computer identification in accreditation paperwork did not always match the actual classified equipment.
- *Inspection Report on Internal Controls Over Classified Computers and Classified Removable Media at the Lawrence Livermore National Laboratory* (DOE/IG-0628, December 2003). Certain internal control weaknesses were identified in Livermore's administration of its classified computer and classified removable media inventories, increasing the vulnerability of these items to loss, abuse, and theft. Specifically, Classified Nuclear Emergency Search Team computer equipment and removable media were not subjected to required inventories; six classified desktop computers that had been shipped permanently to other Department sites remained in Livermore's property inventory; and a classified removable hard drive was not entered into Livermore's classified removable media tracking and accounting system, as required. Given current national security concerns, the Department and its contractors should make a maximum effort to safeguard classified computers and classified media to reduce the possibility of loss, abuse, and theft.
- *Special Inquiry on Operations at Los Alamos National Laboratory* (DOE/IG-0584, January 2003). The OIG conducted a fact finding inquiry into the allegations that senior management of LANL engaged in a deliberate cover-up of security breaches and illegal activities, in particular, with respect to reported instances of property loss and theft. The report disclosed a series of actions by Laboratory officials that had the effect of obscuring serious property and procurement management problems and weakened or overrode relevant internal controls. These actions created an atmosphere in which Los Alamos employees were discouraged from, or had reason to believe they were discouraged from, raising concerns to appropriate authorities. In short, management's actions - whether intended as a cover-up or not - resulted in delayed identification and resolution of the underlying property and procurement weaknesses, and related security concerns. Although our inquiry did not substantiate the allegation that Laboratory management deliberately hid criminal activity, we found that Laboratory management failed to take appropriate or timely action with respect to a number of identified property control weaknesses, and related security concerns. Specifically, there was a lack of personal accountability for property and inadequate controls over procurement and property systems.

Prior Independent Oversight Reports

- Independent Oversight Report on the *Status of the Department of Energy's Information Security Program for National Security Systems*, September 2006
- Independent Oversight *Cyber Security Inspection of the Los Alamos Site Office and Los Alamos National Laboratory, Volume II*, January 2003

Prior Government Accountability Office (GAO) Reports

- *Stand-Down of Los Alamos National Laboratory: Total Costs Uncertain; Almost All Mission-Critical Programs Were Affected but Have Recovered* (GAO-06-83, November 2005). On July 16, 2004, the Director of LANL suspended all activities except those specifically designated as critical, citing a pattern of safety and security incidents that occurred over the course of a year. Specifically, in the weeks prior to the stand-down, an undergraduate student was partially blinded in a laser accident, and two classified computer disks were reported missing. In both cases, laboratory employees disregarded established procedures and then attempted to cover up the incident. On July 23, 2004, the Deputy Secretary of Energy ordered a Department-wide stand-down of operations that used accountable classified removable electronic media. These media include computer disks; removable hard drives; and compact discs, read-only memory (CD ROM) that contain information classified as secret restricted data, top secret, or specially sensitive information. Almost all Department facilities resumed operations within 6 weeks, once they had certified that these media were accounted for and posed no security risk. Neither LANL's \$121 million estimate nor NNSA's \$370 million estimate, which it considers an upper bound, accurately captures the total cost of the LANL stand-down. LANL did not establish separate stand-down activity codes to track the actual time spent on stand-down activities, such as safety reviews and training. As a result, neither NNSA nor GAO can calculate actual stand-down costs.
- *Nuclear Security: Lessons to Be Learned from Implementing NNSA's Security Enhancements* (GAO-02-358, March 2002). Several security incidents in the late 1990s highlighted the need for improvements at the Department of Energy. For example, the possible loss of nuclear weapons design information and the "missing" computer hard drives at LANL revealed important weaknesses in security. More broadly, many reports have criticized Departmental security: the President's Foreign Intelligence Advisory Board report, the Cox Committee report, and a number of other GAO reports on particular aspects of the Department's security program. In response to individual events and reports, the Department, and later NNSA, developed initiatives intended to address nuclear security problems. Numerous initiatives were undertaken to strengthen, among other things, personnel, physical, information, and cyber security as well as the Department's counterintelligence program. Successful implementation of the initiatives should reduce the likelihood of security problems and therefore enhance security at NNSA facilities. For example, the Department has eliminated the backlog of security clearance investigations and reinvestigations of employees with access to classified information. Eliminating this backlog ensures that those employees with access to classified information have had their backgrounds checked and that cleared personnel needed in important mission-related areas are available for work. Other initiatives can strengthen controls over cyber security. The Department had published 29 cyber security directives for classified and unclassified systems and had provided cyber

security training for system administrators and managers. However, initiatives should be clearly communicated to the field. Contractor officials at one national laboratory received guidance on some cyber security initiatives from multiple offices within the Department and NNSA, often through informal means such as web site postings or verbal communication. This lack of clear communication produced confusion at sites about which requirements they needed to implement.

- *Nuclear Security: DOE Needs to Improve Control Over Classified Information* (GAO-01-806, August 24, 2001). The Los Alamos and Sandia National Laboratories have implemented Department of Energy's access controls and need-to-know requirements for both vaults and classified computer systems containing the most sensitive classified information. However, the Department's requirements for documenting need to know lack specificity, allowing laboratory managers wide variation in interpretation and implementation. Need-to-know determinations made by laboratory managers vary from detailed, specific, individual justifications to long-term blanket approvals for hundreds of staff for all classified information in a vault or computer system. More specific requirements and guidance for documenting need-to-know determinations would help ensure that only persons who require access to specific classified information to conduct their current work are granted access to that information. The Department had taken steps to upgrade protection and control over its classified information, but additional steps are needed. The Department's recent revision of its Classified Matter Protection and Control Manual adds several security requirements for top secret information. However, the revised manual does not reinstitute several top secret security requirements, in effect prior to 1998, that would enhance the protection of top secret information by providing a more traceable record of the document if it were to be lost. In addition, the Department was revising its Control of Weapon Data order to increase the security of documents that contain compilations of highly sensitive nuclear weapons information. This effort to upgrade security for the most sensitive weapons documents has already been under way for almost eight years. Until the order is issued and implemented, these documents will have a lower degree of protection.
- *Department of Energy: Key Factors Underlying Security Problems at DOE Facilities* (GAO/T-RCED 99-159, April 1999). The report disclosed security-related problems with controlling foreign visitors, protecting classified and sensitive information, maintaining physical security over facilities and property, ensuring the trustworthiness of employees, and accounting for nuclear materials. Among others, problems included 1) weaknesses in efforts to control and protect classified and sensitive information where one instance a facility could not account for 10,000 classified documents. 2) Lax physical security controls, such as security personnel and fences, to protect facilities and property. Our reviews of security personnel have shown that these personnel have been unable to demonstrate basic skills such as arresting intruders or shooting accurately; at one facility, 78 percent of the security personnel failed a test of required skills. Furthermore, GAO found that equipment and property worth millions of dollars was missing at some facilities. 3) Ineffective management of personnel security clearance programs has been a problem since the early 1980s. Backlogs were occurring in conducting security investigations, and later, when the backlogs were reduced, and some contractors were not verifying information on prospective employees.

Document Number 8



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Department of Energy

Washington, DC 20585

September 27, 2005

MEMORANDUM FOR THE ASSISTANT SECRETARY FOR ENVIRONMENTAL MANAGEMENT

FROM:

Greg Friedman
Gregory H. Friedman
Inspector General

SUBJECT:

Letter Report on "Inspection of Possible Ethics Violation"
(S05IS042)

(b)(6), (b)(7) (C) The Office of Inspector General (OIG) received an allegation from an anonymous complainant involving [redacted] Environmental Management, Department of Energy. It was alleged that in early July 2005, [redacted] made (b)(6), (b)(7) (C) an improper statement in the presence of two senior Office of Environmental Management officials during a meeting the group held to discuss a cessation of work order for Bechtel National, Inc. (Bechtel), due to excessive cost overruns at the Hanford Waste Treatment and Immobilization Plant. Reportedly, [redacted] essentially stated that [redacted] was going to (b)(6), (b)(7) (C) demonstrate how angry he was with Bechtel by calling Washington Group International (WGI) and advising that WGI reconsider their relationship with Bechtel for the impending management and operating contract at the Savannah River Site if WGI wanted to receive that contract. It was (b)(6), (b)(7) (C) also alleged that [redacted] had a personal interest in ensuring that WGI remained as the (b)(6), (b)(7) (C) Savannah River prime contractor because [redacted] is an employee of Westinghouse Savannah River Company, a business component of WGI. [redacted] (b)(6), (b)(7) (C) [redacted] the Savannah River Site procurement.

The objective of our review was to determine the facts and circumstances surrounding the allegations.

RESULTS OF INSPECTION

(b)(6), (b)(7) (C) We interviewed [redacted] denied having made the alleged statement. We interviewed the two Office of Environmental Management officials named by the complainant as (b)(6), (b)(7) (C) attending the meeting with [redacted]. The officials had conflicting recollections over (b)(6), (b)(7) (C) whether [redacted] had made the statement. We could find no evidence to verify either version of the events with certainty. Thus, we were unable to reconcile these differences.

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(b)(6),(b)(7)
(C)

(b)(6),(b)(7)
(C)

(b)(6),(b)(7)
(C)

(b)(6),(b)(7)
(C)

With regard to the acquisition process for the Savannah River Site contract, [REDACTED] advised us that [REDACTED] Westinghouse Savannah River Company. The Department's Assistant General Counsel for General Law confirmed that [REDACTED] regarding the Savannah River Site procurement. She also advised that the Department's policy is likely to require that any new contractor retain the existing contractor's workforce below the senior management level. Thus, it was improbable that [REDACTED] would be affected by a change in contractors at the Savannah River Site, should there be such a circumstance.

DETAILS OF FINDINGS

Alleged Improper Statement

(b)(6),(b)(7)
(C)

(b)(6),(b)(7)
(C)

According to the complainant, in a July 2005 meeting with two senior Office of Environmental Management officials, [REDACTED] made the statement, "To show you how mad I am at Bechtel, I am going to call Washington Group International (WGI) and tell them they better reconsider their partnership with Bechtel or they will not get the Savannah River Site Contract."

(b)(6),(b)(7)
(C)

(b)(6),(b)(7)
(C)

(b)(6),(b)(7)
(C)

(b)(6),(b)(7)
(C)

(b)(6),(b)(7)
(C)

When interviewed, [REDACTED] denied making a statement to any member of his staff or to anyone else that [REDACTED] would contact WGI regarding its relationship with Bechtel as it related to the impending Savannah River Site contract. We interviewed the two senior officials who were reportedly present when [REDACTED] allegedly made the statement. The first official denied that [REDACTED] made the statement. The second official recalled [REDACTED] stating that [REDACTED] would demonstrate how upset [REDACTED] was with Bechtel's performance at the Waste Treatment and Immobilization Plant by calling WGI and telling WGI not to team with Bechtel if they wanted the Savannah River Site contract. Such a statement, had its existence been confirmed, would have been highly problematic. However, as noted previously, the alleged witnesses to the discussion had dramatically different recollections of what was said. We were unable to reconcile these differing recollections.

(b)(6),(b)(7)
(C)

(b)(6),(b)(7)
(C)

Alleged Personal Interest

(b)(6),(b)(7)
(C)

(b)(6),(b)(7)
(C)

(b)(6),(b)(7)
(C)

(b)(6),(b)(7)
(C)

(b)(6),(b)(7)
(C)

(b)(6),(b)(7)
(C)

Allegedly, [REDACTED] had a personal interest in ensuring WGI remains as the prime contractor at the Savannah River Site because [REDACTED] Westinghouse Savannah River Company, a business component of WGI.

(b)(6),(b)(7)
(C)

[REDACTED] stated that [REDACTED] was recused from the acquisition process for the Savannah River Site contract due to [REDACTED] Westinghouse Savannah River Company, the incumbent contractor at the site. [REDACTED] said that the Department's Office of the General Counsel prepared a letter of recusal for [REDACTED] relating to this matter, which he signed on June 27, 2005. [REDACTED] advised that because [REDACTED] with Westinghouse Savannah River Company is at a low level in the corporate hierarchy, [REDACTED] would be automatically transferred to the successful awardee of the Savannah River Site contract.

(b)(6),(b)(7)
(C)

(b)(6),(b)(7)
(C)

(b)(6),(b)(7)
(C)

We met with the Department's Assistant General Counsel for General Law regarding this matter. We were advised that [REDACTED] was authorized to participate in all of [REDACTED]

(b)(6),(b)(7)
(C)

(b)(6),(b)(7)
(C)

responsibilities as [REDACTED] Environmental

(b)(6),(b)(7)
(C)

Management, including those particular matters that affected operations at, on, or relating to the Savannah River Site. However, [REDACTED] authorization did not extend to any matters affecting [REDACTED]; any discussions and decisions regarding an award of particular

(b)(6),(b)(7)
(C)

fees to Westinghouse Savannah River Company; any involvement in the discussions or decisions regarding the future management and operating contract structure at the Savannah River Site; or any involvement in the source selection process unique to the competition for the contractor at the site. Further, the Assistant General Counsel said that under Department policy it is likely that any new contractor would retain the existing workforce below the senior management level. She said that [REDACTED] held a position below that threshold and could anticipate being retained by the new contractor at the Savannah River Site, should one be selected.

(b)(6),(b)(7)
(C)

In light of the above, we plan no further action on this matter.

This inspection was conducted in accordance with the "Quality Standards for Inspections" issued by the President's Council on Integrity and Efficiency. If you have any questions concerning this review, please contact [REDACTED] at 202-586-[REDACTED]

(b)(6)

(b)(6)

Document Number 9

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U.S. Department of Energy
Office of Inspector General

Special Report to Management

Review of Environmental Management Controls

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OAS-SR-05-03

10/1/2005

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Department of Energy

Washington, DC 20585

April 13, 2005

MEMORANDUM FOR THE DEPUTY SECRETARY

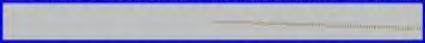


FROM:


Gregory H. Friedman
Inspector General

SUBJECT:

INFORMATION: Review of Environmental Management Controls

INTRODUCTION

On September 20, 2004, the Office of Inspector General received an anonymous complaint alleging corrupt business practices within the Office of Environmental Management (EM). The complainants alleged abuses of Federal regulations and human resource requirements, and duplicate payments to various individuals totaling tens of thousands of dollars. The allegations implicated   Environmental Management, as well as senior members of  management team. The complainants specifically alleged that a number of travel, time and attendance, and procurement abuses had occurred that resulted in excessive costs to the Department. The group making the complaint also professed a belief that a business decision for the site selection of the Environmental Management Business Center was not cost-effective, and that appointments of individuals were made to positions for which they were not qualified.

(b)(6), (b)(7)
(C)

(b)(6), (b)(7)
(C)
(b)(6), (b)(7)
(C)

We initiated this review to determine the validity of the allegations and, if so, to determine whether the Government had suffered significant losses. While we generally covered each of the allegations, we did not attempt to determine the appropriateness of management's judgment as to whether an individual was qualified for a particular position.

OBSERVATIONS

Our review did not substantiate allegations of wide-spread overpayments and abuses of management discretion. Based on extensive testing, we determined that the sum of duplicate and erroneous payments amounted to about \$1,000 and appeared to have been caused by confusion over regulations or administrative errors. We were unable to

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substantiate allegations of improper procurement practices or problems with business center site selection discussed in the complaint. We discussed our findings regarding the overpayments with management officials in EM and the Office of Management, Budget and Evaluation who agreed to take appropriate administrative action. Specifics regarding our findings are discussed in the following paragraphs.

While the complaint alleged substantial problems with travel and assignments, our testing revealed only two instances of small overpayments for per diem. The allegation named five EM officials who allegedly abused travel regulations by claiming full travel, lodging and meal per diem reimbursements for both their permanent and temporary duty stations.

We found, however, that only two of the five named individuals claimed reimbursements for per diem expenses at separate locations during the same time period. Specifically, we found that while [REDACTED] was on a detail at one location, [REDACTED] traveled to several other locations for official business and on three occasions received duplicate payments for meals and incidental expenses totaling approximately \$41. We also noted that while [REDACTED] was receiving temporary quarter allowances, [REDACTED] traveled to another location for official purposes and received additional per diem for three days. [REDACTED] also received both per diem reimbursement and temporary quarter allowance for [REDACTED] first day of temporary quarters. For [REDACTED] excessive reimbursement costs totaled approximately \$344. Management explained that this may have occurred due to confusion with regulations regarding permanent change of duty station. We have referred these matters to the Office of Management, Budget and Evaluation, which agreed to recover the overpayments or take appropriate action.

In examining allegations regarding inappropriate permanent changes of station, we observed an administrative error that resulted in the Department paying one individual more than it should have for a move to a location other than the assigned permanent duty station. In particular, we noted that a cost comparison was not performed for moving [REDACTED] to a location other than [REDACTED] new permanent duty station. The cost comparison would have limited the expense to an amount allowable for a move to the new duty station. We referred this error to an official in the Office of Management, Budget and Evaluation who determined that the excessive reimbursement totaled \$622. Once this error was brought to management's attention it agreed to make the necessary corrections and seek repayment from [REDACTED].

Although the complaint cited serious time and attendance abuses, we were unable to substantiate the allegations. The complaint alleged that three EM officials never charged annual leave and two of these officials claimed travel reimbursements while on vacation. We reviewed time and attendance records for the three individuals and found that each person used a substantial amount of leave during the last two years. We also found that the travel reimbursements claimed by these individuals showed that they traveled to specific Department sites or other locations where Department-related conferences were held. No other facts came to our attention to indicate that the three individuals abused time and attendance.

Despite assertions to the contrary, we were also unable to substantiate allegations of procurement or business center selection improprieties. The complaint alleged that EM sites were forced to use four named support service contractors and that these contractors were not producing any tangible work products. At two sites where these contractors were used, we found that over 90 percent of their contracts were either competitively bid or awarded to Small or Minority Businesses that the Department classified as "set asides." Contracting officials told us that all of the contractors were producing tangible work products and that they were satisfied with their performance.

It was also alleged that the Department chose to develop its EM Consolidated Business Center in the State of Ohio for political reasons. However, we found extensive documentation indicating that the location was chosen for business and financial reasons. As with a number of allegations contained in the complaint, no other facts came to our attention to indicate that problems in this area were significant or material.

No recommendations are being made in this report and a formal response is not required. We appreciate the cooperation of the Department's staff during this review. If you have any questions regarding the matters discussed in this report, please do not hesitate to contact me.

Attachment

cc: Chief of Staff

SCOPE

The review was performed between November 2004 and March 2005 at Department Headquarters in Washington, DC, and Germantown, MD. We evaluated travel documents, and time and attendance documents for individuals specifically named in the complaint for calendar years 2003 and 2004. We also spoke with contracting officials regarding the services provided by the four named contractors during Fiscal Years (FY) 2003 and 2004 at EM sites in Richland, Washington, and Rocky Flats, Colorado. Additionally, we analyzed documents supporting the FY 2004 decision to locate the Consolidated Business Center in Cincinnati, Ohio.

METHODOLOGY

To accomplish our objective we:

- Analyzed travel documents obtained from the Financial Services Branch of the Office of Management, Budget and Evaluation to determine whether the employees named in the allegation were abusing travel regulations.
- Analyzed time and attendance information obtained from the Financial Services Branch for the employees named in the allegation to determine whether the employees named in the allegation were abusing time and attendance.
- Met with EM management officials to discuss inappropriate costs and determine if such costs were justified and approved.
- Questioned Technical Representatives and Contracting Officers to determine whether the four support service contracts were competed and the work being performed by the contractors was satisfactory.
- Analyzed the documents that supported the selection of Cincinnati, Ohio, as the location for the Consolidated Business Center to determine whether the decision was based on business cost-effectiveness.

This special inquiry included a review of compliance with laws and regulations. However, we did not include a test of internal controls or a review of the *Government Performance and Results Act of 1993*, applicable to audits. Additionally, we did not rely on computer-processed data during this inquiry.

ENVIRONMENTAL MANAGEMENT CONTROLS

1. Travel and Time & Attendance Abuses

- Many ES and SES officials abused travel regulations and leave regulations.

2. Misuse of OIG

- EM manipulated the OIG by having anonymous allegations made to the OIG and then not resolving the issue properly. The complainant claimed that EM used this method as a pretense for taking disciplinary action against employees it was targeting. After discussions with Division Director, we decided against pursuing these allegations because it would not be possible to establish management's role due to the anonymous nature of the complaints. The complaint also did not provide a sufficient basis or facts necessary for follow-up. Finally, the complaint was based on the mistaken premise that the OIG forwards all allegations to management for resolution. Actually, the OIG carefully reviews each complaint and makes an independent decision as to whether to investigate the issues or forward them to management for resolution.

3. Support Service Contractors

- Support services contractors were being forced on all EM sites and were not producing any tangible work products.

4. SES and ES Selections

- SES and ES employees were not properly selected. We did not pursue these allegations because we believed that it would be difficult for us to prove that individuals selected for positions were not the best qualified.

5. Consolidated Business Center in Ohio

- The Secretary chose Cincinnati, Ohio for the Consolidated Business Center in an effort to gain the State of Ohio's support for the current administration to continue for the next four years. Field managers are forced to eliminate positions and functions from RL and SRS so the federal employees transferred to the CBC from closure sites in Colorado and Ohio will have work.

Document Number 10

**INSPECTION
REPORT
TO
MANAGEMENT**

**INSPECTION OF TRAINING ISSUES
AT THE ROCKY FLATS FIELD OFFICE
ROCKY FLATS, COLORADO
(S02IS020)**

MARCH 2002



**U.S. DEPARTMENT OF ENERGY
OFFICE OF INSPECTOR GENERAL
OFFICE OF INSPECTIONS**

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Department of Energy
Washington, DC 20585

March 25, 2002

MEMORANDUM FOR THE SECRETARY

FROM:

Gregory H. Friedman
Gregory H. Friedman
Inspector General

SUBJECT:

INFORMATION: "Inspection of Training Issues at the
Rocky Flats Field Office" (S02IS020)

BACKGROUND

In a January 16, 2002, memorandum, you expressed concern regarding an allegation that some Department of Energy employees at the Rocky Flats Field Office (Rocky Flats) were authorized to take golf lessons and pilot training at taxpayer expense. You asked that the Office of Inspector General (OIG) examine the circumstances surrounding this matter.

RESULTS OF INSPECTION

Our review confirmed that Rocky Flats funded golf training for one employee and pilot training for three other employees. The golf and pilot training, authorized by Rocky Flats as transition training, cost \$11,475. We determined that there was no legal basis for the expenditure of Federal funds associated with this training. Despite being notified in early 2001 of concerns regarding the legality of the authorization and payment of this training, Rocky Flats management failed to take timely and decisive action to remedy the situation.

Further, we found that:

(b)(6), (b)(7)
(C)
(b)(6), (b)(7)
(C)

• [redacted] upon arriving at the site, had conveyed intentions to employees that [redacted] wanted to assist them in obtaining other jobs because of the impending closure of the site.

- Rocky Flats failed to develop and approve the training policies and procedures required by DOE Order 360.1A. Rocky Flats relied on a Training and Education Prioritization (TEP) Plan that included misleading and incomplete criteria for allowable training at the site.

(b)(6), (b)(7)
(C)

- One of the main controversies identified during our inspection concerned whether the TEP had been subjected to legal review. [redacted] said that the Rocky Flats Office of Chief Counsel had concurred on a routing document attached to the TEP. However, [redacted] could not produce a copy of this document. Officials in the Office of Chief Counsel told us they had never received a draft of the TEP for legal review and had not concurred.



(b)(6),(b)(7)
(C)

_____ who was the technical training expert at the site, played a central role in formulating the TEP and in related matters, and was the individual who took the golf training. _____ has been (b)(6),(b)(7) (C) reprimanded and has repaid the Department for the cost of his training.

(b)(6),(b)(7)
(C)

(b)(6),(b)(7)
(C)

(b)(6),(b)(7)
(C)

- There was an apparent breakdown in the working relationships among senior Rocky Flats officials. Rocky Flats staff responsible for addressing concerns about the appropriateness of the golf and pilot training said that significant tension developed between themselves and _____ over their conclusions that the authorization of golf and pilot training was without a firm legal foundation. We were told by Rocky Flats officials that _____ criticized them for giving _____ "the wrong answer" with respect to these (b)(6),(b)(7) (C) conclusions, told them that their jobs were at risk, and stated that they were not team (C) players. _____ denied making these statements.

(b)(6),(b)(7)
(C)

(b)(6),(b)(7)
(C)

(b)(6),(b)(7)
(C)

- On July 30, 2001, the _____ at Rocky Flats informed the OIG by telephone that they were addressing potential issues relative to the training and that they would get back to the OIG at a later time. This was followed up by an August 16, 2001, memorandum to the OIG from _____, advising that Rocky Flats had completed an assessment of the training issues and would forward the report along with a corrective action plan, by September 30, 2001. In a memorandum dated January 23, 2002, subsequent to your request that we address concerns regarding the training, _____ (b)(6),(b)(7) (C) provided the OIG a status update on the training issues.

While the authorization of golf and pilot training was a serious issue, the subsequent events were even more troubling. In our judgment, had management taken decisive remedial action at the time this problem was first identified, nearly a year of internal controversy, intense personal recrimination and wasteful diversion of management attention could have been avoided. While some corrective actions have been taken, we believe that more needs to be done. Consequently, our report contains recommendations to consider disciplinary actions with respect to the immediate situation at Rocky Flats as well as recommendations for ensuring that similar problems do not occur at other Departmental locations.

I would be pleased to discuss our report with you at your convenience.

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Attachment

cc: Chief of Staff
General Counsel
Assistant Secretary for Environmental Management
Director, Office of Management, Budget and Evaluation/Chief Financial Officer

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INTRODUCTION AND OBJECTIVES

On January 23, 2002, the Office of Inspector General (OIG) initiated an inspection to determine the facts and circumstances surrounding the approval of golf and pilot training for employees of the Rocky Flats Field Office (Rocky Flats). The inspection was initiated in response to a request from the Secretary of Energy. Specifically, in a memorandum to the Inspector General dated January 16, 2002, the Secretary stated that a concern was brought to his attention that some Department of Energy (DOE) employees at Rocky Flats were authorized to take golf and pilot training at taxpayer expense. The Secretary asked that the OIG examine the circumstances surrounding the approval of this training. The Secretary also asked that the OIG examine what occurred and make recommendations regarding the training plan at Rocky Flats, the procedures under which the training was approved, and the manner in which Rocky Flats management responded to the situation.

The objectives of our inspection, therefore, were to determine: (1) the circumstances that led up to this training; (2) what procedures were used to approve the training; and, (3) the manner in which Rocky Flats management responded when concerns were raised about the authorization of this training.

OBSERVATIONS AND CONCLUSIONS

Our inspection determined that Rocky Flats approved and funded golf training for one employee and pilot training for three other employees without a legal basis for the expenditure of Federal funds associated with this training.

(b)(6),(b)(7)
(C) In the process of approving the golf and pilot lessons, Rocky Flats did not have approved training policies and procedures as required by DOE Order 360.1A, FEDERAL EMPLOYEE TRAINING. Instead, Rocky Flats developed a Training and Education Prioritization (TEP) Plan that included misleading and incomplete criteria for allowable training at the site. The TEP was approved and accepted by the [REDACTED] without any legal review by the Rocky Flats Office of Chief Counsel. The TEP was then used as the basis for authorizing the golf and pilot lessons at a cost of \$11,475. [REDACTED] said the Office of Chief Counsel had concurred on a routing document attached to the TEP. However, [REDACTED] could not produce a copy of this document. Moreover, officials in the Office of Chief Counsel told us they had never received a draft of the TEP for legal review and had not concurred. (b)(6),(b)(7)
(C)

In the process of securing Federal funds to pay for this training, Rocky Flats provided a misleading certification statement to the Oak Ridge Financial Service Center indicating that golf and pilot training complied with applicable laws and regulations. The certification statement was then retroactively attached to two training authorizations for pilot lessons that had already been paid prior to the statement being developed.

(b)(6),(b)(7)
(C) The Rocky Flats [REDACTED] failed to assure that all appropriate Federal laws and regulations were followed. [REDACTED] played a central role in the authorization of the inappropriate training. [REDACTED] was responsible for the training program at Rocky Flats and was the training expert relied upon in the development of the (b)(6),(b)(7)
(C)

Training and Education Prioritization Plan, and [redacted] participated in the development of the certification statement sent to the Oak Ridge Financial Service Center. Further, [redacted] was the Rocky Flats employee who took the golf training at Government expense, with the authorization signed by [redacted] subordinate. (b)(6),(b)(7) (C)

When informed of the legal problems associated with the golf and pilot training, [redacted] did not take decisive and timely action. Instead, [redacted] actions suggested that [redacted] was seeking some rationale to justify the authorization of this type of training. This resulted in several reviews by other DOE officials over a 10-month period to further evaluate the appropriateness of golf and pilot training. Even after [redacted] issued verbal direction that the approval of this type of training should cease, we found that an authorization for pilot training costing \$1,500 was approved and paid. (b)(6),(b)(7) (C)

Interviews of Rocky Flats officials responsible for addressing the training concerns disclosed that there was significant tension with [redacted] over the conclusions reached regarding the appropriateness of authorizing the golf and pilot training. We were told by Rocky Flats officials that [redacted] criticized Rocky Flats officials for giving [redacted] "the wrong answer" (that is, [redacted] not the answer [redacted] wanted) with regard to the legal opinions on the authorization of the golf and pilot training, suggesting that their jobs were at risk, and implying that they were not team players. However, [redacted] denied making these statements. (b)(6),(b)(7) (C)

RESULTS OF INSPECTION

Rocky Flats did not have Approved Training Policies and Procedures

The Rocky Flats Field Office did not have approved training policies and procedures when the golf and pilot training was authorized between November 2000 and March 2001. We were told that Rocky Flats had been working on training policies and procedures since October 2000, but that the policies and procedures had been under review and revision without being finalized at the time the golf and pilot training was approved. (See Appendix B for DOE criteria.)

Rocky Flats Relied on a Training and Education Prioritization (TEP) Plan that included Misleading and Incomplete Criteria for Allowable Training

The Rocky Flats Field Office relied on a TEP developed by a Training Advisory Committee¹ in September 2000, for the funding and scheduling of training and education for Rocky Flats staff. This plan established general guidelines to implement a prioritization process for the Individual Development Plan Program at the site, and a process for funding training and education. However, the TEP included misleading and incomplete criteria for allowable training, which implied that training that met any of the criteria set forth in the TEP could be approved. (See Appendix B for TEP criteria and criteria for Career Transition Plans or Workforce Development Plans.)

¹ The Training Advisory Committee was formed in accordance with Article 24 of the Collective Bargaining Agreement between the American Federation of Government Employees Local 1103 and Rocky Flats management and was comprised of six Federal employees, three union members and three non-union members.

Rocky Flats Accepted the TEP without any Evidence of a Legal Review

(b)(6),(b)(7)
(C) On October 12, 2000, [REDACTED] approved and accepted the TEP. In a memorandum to the Deputy Manager, the Assistant Managers, other Rocky Flats officials, and union
(b)(6),(b)(7) representatives, [REDACTED] accepted the recommendations of the Training Advisory
(b)(6),(b)(7) Committee. [REDACTED] said that the Rocky Flats Office of Chief Counsel had concurred
(C) on a routing document attached to the TEP, but [REDACTED] was unable to provide us with a copy of this (b)(6),(b)(7)
(C) document. In contrast, officials in the Office of Chief Counsel told us that they had never received a draft of the TEP for legal review, and that the Office of Chief Counsel had not concurred on the TEP. Given the apparent reliance placed on the Chief Counsel's review and concurrence of the TEP, the importance of this inconsistency cannot be overstated.

Rocky Flats Approved Golf and Pilot Training

(b)(6),(b)(7) The Rocky Flats Field Office approved golf and pilot training for four employees between
(b)(6),(b)(7) November 2000 and March 2001. [REDACTED] who also served as the [REDACTED] (b)(6),(b)(7)
(C) [REDACTED] was authorized golf training at a cost of \$975. When advised in August
(C) 2001, that the golf training was inappropriately paid for with Government funds, [REDACTED] (b)(6),(b)(7)
(C) reimbursed the cost of this training. Three other employees, [REDACTED] (b)(6),(b)(7)
(b)(6),(b)(7) [REDACTED] were authorized pilot lessons at a cost of \$10,500. This (C)
(C) training was originally identified by the four Rocky Flats employees on their Individual Development Plans between June and November 2000. The Individual Development Plans were signed by the employees and their Supervisors of Record.

Golf and Pilot Training Authorized by a Training Specialist

(b)(6),(b)(7) The golf and pilot training was approved by [REDACTED] in the
(b)(6),(b)(7) Rocky Flats Training Division. [REDACTED] signed the REQUEST, AUTHORIZATION,
(C) AGREEMENT, AND CERTIFICATION OF TRAINING, Standard Form (SF) 182, as the
(b)(6),(b)(7) Authorizing Official. In the case of the golf lessons taken by [REDACTED] the signature of [REDACTED] (b)(6),(b)(7)
(C) [REDACTED] SF 182 constituted authorization by a subordinate. (C)

Concerns about the Appropriateness of Training Formally Raised by the Rocky Flats Funds Certifier on February 9, 2001

In early 2001, responsible Rocky Flats officials recognized that the golf and pilot training was highly inappropriate. In fact, on February 9, 2001, the [REDACTED] (b)(6),(b)(7)
(C) sent an e-mail to the Office of Chief Counsel stating that:

(b)(6),(b)(7) As the [REDACTED] I have informed the Manager, CFO, my
(C) team lead, and the training office that, in my opinion, these classes (golf and pilot training) exceeded the authority of the Government Employees Training Act, and that approving these type of training activities should cease immediately. I believe that under Federal Appropriations Law and ethics regulations, this constitutes abuse and mismanagement of Federal appropriations.

(b)(6),(b)(7)
(C) [redacted] was notified of the e-mail and a subsequent Office of Chief Counsel determination that there appeared to be a problem with the authorization of the training. (b)(6),(b)(7)
(C) On March 16, 2001, [redacted] verbally directed that no new transition or non-traditional training be authorized or initiated. However, on March 19, 2001, another training authorization was approved for pilot training at a cost of \$1,500.

Rocky Flats Provided a Misleading Certification Statement to Secure Federal Funds to Pay for Golf and Pilot Training

Rocky Flats provided a misleading certification statement to the Oak Ridge Financial Service Center (Oak Ridge) in order to secure Federal funds to pay for the golf and pilot training. This statement was developed after Oak Ridge had questioned the appropriateness of releasing Federal funds to pay for this training. In developing and providing this statement, Rocky Flats incorrectly certified that the golf and pilot training was in compliance with applicable laws and regulations. This certification was attached to the Training Authorizations for golf and pilot training, SF 182s, submitted to the Oak Ridge Financial Service Center for payment in February and March 2001. (See Appendix B for certification statement.)

The certification statement was retroactively attached to two Training Authorizations for pilot lessons that had been submitted to the Financial Service Center and paid in November and December 2000. We were told by a certifying officer from the Oak Ridge Financial Service Center, that the Financial Service Center attached this statement to the already submitted and paid authorizations, so that there would be a paper trail showing that the Financial Service Center and Rocky Flats had followed the proper procedures in authorizing and paying for this training. The record indicates that the Oak Ridge certifying officer believed that Rocky Flats "senior management and attorneys were involved in the process," and that Rocky Flats had put a lot of time into researching this issue and had thoroughly "checked it out."

We found that there had been no determination that the golf and pilot training was in compliance with applicable laws, regulations, policies, and requirements. The special authorities granted the Department to retrain employees under 42 U.S.C. 7274h and 42 U.S.C. 7237 were not applicable because the Rocky Flats employees had not been terminated from a defense nuclear facility, were not subject to a reduction-in-force, nor had they actually lost their jobs as part of a reduction-in-force.

The Rocky Flats Training Official Failed to Assure that all Appropriate Laws and Regulations were Followed

(b)(6),(b)(7)
(C) [redacted] played a central role in the authorization of the inappropriate training. [redacted] (b)(6),(b)(7)
(b)(6),(b)(7)
(C) [redacted] was responsible for the training program at Rocky Flats. [redacted] was the training expert (b)(6),(b)(7)
(C) relied upon by the Training Advisory Committee, and was the person primarily responsible for (C) the criteria identified in the TEP. [redacted] played a key role in the development of the (b)(6),(b)(7)
(C) certification statement that was attached to the authorizations. In addition, [redacted] was (b)(6),(b)(7)
(C) authorized to take the golf lessons, with the authorization signed by [redacted] subordinate. (b)(6),(b)(7)
(C)

(b)(6),(b)(7) (C) (b)(6),(b)(7) (C) (b)(6),(b)(7) (C) [redacted] said that when [redacted] arrived at Rocky Flats there was a change in the emphasis on training. [redacted] said [redacted] wanted to take care of employees because of the impending site closure, and that the emphasis was to authorize training to help Rocky Flats employees obtain any type of job. [redacted] said, however, that [redacted] missed a requirement in the DOE training order that required concurrence by DOE Headquarters prior to authorizing training to transition employees into other Government agencies. (b)(6),(b)(7) (C)

(b)(6),(b)(7) (C) [redacted] said that [redacted] had failed [redacted] in his responsibilities as the [redacted] (b)(6),(b)(7) (C) [redacted] because of concerns raised about the appropriateness of the golf and pilot training. In a November 13, 2001, memorandum signed by [redacted] (b)(6),(b)(7) (C) [redacted] was formally reprimanded for failing in his responsibilities as [redacted] (b)(6),(b)(7) (C)

(b)(6),(b)(7) (C) The [redacted] Failed to take Timely and Appropriate Action When Training Concerns were Brought to [redacted] Attention

(b)(6),(b)(7) (C) [redacted] did not take decisive or timely corrective action when informed of the legal problems associated with the authorization of the golf and pilot training. Instead, [redacted] (b)(6),(b)(7) (C) [redacted] continued to seek information to determine if this type of training could be authorized. This resulted in several reviews over a 10-month period where other DOE offices were asked to further evaluate the appropriateness of golf and pilot training. The process to begin recovery of the Federal funds used to pay for the pilot training was not initiated until January 23, 2002. This was more than a year after the concerns about the use of Federal funds to pay for golf and pilot training were first raised by the Oak Ridge Financial Service Center in early January 2001.

The following reviews and assessments of the training authorizations at Rocky Flats were requested and performed. On February 16, 2001, [redacted] (b)(6),(b)(7) (C) [redacted] requested that the Office of Chief Counsel (b)(6),(b)(7) (C) conduct a legal review of "controlling law and regulation." On May 14, 2001, the Office of Chief Counsel issued a legal opinion regarding the authority to provide Federal employees transition or non-traditional training. This opinion, signed by [redacted] (b)(6),(b)(7) (C) [redacted] Rocky Flats Office of Chief Counsel, concluded that "The current application of the Rocky Flats Field Office (RFFO) Training Policy, as presently implemented lacks a firm legal foundation with regard to transition and non-traditional training," and that "The current application of the RFFO Training Policy raises serious legal concerns." On June 6, 2001, the Office of Chief Counsel requested that the DOE Office of Training and Human Resources Development conduct an inquiry into the appropriateness of transition and non-traditional training courses in areas such as golf and pilot lessons. The Office of Training and Human Resources Development responded on June 27, 2001, and concluded "the training was improperly funded."

(b)(6),(b)(7) (C) In July 2001, [redacted] requested an independent assessment by a team comprised of Ohio Field Office and Rocky Flats personnel. The Assessment Team responded on August 10, 2001, concluding that: (1) there were several requirements of DOE Order 360.1A that were not being implemented, or that were being misapplied; (2) the golf lessons were contrary to DOE

(b)(6),(b)(7)(C) (b)(6),(b)(7)(C) (b)(6),(b)(7)(C) (b)(6),(b)(7)(C) (b)(6),(b)(7)(C) (b)(6),(b)(7)(C)

(b)(6),(b)(7)(C) Order requirements; (3) pilot lessons were within the confines of the DOE mission, but it was highly unlikely that an individual receiving this training would be placed in a pilot position within the Department; and, (4) there was no willful noncompliance with the DOE Order. On September 5, 2001, the Rocky Flats Chief Counsel requested a review of its May 14, 2001, legal (b)(6),(b)(7)(C) opinion from the DOE Office of General Counsel. The Office of General Counsel responded on December 27, 2001, concluding that golf and pilot training was impermissible.

(b)(6),(b)(7)(C) (b)(6),(b)(7)(C) (b)(6),(b)(7)(C) (b)(6),(b)(7)(C) (b)(6),(b)(7)(C) (b)(6),(b)(7)(C)

(b)(6),(b)(7)(C) During the period of these reviews and assessments, we were told of a number of instances where [redacted] was highly critical of the advice [redacted] was receiving from the Office of Chief Counsel. After [redacted] signed a written notice dated May 16, 2001, to suspend the authorization and initiation of all transition and non-traditional training, we were told that [redacted] told [redacted] that [redacted] was providing [redacted] the "wrong answer." We were told that, on one occasion, [redacted] told [redacted] Rocky Flats [redacted] that their jobs were at risk "if you give me the wrong answer." We were also told that this tension escalated to a conflict between [redacted] and [redacted] where [redacted] told [redacted] was not a team player, and that [redacted] was not supporting [redacted] [redacted] indicated that [redacted] had requested a detail to the Headquarters Office of Environmental Management in the fall of 2001 because [redacted] felt threatened by [redacted] (b)(6),(b)(7)(C) (b)(6),(b)(7)(C) (b)(6),(b)(7)(C) (b)(6),(b)(7)(C) (b)(6),(b)(7)(C)

(b)(6),(b)(7)(C) (b)(6),(b)(7)(C) (b)(6),(b)(7)(C) (b)(6),(b)(7)(C) (b)(6),(b)(7)(C) (b)(6),(b)(7)(C)

(b)(6),(b)(7)(C) [redacted] however, told us that [redacted] did not make these statements. [redacted] said [redacted] did not recall using the term "wrong answer," and that [redacted] did not make the statement that individual's jobs were at risk. Likewise, [redacted] said [redacted] did not make the alleged statements to [redacted] regarding the training concerns. [redacted] did say that [redacted] was not a team (b)(6),(b)(7)(C) player. [redacted] was trying to develop a management team; that [redacted] was not being a member of that team; and that [redacted] had disagreements with counterparts and contractors, was antagonistic, and not business like. [redacted] also said that [redacted] (b)(6),(b)(7)(C) detail was due to a request from the Assistant Secretary for Environmental Management, and not related to the training concerns. (b)(6),(b)(7)(C) (b)(6),(b)(7)(C)

(b)(6),(b)(7)(C) (b)(6),(b)(7)(C) (b)(6),(b)(7)(C) (b)(6),(b)(7)(C) (b)(6),(b)(7)(C) (b)(6),(b)(7)(C)

(b)(6),(b)(7)(C) [redacted] said [redacted] did not take immediate action when [redacted] received the Office of Chief (b)(6),(b)(7)(C) Counsel legal opinion in May 2001 because [redacted] felt that the Office of Chief Counsel had not considered Headquarters policies and procedures that might allow for transition training for employees to other Federal agencies. [redacted] said [redacted] did not believe that the Office of Chief Counsel took into consideration training outside of the Department of Energy, and whether the Department's Headquarters could authorize this training. [redacted] said [redacted] was trying to seek information about what could be authorized. The three employees who were authorized to take pilot training were not notified until January 23, 2002, that they would be invoiced for the cost of any pilot training they took while employees of Rocky Flats.

RECOMMENDATIONS

As noted in our report, certain disciplinary actions and efforts to recover funds have already been initiated, some as recently as January of this year. We believe, however, that more needs to be done. Consequently, we are addressing the following recommendations to the Offices of Environmental Management; Management, Budget and Evaluation; and, the Office of Worker and Community Transition.

We recommend that the Assistant Secretary for Environmental Management:

1. Consider the full range of options for disciplinary action with respect to the inappropriate handling of training authorizations, funding, and the improper and untimely resolution of these issues.
2. Review all training at Rocky Flats to ensure it complies with all applicable laws, regulations, and Departmental Orders.
3. Complete the recovery of all costs associated with golf and pilot training at Rocky Flats.

We recommend that the Director, Office of Management, Budget and Evaluation/Chief Financial Officer, and the Director for the Office of Worker and Community Transition:

4. Re-evaluate transitional training programs and procedures Department-wide to ensure that such programs comply with all applicable laws, regulations, and Department Orders; and if necessary, issue supplemental Department-wide policy on this issue.

APPENDIX A

Scope and Methodology

While reviewing the Secretary of Energy's concern discussed in this report, we evaluated:

- the circumstances that led up to this training,
- what occurred with regard to the training plan,
- the procedures under which the training was approved, and
- the manner in which the Rocky Flats management responded to the situation

As part of our review, we interviewed officials from the Rocky Flats Office of Chief Counsel, Office of Chief Financial Officer, Office of Training, Office of Administrative and Strategic Planning, Training Advisory Committee members, and Rocky Flats employees.

In addition, we also reviewed documentation relating to the Rocky Flats training procedures; Rocky Flats training orders; Individual Training Plans; training approval, authorizations, and payment; legal documentation; Rocky Flats memorandums, letters, and electronic mail messages; Department of Energy Headquarters training documentation; Department of Energy General Counsel opinions; Ohio Field Office and Rocky Flats Assessment Report; and corresponding documentation.

This inspection was conducted between January and March 2002, in accordance with "Quality Standards for Inspections" issued by the President's Council on Integrity and Efficiency.

APPENDIX B

Department of Energy Criteria

DOE Order 360.1A

DOE Order 360.1A², FEDERAL EMPLOYEE TRAINING, states that each DOE element must have an approved training plan. This Order states that the Heads of DOE Elements (First-Tier Headquarters and Senior Operations/Field Office officials) approve the training policies and procedures for their DOE elements.

Training and Education Prioritization Plan (TEP) Criteria for Allowable Training

Specifically, the TEP identified "Criteria for Allowable Training/Education Courses" as that contained in "Title 5, Chapter 1, and Office of Personnel Management, Section 410.101 subpart (d) and (e)." The TEP stated that "Mission-related training is training that supports agency goals by improving organizational performance at any appropriate level in the agency, as determined by the head of the agency." The TEP stated that this definition included training that:

1. Supports the agency's strategic plan and performance objectives.
2. Improves an employee's current job performance.
3. Allows for expansion or enhancement of an employee's current job.
4. Enables an employee to perform needed or potentially needed duties outside the current job at the same level of responsibility.
5. Meets organizational needs in response to human resource plans and re-engineering, downsizing, restructuring, and/or program changes.

However, only the first four categories deal with mission-related training that would prepare an employee to perform another job at Rocky Flats or within the Department of Energy. The fifth category addresses a type of training referred to as transition or non-traditional training that may lead to jobs in other Federal agencies or the private sector. The training authorizations for the Rocky Flats employees, who were authorized golf and pilot training, identified the training as "EMPLOYEE TRANSITION." These employees tried to support the appropriateness of the training through inferences that they were preparing for positions in other Federal agencies.

The TEP also included "Retraining" under "Criteria for Allowable Training/Education Courses" as follows:

Retraining means training and development provided to address an individual's skills obsolescence in the current position, and/or training and development to prepare an individual for a different occupation, in the same agency, or in another Government agency.

² This Order was cancelled on October 11, 2001, and superseded by DOE Order 360.1B.

Career Transition Plan or Workforce Development Plan

The Department of Energy only allows the funding of transition training to other Federal agencies in two ways: under a Career Transition Plan, or under a Workforce Development Program. The TEP did not address the regulatory criteria found under 5 C.F.R. 410³, 42 U.S.C. 7274h⁴, or 42 U.S.C. 7237⁵ that would legally authorize either of these types of transition training. Specifically, in order for training to be authorized under a Career Transition Plan, employees must be subject to certain specific actions, including certificates of expected separation, certifications indicating that positions are surplus, or reduction-in-force notices.⁶ However, the TEP did not address these criteria. Under a Workforce Development Program, the requirements of 5 C.F.R. 410.307 must be followed. This regulation requires the head of the agency, prior to authorization of the training, to determine that there exists a reasonable expectation of placement in another agency, considering the extent to which the employee's skills may be utilized in the new position, the employee's capability to learn skills and acquire knowledge and abilities in the new position, and the benefits to the Government that would result from retaining the employee in Federal service. Again, the TEP did not address these criteria.

Certification Statement

The Rocky Flats Office of the Chief Financial Officer and the Oak Ridge Financial Service Center (Financial Service Center) had several discussions during January 2001, and the following certification statement was first provided by Rocky Flats to the Financial Service Center in February 2001 so that the Financial Service Center would release Federal funds to pay for the pilot and golf lessons:

The Rocky Flats Field Office (RFFO) has been designated a closure site, and as such the Manager has determined it is the interest of the Government to provide and/or pay for training that will assist employees with career transition. The RFFO Training Official, having been officially delegated responsibility to make such determinations, has determined that this training is in compliance with applicable laws, regulations, policies, and requirements including, but not limited to 5 U.S.C. 4103 (b) and 5 C.F.R. 410.307(c)(2), and therefore has authorized the employee's training request.

³ 5 Code of Federal Regulations (C.F.R.), Administrative Personnel, Office of Personnel Management, Part 410, TRAINING.

⁴ Department of Energy Defense Nuclear Facilities Workforce Restructuring Plan.

⁵ Priority Placement, Job Placement, Retraining, and Counseling Programs for United States Department of Energy Employees Affected by Reduction in Force.

⁶ 5 C.F.R. 330.301, Placement Assistance Programs for Displaced Employees, 5 C.F.R. 330.601, Agency Career Transition Assistance Plans for Local Surplus and Displaced Employees, and 5 C.F.R. 330.701, Interagency Career Transition Assistance Plan for Displaced Employees.

Document Number 11

**INSPECTION
REPORT
TO
MANAGEMENT**

**INSPECTION OF ALLEGATIONS REGARDING
ACTIONS BY SENIOR OFFICE OF ENVIRONMENT,
SAFETY AND HEALTH OFFICIALS (S01IS018)**

JULY 2001



**U.S. DEPARTMENT OF ENERGY
OFFICE OF INSPECTOR GENERAL
OFFICE OF INSPECTIONS**

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Department of Energy

Washington, DC 20585

July 3, 2001

MEMORANDUM FOR THE UNDER SECRETARY

FROM:

Gregory H. Friedman
Gregory H. Friedman
Inspector General

SUBJECT:

Inspection Report to Management on "Allegations Regarding Actions by Senior Office of Environment, Safety and Health Officials" (S01IS018)

The purpose of this inspection report is to advise you of the results of our limited scope review of allegations received by the Office of Inspector General (OIG) regarding actions by senior officials in the Department of Energy (DOE) Office of Environment, Safety and Health (EH). The allegations were contained in a constituent's letter referred to the DOE Assistant Secretary for Congressional Affairs by Senator Pete Domenici that was received by the OIG on March 20, 2001. Based on the constituent's letter, we identified the following issues for review:

- (b)(6),(b)(7)
(b)(6),(b)(7)
(C)
- (1) Whether [redacted] who is currently serving as [redacted] (b)(6),(b)(7)
[redacted] had been competitively selected for a Senior Executive Service (SES) position; (C)
- (2) Whether senior EH officials suppressed the draft report prepared by the EH Office of Performance Assessment and Analysis (PA&A) that reportedly indicated that EH management had failed to adequately resolve significant safety concerns; and
- (3) Whether PA&A had been reorganized to silence its criticism of EH's handling of safety matters.

(b)(6),(b)(7)
(b)(6),(b)(7)
(C)

We interviewed [redacted]
[redacted]
[redacted] We also reviewed the draft prepared by PA&A titled "Progress Report 2000 - ES&H Topical Analyses." Our inspection was conducted in accordance with the "Quality Standards for Inspections" issued by the President's Council on Integrity and Efficiency.

Selection for SES Position

(b)(6),(b)(7)
(b)(6),(b)(7)
(C)

We determined that [redacted] was competitively selected to a career SES position as [redacted] (b)(6),(b)(7)
[redacted] The vacancy announcement for the position was open for two months. (C)
Seven of the 36 people who applied for the position were determined by a selection panel to



(b)(6),(b)(7) he "superior" and their names were referred to [redacted] (b)(6),(b)(7)
(b)(6),(b)(7) [redacted] who was the selecting official. [redacted] selected [redacted] whose selection (b)(6),(b)(7)
(C) was coordinated with the Office of Personnel Management.

Release of the Draft Report

We determined that the draft prepared by PA&A did not identify any new, significant safety issues. The draft was a compendium of information in reports that had been prepared by the OIG, DOE field and Headquarters offices, and external groups, such as the General Accounting Office. We could not determine, however, whether the draft was suppressed by EH senior officials. EH management officials who we interviewed said they had concerns with the content and quality of the draft and said the draft was not suppressed.

(b)(6),(b)(7) [redacted] believed the draft was suppressed. This appears to be a matter of (b)(6),(b)(7)
(b)(6),(b)(7) professional disagreement among [redacted] and senior EH management officials. (C)

(b)(6),(b)(7) According to [redacted] the draft was critical of the Department. [redacted] said that although (b)(6),(b)(7)
(C) the draft was not directly critical of two EH programs, Integrated Safety Management (ISM) and the Voluntary Protection Program, the draft showed that neither program has had a positive effect on safety at DOE sites. [redacted] believed that [redacted] felt the draft was only a (b)(6),(b)(7)
(b)(6),(b)(7) "rehash" of a 1998 report and said that [redacted] had been instrumental in preventing release (C)
(b)(6),(b)(7) of the draft. [redacted] told us that the response by EH management to the draft was (C)
(b)(6),(b)(7) very negative and said that [redacted] and [redacted] (b)(6),(b)(7)
(b)(6),(b)(7) [redacted] were reportedly "really disturbed" by the draft. [redacted] said that [redacted] had (b)(6),(b)(7)
(C) planned four or five meetings for EH staff to go over the draft, but the meetings never took place and disagreements involving the content of the draft were never resolved.

(b)(6),(b)(7) [redacted] said that [redacted] believed the draft would hurt EH's credibility because it was an (b)(6),(b)(7)
(C) update of a 1998 report, but written in a less effective format; it was incomplete and misleading; it included a collection of general findings that were presented as complex-wide problems; and it contained inferences and conclusions that were not supported by the findings. [redacted] said that although portions of the draft were reviewed by EH subject matter (b)(6),(b)(7)
(b)(6),(b)(7) experts, [redacted] did not view this as a peer review since the DOE community and other EH offices (C)
(C) had been excluded from the review process. [redacted] told us that although the draft was (b)(6),(b)(7)
(C) never released for publication, it was put on the EH web site by PA&A, which he said belies the assertion that the draft was suppressed.

(b)(6),(b)(7) [redacted] said that the draft was not an improvement over a 1998 report. [redacted] said that PA&A (b)(6),(b)(7)
(C) had been provided negative feedback on the draft, but had not made any changes. He said, for example, that the EH Office of Oversight had produced a site-specific report with findings that were not consistent with findings in the PA&A draft. However, when the inconsistencies were discussed with [redacted] refused to make any changes to the (b)(6),(b)(7)
(b)(6),(b)(7) draft. [redacted] said that EH management was at an impasse with PA&A over the content (C)
(b)(6),(b)(7) and format of the draft because PA&A gave "no middle ground." [redacted] denied that the draft (b)(6),(b)(7)
(b)(6),(b)(7) was suppressed or that safety concerns were covered up by not issuing the draft. [redacted] said that (C)
(C) if the draft contained any information regarding safety concerns, the information could have been communicated by PA&A to the EH Office of Oversight for its review.

PA&A Reorganization

The basis for the reorganization of PA&A also appears to be a matter of professional disagreement between [redacted] and senior EH management officials.

(b)(6),(b)(7)
(C)
(b)(6),(b)(7)
(C) [redacted] told us that [redacted] was [redacted] but currently has no involvement with PA&A. [redacted] said that in January 2001, he was detailed by (b)(6),(b)(7)
(C) [redacted] which reported directly to the Assistant Secretary. [redacted] said that although PA&A still exists, its mission has been significantly minimized, its budget cut by 50 percent, and five contractors have been released. According to [redacted] EH management officials had said that PA&A was being affected because the draft did not make EH "look good." [redacted] also said that [redacted] had been (b)(6),(b)(7)
(C) told that [redacted] was being detailed because of budget constraints and because PA&A was not making the EH Office of Oversight "look good."

(b)(6),(b)(7)
(C) According to [redacted] the most important aspect of PA&A's mission was to support ISM by developing/researching ISM performance indicators. [redacted] said that PA&A focused instead (b)(6),(b)(7)
(C) on another aspect of its mission - performing and writing topical analyses as part of its additional role of assessing environment, safety and health matters in the Department. [redacted] (b)(6),(b)(7)
(C) said that although there was normally a collegial atmosphere within EH, the contentious posture taken by PA&A over criticism of the draft, the lack of responsiveness by PA&A to the criticism, and the tone of PA&A's comments negatively impacted the relationship between PA&A and the rest of EH. According to [redacted] the decision to change the (b)(6),(b)(7)
(C) PA&A organization was based on several factors, including its refusal to make any changes to the draft based on the criticisms by EH management. [redacted] said that another factor in the (b)(6),(b)(7)
(C) decision was that PA&A was "burning up money at a remarkable rate" by using old contract vehicles to perform work. [redacted] said, for example, that [redacted] used one and one-half (b)(6),(b)(7)
(C) months of contractor money for work to essentially support his position that no changes were needed to the draft.

Conclusion

Based on our limited scope review, we concluded that [redacted] was competitively selected (b)(6),(b)(7)
(C) to an SES position. We also concluded that the PA&A draft report did not identify any new, significant safety issues. However, there is conflicting evidence regarding the alleged suppression of the PA&A draft report and the basis for the reorganization of PA&A. These matters appear to be the result of a professional disagreement among [redacted] and EH (b)(6),(b)(7)
(C) management officials. We plan no further action on these matters.

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Please let me know if you have any questions regarding this matter.

Document Number 12



Department of Energy

Office of Inspector General
Office of Inspections

Summary

Abstract Report of Inspection

**TITLE: "Alleged Improper Management Actions by Office of
Environmental Management Officials" S95IS017**

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**Summary Abstract Report Of Inspection Of
"Alleged Improper Management Actions By Office Of
Environmental Management Officials"**

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Summary Abstract Report Of Inspection Of "Alleged Improper Management Actions By Office Of Environmental Management Officials"

This is an Office of Inspector General Summary Abstract Report of Inspection of four anonymous complaints which alleged that Office of Environmental Management officials had taken improper management actions against RUST Geotech, Inc., a contractor at the Department's Grand Junction Project Office. This inspection was conducted in accordance with Quality Standards for Inspections issued by the President's Council on Integrity and Efficiency.

I. PREDICATION

In the month of December 1994, the Office of Inspector General received four anonymous complaints of improper management actions by certain Office of Environmental Management officials. The complaints included allegations that Office of Technology Development (EM-50) officials improperly tried to have an October 1994 Crosswalk Report, entitled "Technology Needs Crosswalk -- Status and Analysis of Environmental Technology Management at DOE," changed by threatening to withhold EM-50 funding from RUST Geotech, Inc., a Departmental contractor who prepared the report for the Office of Environmental Restoration (EM-40). One complainant alleged that the October 1994 Report contained "true and well-documented statements about the Office of Technology Development" and that the report was revised as a result of EM-50 officials' threats to withhold EM-50 funding. The complaints also included the allegation that EM-50 officials directed disciplinary action to be taken against six RUST Geotech authors who prepared the report. We identified the following issues as the focus of the inspection.

1. Did EM-50 officials inappropriately direct the withholding of EM-50 funding from RUST Geotech, Inc. at Grand Junction because they were dissatisfied with the October 1994 Crosswalk Report that RUST Geotech prepared for EM-40?

2. Was useful information deleted from the October 1994 Crosswalk Report as a result of EM-50 officials' direction to withhold funding from RUST Geotech?
3. Were the disciplinary actions taken against the six RUST Geotech authors directed by EM-50 officials?

The period covered by the inspection was January through September 1995. We interviewed Headquarters officials from the offices of the Assistant Secretary for Environmental Management; the Assistant Secretary for Human Resources and Administration; General Counsel and Contractor Employee Protection. We also interviewed Departmental officials at the Albuquerque Operations Office (Albuquerque) and the Grand Junction Project Office. Furthermore, we interviewed contractor officials with RUST Geotech, Inc. Finally, we reviewed relevant provisions of Departmental regulations, policies and procedures; and relevant information located at RUST Geotech, Inc. and the Department's Headquarters and field offices. Attachment A includes a list of key individuals, including their titles, organizations and locations.

II. BACKGROUND

The Office of the Assistant Secretary for Environmental Management (Environmental Management) was formed in November 1989 and was tasked with cleaning up the environmental pollution at DOE weapons complex facilities and preventing further environmental contamination. The Waste Management (EM-30) and Environmental Restoration (EM-40) components of Environmental Management were established to help carry out this mission. Environmental Management officials believed that existing technology would be too costly and would take too long to clean up DOE sites. As a result, a Technology Development (EM-50) component was established within Environmental Management to identify and promote the use of new and innovative technologies.

Environmental Restoration's (EM-40) Office of Program Integration had a responsibility for providing a link between environmental problems and relevant technologies. To further carry out this responsibility, Environmental Restoration officials tasked RUST Geotech, Inc., a contractor at the Department's Grand Junction Project Office, to complete annual Crosswalk Reports beginning in 1991. The Reports were initially called technology needs assessments. In October 1993, Environmental Restoration (EM-43) officials tasked RUST Geotech, Inc. to complete the fourth Crosswalk Report through a "Technology Needs Crosswalk -- Fiscal Year 1994 Update." According to the "Objective and Scope" of work for the 1994 Report (Attachment B), RUST Geotech officials were to:

- Update the information on Environmental Restoration problems and the Office of Technology Development's developing technologies in the January 1993 Crosswalk Report and data base;

- Expand the range of collected information, including waste form and disposal considerations, developing technologies, and emphasis on decontamination and decommissioning activities;
- Transfer crosswalk information effectively to DOE technology users and providers;
- Assist DOE Headquarters and Operations Office officials in the use of the crosswalk information; and
- Include a crosswalk purpose, process, results and observations from analysis and site visits sections in the report.

The task resulted in a January 1994 draft Crosswalk Report which was issued and distributed for review and comment to Environmental Management officials, including EM-50 officials. Em Officials' comments on the January draft of the Crosswalk Report were considered in preparing a September 1994 version of the Crosswalk Report, which was commented on by Booz Allen Hamilton, Inc., an independent consulting firm. Booz Allen Hamilton, Inc.'s comments were considered in preparing an October 1994 version of the Crosswalk Report.

In December 1994 it was alleged that EM-50 officials were dissatisfied with the October Report and as a result directed the withholding of EM-50 funding from RUST Geotech, and directed the disciplining of RUST Geotech authors responsible for writing the report. Subsequently, the report was revised to address EM-50's concerns and the final report was issued March 1995. We noted that Executive Summaries of all three draft reports mentioned above included the text with which EM-50 officials were allegedly dissatisfied. This Summary Abstract Report of Inspection presents the findings, conclusions and recommendations of the inspection and Departmental managers comments on the inspection report.

III. RESULTS OF INSPECTION

1. Did EM-50 officials inappropriately direct the withholding of EM-50 funding from RUST Geotech, Inc. at Grand Junction because they were dissatisfied with the October 1994 Crosswalk Report that RUST Geotech prepared for EM-40?

(b)(6),(b)(7)(C)

The inspection found that [REDACTED]

(b)(6),(b)(7)(C)

[REDACTED] directed the withholding of EM-50 funds from the RUST Geotech contract at Grand Junction because of [REDACTED] dissatisfaction with observations that Environmental Management Officials referred to as "9 one-liners" in the Executive Summary of the October 1994 Crosswalk Report, and because of [REDACTED] view that EM-40 officials historically had not adequately considered EM-50 officials' concerns in

(b)(6),(b)(7)(C)

(b)(6),(b)(7)(C)

(b)(6),(b)(7)
(C) preparing technology needs assessment reports like the Crosswalk Report. In our view, the [redacted] direction to withhold EM-50 funding was inappropriate. The action, we believe, reflected poor management performance based on [redacted] Executive Performance Plan. (b)(6),(b)(7)
(C)

The following information taken from statements, interviews and documents is provided in support of our findings and conclusion.

EM-50 Officials Express Concerns with the "9 one-liners"

(b)(6),(b)(7)
(C) We interviewed Departmental and RUST Geotech officials to determine when EM-50 officials became concerned with the Crosswalk Report and how their concerns were communicated. (b)(6),(b)(7)(C) (b)(6),(b)(7)(C) (b)(6),(b)(7)(C)

(b)(6),(b)(7)
(C) In a May 4, 1995, interview with [redacted] Office of Demonstration Testing and Evaluation (EM-54), [redacted] stated that [redacted] read the report on a (b)(6),(b)(7)(C) Sunday in November and that there were "9 one-liners" in the report which [redacted] believed (b)(6),(b)(7)(C) were "inaccurate." [redacted] stated that on that day [redacted] contacted [redacted] an (b)(6),(b)(7)(C) Energy and Technologies Division official at Albuquerque, and [redacted] a RUST (b)(6),(b)(7)(C) Geotech, Inc. [redacted] of the October 1994 Crosswalk Report, to discuss (C) concerns regarding the "9 one-liners." [redacted] also stated that [redacted] briefed [redacted] (b)(6),(b)(7)(C) [redacted] (EM-50), on a Monday (b)(6),(b)(7)(C) or Tuesday. (b)(6),(b)(7)(C) (b)(6),(b)(7)(C)

(b)(6),(b)(7)
(C) [redacted] stated in his May 3, 1995, signed and sworn statement that [redacted] (b)(6),(b)(7)(C) contacted [redacted] on Sunday, November 20, 1994, to discuss [redacted] concerns (b)(6),(b)(7)(C) regarding the "9 one-liners" in the Executive Summary section of the October 1994 (C) Crosswalk Report. We also obtained from [redacted] a copy of a facsimile (b)(6),(b)(7)(C) (Attachment C), dated November 22, 1994, which had been sent to [redacted] by [redacted] (b)(6),(b)(7)(C) The facsimile to [redacted] identified the "9 one-liners." (b)(6),(b)(7)(C) (b)(6),(b)(7)(C) (b)(6),(b)(7)(C)

EM-40 Notified of the "9 one-liners"

(b)(6),(b)(7)(C) We interviewed Headquarters Environmental Management and RUST Geotech officials to determine the events relating to notification of EM-40 officials about EM-50 officials' concerns with the "9 one-liners." (b)(6),(b)(7)(C) (b)(6),(b)(7)(C)

(b)(6),(b)(7)
(C) [redacted] stated in his May 3, 1995, signed and sworn statement that on November (b)(6),(b)(7)(C) 21, 1994, [redacted] called [redacted] technical support staff for EM-43, to discuss EM-50 (b)(6),(b)(7)(C) officials' concerns with the "9 one-liners." [redacted] stated in a July 12, 1995, (b)(6),(b)(7)(C) interview that after being notified by the contractor of EM-50's concerns [redacted] immediately (b)(6),(b)(7)(C) informed [redacted] Office of Program Integration (b)(6),(b)(7)(C) (EM-43). (b)(6),(b)(7)(C)

(b)(6),(b)(7)(C)

(b)(6),(b)(7)(C)

(b)(6),(b)(7)(C)

(b)(6),(b)(7)(C)

(b)(6),(b)(7)(C)

(b)(6),(b)(7)(C)

(b)(6),(b)(7)(C)

(b)(6),(b)(7)(C) (EM-50) notified EM-40 verbally and in writing. In a May 11, 1995, interview (b)(6),(b)(7)(C) stated that (b)(6),(b)(7)(C) spoke to (b)(6),(b)(7)(C) Environmental Restoration (EM-40), about (b)(6),(b)(7)(C) concerns with the "9 one-liners", but (b)(6),(b)(7)(C) could not recall when that conversation occurred. EM-50 formally notified EM-40 of its concerns with the "9 one-liners" through a December 6, 1994, memorandum from (b)(6),(b)(7)(C). The memorandum included comments on each of the "9 one-liners." A copy of the December 6, 1994, memorandum is provided as Attachment D.

(b)(6),(b)(7)(C)

Direction to Withhold EM-50 Funding

(b)(6),(b)(7)(C)

(b)(6),(b)(7)(C)

We interviewed Headquarters Environmental Management and Albuquerque Energy and Technology Development and Budget officials to determine if EM-50 officials directed the withholding of EM-50 funding from RUST Geotech at Grand Junction. (b)(6),(b)(7)(C)

(b)(6),(b)(7)(C)

(b)(6),(b)(7)(C)

(b)(6),(b)(7)(C) Technology Development, EM-50, stated in (b)(6),(b)(7)(C) May 22, 1995, signed and sworn statement, that (b)(6),(b)(7)(C) directed (b)(6),(b)(7)(C) to "freeze the funds at Rust Geotech at Grand Junction ONLY." (b)(6),(b)(7)(C) further stated that "This action was meant to get the attention of (b)(6),(b)(7)(C) Environmental Restoration] (EM-40) to get (b)(6),(b)(7)(C) into a meaningful discussion associated with these types of activities." (b)(6),(b)(7)(C)

(b)(6),(b)(7)(C)

(b)(6),(b)(7)(C)

(b)(6),(b)(7)(C)

(b)(6),(b)(7)(C) May 23, 1995, signed and sworn statement confirmed that (b)(6),(b)(7)(C) directed (b)(6),(b)(7)(C) to withhold funds from RUST Geotech at Grand Junction. (b)(6),(b)(7)(C) statement included a sequence of events that contained the following: (b)(6),(b)(7)(C)

"Discussed executive summary with (b)(6),(b)(7)(C) instructed me to contact the budget office and identify FY 95 activities that (b)(6),(b)(7)(C) should be placed on hold and put on hold."

(b)(6),(b)(7)(C)

(b)(6),(b)(7)(C) Also, (b)(6),(b)(7)(C) stated that (b)(6),(b)(7)(C) contacted (b)(6),(b)(7)(C) an Environmental Management Budget Operations official (EM-131), to determine the necessary steps to withhold EM-50 funding. (b)(6),(b)(7)(C) stated during a May 19, 1995, interview that (b)(6),(b)(7)(C) contacted (b)(6),(b)(7)(C) an Albuquerque Budget Review Division official, to determine procedures to withhold EM-50 funding. (b)(6),(b)(7)(C)

(b)(6),(b)(7)(C)

(b)(6),(b)(7)(C)

(b)(6),(b)(7)(C)

In (b)(6),(b)(7)(C) May 3, 1995, signed and sworn statement, (b)(6),(b)(7)(C) stated that (b)(6),(b)(7)(C) contacted (b)(6),(b)(7)(C) during November 1994 "at the request of (b)(6),(b)(7)(C) (EM-54)." (b)(6),(b)(7)(C) stated that (b)(6),(b)(7)(C) requested a withdrawal of EM-50 funding from the RUST Geotech contract at the Grand Junction Project Office. (b)(6),(b)(7)(C) stated that (b)(6),(b)(7)(C) informed (b)(6),(b)(7)(C) that a written request, versus a verbal request was needed for withdrawing funding from a contract. (b)(6),(b)(7)(C) also stated that (b)(6),(b)(7)(C) told (b)(6),(b)(7)(C) that a "stop work order... would be needed." (b)(6),(b)(7)(C) stated (b)(6),(b)(7)(C) then contacted (b)(6),(b)(7)(C) alert (b)(6),(b)(7)(C) of the "potential financial impact on this program and the need for damage control." (b)(6),(b)(7)(C) stated that (b)(6),(b)(7)(C) and (b)(6),(b)(7)(C) contacted (b)(6),(b)(7)(C)

(b)(6),(b)(7)(C)

(b)(6),(b)(7)(C)

(b)(6),(b)(7)(C)

(b)(6),(b)(7)(C)

(b)(6),(b)(7)(C)

(b)(6),(b)(7)(C)

(b)(6),(b)(7)(C)

(b)(6),(b)(7)(C)

(b)(6),(b)(7)(C) (b)(6),(b)(7)(C) (b)(6),(b)(7)(C)

[redacted] to alert Grand Junction officials of the potential funding changes. Finally, [redacted] stated that [redacted] and [redacted] discussed the idea of exploring alternatives to withholding funds with [redacted]

(b)(6),(b)(7)(C) (b)(6),(b)(7)(C)

EM-50 Funding Was Not Withheld

We interviewed Headquarters and Albuquerque Operations Office officials to determine if EM-50 funding was actually withheld from RUST Geotech at the Grand Junction Project Office.

In his May 3, 1995, signed and sworn statement, [redacted] stated that:

(b)(6),(b)(7)(C) (b)(6),(b)(7)(C) (b)(6),(b)(7)(C) (b)(6),(b)(7)(C)

"It was our understanding that the main driver behind the proposed funding cutback was displeasure by [redacted] (EM-50) with the contents of the Executive Summary of the report... There was a discussion [between [redacted] and [redacted]] on what could be done to placate [redacted] and it was decided that toning down the Executive Summary and pulling back all distributed copies that could be retrieved would go a long way toward resolving the problem, and EM-50 would not pursue the pull back of funds. The AL [Albuquerque Operations Office] Technical Programs Office (ETD) agreed to [a] rewrite of the report."

(b)(6),(b)(7)(C) (b)(6),(b)(7)(C) (b)(6),(b)(7)(C) (b)(6),(b)(7)(C)

In a May 2, 1995, interview [redacted] stated that [redacted] called [redacted] about the withholding of EM-50's funding and [redacted] told [redacted] to just wait and everything would blow over. [redacted] further stated that the funding was not withheld.

(b)(6),(b)(7)(C) (b)(6),(b)(7)(C) (b)(6),(b)(7)(C) (b)(6),(b)(7)(C)

[redacted] an EM-131 [redacted] stated during a May 19, 1995, interview that [redacted] provided [redacted] office with the information [redacted] had obtained on the process to withhold EM-50 funds from Rust Geotech. [redacted] stated that [redacted] an Albuquerque Budget Review Division official, had provided the information to [redacted] [redacted] also stated that after providing the information to [redacted] office, that was the last [redacted] heard about withholding EM-50 funding from RUST Geotech.

(b)(6),(b)(7)(C) (b)(6),(b)(7)(C) (b)(6),(b)(7)(C)

In his May 22, 1995, signed and sworn statement, [redacted] stated that:

(b)(6),(b)(7)(C) (b)(6),(b)(7)(C)

"Until approximately one to two weeks ago I was not aware that my staff had not frozen the money and that apparently [redacted] worked with individuals at Albuquerque Operations [Office] and presumably Grand Junction [Project Office] to find acceptable alternatives to freezing the money. I have no knowledge of what these alternatives were."

(b)(6),(b)(7)(C) (b)(6),(b)(7)(C)

[redacted] also stated in a May 11, 1995, interview that [redacted] would take the same action to freeze funds if the circumstances were to occur again. [redacted] further stated that the

(b)(6),(b)(7)
(C)

(b)(6),(b)(7)
(C)

major distinction between his previous actions and future action would be to follow through to ensure that the withholding of funding was completed.

(b)(6),(b)(7)
(C)

(b)(6),(b)(7)
(C)

[redacted] stated during a May 23, 1995, interview that EM-50 funding was not withheld from RUST Geotech. [redacted] stated that [redacted] believed the funds were withheld until approximately two or more weeks ago when [redacted] contacted Environmental Management budget officials and was told that the RUST Geotech Grand Junction funds had not been withheld.

We reviewed the October 1994 through March 1995 monthly financial plan changes for EM-50 funding of RUST Geotech at the Grand Junction Project Office and we did not find evidence that EM-50 funding had been withheld from RUST Geotech as directed by the EM-50 DAS.

(b)(6),(b)(7)
(C)

Appropriateness of Direction to Withhold EM-50 Funds

(b)(6),(b)(7)
(C)

We believe that the EM-50 [redacted] direction to withhold EM-50 funding at RUST Geotech to get the EM-40 [redacted] attention was inappropriate and reflected poor management performance based on the standards regarding effective communication and coordination that are in his Executive Performance Plan. This Plan was prepared for the rating period of October 1, 1994, through September 30, 1995, and was signed by the EM-50 [redacted] on February 10, 1995.

(b)(6),(b)(7)
(C)

(b)(6),(b)(7)
(C)

We identified four standards in the EM-50 [redacted] Performance Plan that we believe are applicable. These standards were found under Performance Area I -- "LEADERSHIP" and they included A.3. "COMMUNICATIONS"; A.4. "EXTERNAL RELATIONSHIPS/NETWORKING"; A.5. "NEGOTIATION/INFLUENCING"; and A.6. "INTERPERSONAL RELATIONSHIPS."

Standard A.3. "COMMUNICATIONS" stated, in part, that the [redacted]

(b)(6),(b)(7)
(C)

"... Establishes processes and systems which promote communications within the organization, and with the organization's customers."

Standard A.4. "EXTERNAL RELATIONSHIPS/NETWORKING" stated:

"Effectively articulates and promotes the organization's purposes and programs to outside groups. Meets regularly with clients, institutionalizes relationships with them as needed and engenders their cooperation and support."

Standard A.5. "NEGOTIATING/INFLUENCING" stated:

"Language and behavior promote 'win-win' solutions when differences or opportunities between groups or individuals arise. Makes timely, thoughtful and

practical proposals to resolve impasses or reach consensus, taking stakeholders' interests into account."

Standard A.6. "INTERPERSONAL RELATIONSHIPS" stated, in part:

"...Creates solid working relationship across various levels of the Department."

(b)(6),(b)(7)
(C) It was our view that the EM-50 [redacted] actions in directing the withholding of funds from RUST Geotech to "get the attention of ... EM-40" were not consistent with these standards.

(b)(6),(b)(7)
(C) We also believe that the EM-50 [redacted] actions were inconsistent with two of EM's "18 Rules of Engagement," which we found were developed at an "EM Team Building Retreat." These Rules were distributed to all EM staff through EM's computer network. The two rules of engagement that we believe to be applicable were "No 'end runs'." and "Preach teamwork in your organization."

Furthermore, We reviewed three other criteria to determine their applicability to this management action: 1) Standards of Ethical Conduct (5 CFR 2635); 2) Procurement Integrity (48 CFR 3.104); and 3) Scope of Official Duties (the EM-50 [redacted] Position (b)(6),(b)(7)
(C) Description.) We did not find that these criteria applied to this issue.

Finally, we reviewed the October 1994 through March 1995 monthly financial plan changes for EM-50 funding of RUST Geotech at the Grand Junction Project Office. We did not find evidence that EM-50 funding had been withheld from RUST Geotech, despite the EM officials direction to withhold the funds.

RECOMMENDATIONS

- (b)(6),(b)(7)
(C) 1. We recommend that the [redacted] consider appropriate disciplinary action for the [redacted] (b)(6),(b)(7)
(C) [redacted] and consider his actions in preparing his annual performance appraisal.

(b)(6),(b)(7)
(C) The [redacted] concurred with this recommendation and stated the following:

(b)(6),(b)(7)
(C) "...[I] am considering, in consultation with representatives from the office of Human Resources and Administration and the Office of General Counsel the following actions: a) appropriate disciplinary action against [redacted] and b) taking [redacted] actions into consideration in preparing [redacted] annual performance appraisal."

(b)(6),(b)(7)
(C)

(b)(6),(b)(7)
(C)

2. We recommend that the [REDACTED] reemphasize the Secretary of Energy's initiative within Environmental Management regarding openness and acceptance of dissenting opinions.

(b)(6),(b)(7)
(C)

The [REDACTED] concurred with this recommendation stating that he:

"...will take action -- both through issuance of a guidance memorandum and in discussions with senior managers within the Office of Environmental Management (EM) -- to reemphasize the Secretary of Energy's initiative regarding openness and acceptance of dissenting opinions."

2. Was useful information deleted from the October 1994 Crosswalk Report as a result of EM-50 officials' direction to withhold funding from Rust Geotech?

Although we did not do sufficient analysis to conclude that useful information was deleted, we found evidence that supports the view that information was deleted from the report that may be useful for identifying management problems regarding technology development. Accordingly, we believe that Environmental Management officials should have the deleted information independently reviewed by an organization other than EM-40 or EM-50 to determine if corrective actions are appropriate.

Direction to Change the Crosswalk Report

(b)(6),(b)(7)
(C)

We interviewed Departmental and RUST Geotech officials and reviewed pertinent documents, including memorandums and the October 1994 and March 1995 Crosswalk Reports to determine what direction was given to change the Crosswalk Report.

(b)(6),(b)(7)
(C)

(b)(6),(b)(7)
(C)

(b)(6),(b)(7)
(C)

(b)(6),(b)(7)
(C)

In a June 5, 1995, interview, [REDACTED] EM-40, stated that [REDACTED] and [REDACTED] the Director of Program Integration EM-43, discussed changes needed to the report. As a result of that discussion, [REDACTED] issued a November 25, 1994, memorandum to [REDACTED] Grand Junction Project Office. The memorandum included a statement directing [REDACTED] to "...remove the '9 one-liners' and other references that could be construed to be critical of the performance of any [REDACTED] organization."

(b)(6),(b)(7)
(C)

(b)(6),(b)(7)
(C)

The action directed by [REDACTED] to change the October 1994 Crosswalk Report was broader than the originally stated concerns of [REDACTED] and [REDACTED] (EM-54). In a July 12, 1995, interview, [REDACTED] stated that he prepared the initial draft of the November 25, 1994, memorandum to direct RUST Geotech to change the Crosswalk Report. [REDACTED] stated that the original draft memorandum focused primarily on the "9 one-liners" and did not require other critical

assessments to be removed. [REDACTED] stated during a May 4, 1995, interview that the directions to change the report was broader because the "9 one-liners" were "woven" throughout the report, and therefore, several sections of the report were required to be rewritten.

Changes to the Crosswalk Report's Executive Summary

We reviewed pertinent documents, including memorandums and the October 1994 and March 1995 Crosswalk Report to determine what information was changed in the final report. We found that RUST Geotech officials modified the Executive Summary of the October 1994 Crosswalk Report, in part, by deleting five of the "9 one-liners" and changing the remaining four "one-liners." The inspection also found that numerous changes were made to the body of the report.

Following are the five "one-liners" that were deleted from the Executive Summary.

"Technology development should not be geared toward developing the perfect technology; rather, it must focus on providing sufficient information to make good environmental restoration decisions. Technology developers must work with end users (champions) to ensure that modifications are indeed necessary and that user requirements are met. DOE's technology development program is being restructured to move in this direction."

"A significant portion of EM-50 funding is directed toward nontechnological activities. Approximately half of the EM-50 budget is funding for technical support, administrative, management, and other similar activities that are not directly technology development. These activities could be the result of the radiological environment associated with current and former defense efforts that require a high percentage of these services to satisfy DOE orders, procedures, and directives."

"Organization of technology activities by 'Program Elements' within EM-50 makes it difficult to find information about a technology with the emphasis on transferring technology from inside DOE to the outside, more effective and comprehensive information transfer tools need to be implemented. The recent addition of a toll free "1-800" number will aid in these efforts."

"The role that the different EM organizations have in developing a technology is not defined; that is, how far should EM-50 develop a technology before it is turned over to EM-30 and EM-40? For new technological applications being pursued by EM-50, an element of EM-40 or EM-30 involvement (i.e., champion) and funding would seem appropriate, because EM-40 or EM-30 is presumably the ultimate user of the technology. By investing in the technology, the customer is more likely to use it. The involvement of EM-40 or EM-30 also would bring the regulatory and public stakeholders into the process and increase the likelihood that the technology will be accepted."

"Coordination of technology development activities within EM-50 is not straightforward, establishment of priorities for technology development funding is not apparent, and continuity of technology development efforts is lacking from year to year."

The following statements were also deleted from the Executive Summary of the Crosswalk Report.

"For DOE's environmental technology development efforts to be successful, a fundamental change in culture is required to instill a passion to recognize that environmental technology is needed now for field application to problems that pose a real and current threat.

"Organization of technology development activities into Integrated Demonstration, Integrated programs, and Focus areas creates a potential for redundancy."

Changes to the Body of the Crosswalk Report

During our review of the October 1994 and March 1995 versions of the Crosswalk Report, we found that observations and statements were deleted and changed in the body of the report. Statements deleted in Section "3.0 Results" included:

"While the overall emphasis of the EM-50 program seems to be appropriately placed and geared to solving DOE problems, in many cases it appears that a "shotgun" approach is being used and numerous competing efforts at various DOE sites are aimed at solving the same problem (e.g., many different technologies are being funded that accomplish the same goal). A clear strategy does not emerge that describes how these various efforts support each other."

"Many EM-50 efforts appear to be related and overlap with one another, as well as with EM-40 projects. Enough information was not available to determine how these activities are integrated and coordinated. With the development of the Focus Areas within EM, coordination of similar activities should be more clearly understood."

Attachment E presents more examples of the changes to the body of the report.

Usefulness of Information Deleted

We interviewed Environmental Management officials and the six RUST Geotech authors of the October 1994 Report. We also reviewed EM-50 officials' and RUST Geotech authors' written comments on the "9 one-liners" and Booz Allen and Hamilton, Inc. officials' comments on a September draft of the Crosswalk Report. We found that

the comments provided in the interviews and documents we reviewed focused on the factual accuracy and usefulness of the information in the Crosswalk Report. In our view, some of these comments provided evidence that information was deleted from the report that may be useful for identifying management problems regarding technology development. Accordingly, we believe that Environmental Management officials should have the deleted information independently reviewed by an organization other than EM-40 or EM-50 to determine if corrective actions are appropriate.

Following are some specific excerpts from Departmental and contractor officials' comments on the Crosswalk Report and documents that we reviewed.

(b)(6),(b)(7)
(C)

[REDACTED] December 6, 1994, memorandum (Attachment D) commenting on the "9 one-liners" stated, in part, that:

"The referenced report prepared by Rust Geotech, Inc. for the Office of Environmental Restoration appears to have been prepared without reference to, or knowledge of, the scope of the Office of Environmental Management (EM) technology development activities. Accordingly, the report has limited usefulness to achieve its intent, i.e., 'to permit DOE Headquarters (DOE-HQ) and field personnel to use the information to assist them in making decisions regarding technology development investments.

"The report purports to provide an analysis of technology development activities being pursued by the Office of Waste Management (OWM), the Office of Environmental Restoration (OER), and the Office of Technology Development (OTD). However, the General Observation contained in the Executive Summary of the report in Volume I are almost exclusively devoted to OTD programs. These observations are replete with errors of fact and omission. Both deficiencies could have been remedied by more careful research, accessing readily available reports, and talking with the principals."

RUST Geotech authors' had prepared written comments on the "9 one-liners" (Attachment F) after EM-50 officials' concerns were initially raised in late November. These comments were completed in late December 1994 and included a response to [REDACTED] December 6, 1994, memorandum on the "9 one-liners." The RUST Geotech authors' comments included the following statements.

(b)(6),(b)(7)
(C)

"The October 1994 report...does not portray the full scope of EM's technology development efforts. (This was stated in the first paragraph of Section 2.0 of the October 1994 report.) However, the January [1994] report did undergo review by OTD and concerns expressed in those reviews were addressed in the subsequent revision dated October 1994. Note that the Crosswalk Report represents a snapshot in time (August 1993) of a rapidly-evolving EM Program; it recognizes that efforts are currently underway to correct past deficiencies noted by a variety of organizations.

"The issues in question have been referred to as 'one-liners' that appear as part of the bulleted items in the Executive Summary. In most cases the 'one-liners' have been taken out of context by not including the entire bullet and not relying on how this bullet is backed up by information in the body of the report. Therefore, the entire bulleted items from the Executive Summary are included below with the 'one-liners' presented in bold italicized typeface. Note also that backup information to support the bullets in the Executive Summary is provided in the complete report, including the appendices."

(b)(6),(b)(7)
(C)

Following are excerpts from the EM-50 [REDACTED] December 6, 1995, memorandum and the RUST Geotech authors' written comments on one of the "9 one-liners."

The one liner, stated: "Coordination of technology development activities within OTD is not straightforward, establishment of priorities for technology development funding is not apparent, and continuity of technology development efforts is lacking from year to year."

(b)(6),(b)(7)
(C)

EM-50 [REDACTED] Position in the December 6, 1994, memorandum:

"This statement appears to reflect a lack of awareness of the significant coordination efforts ongoing within EM and of the processes leading to final selection of OTD program activities. Technology Needs Statements from OWM [Office of Waste Management] and OER [Office of Environmental Restoration] are submitted to OTD. These need documents are widely distributed internally to the DOE complex and to the external community including stakeholders. On the basis of these Needs Statements a call for TTPs [Technical Task Plans] is made to the field in coordination with OWM and OER. In the 'New Approach' referenced above, an action plan provides for establishing priorities and assuring coordination on continuing technology development efforts."

RUST Geotech Authors' Written Comments:

"Concerning the coordination of technology development activities within OTD, during the analysis of the TTP PEG information it was not readily apparent how or if the coordination of technology development activities within the EM-50 program actually occurred. However, it was readily apparent that numerous TTP's within many categories appeared to have similar if not the same names and descriptions. How these activities are integrated and coordinated is unclear, particularly when they are being conducted through different integrated demonstrations and programs at different sites by different individuals. Numerous examples illustrate how this conclusion was reached and are found throughout in Section 3 and the Appendix of the Crosswalk Report. One of these examples are listed below but are only a small sample and the reader is

urged to read the documents in their entirety to obtain a better understanding of why this conclusion was made.

"Example

"Many TTP's from several different sites describe identical scopes of work with no description of clear-cut differences in responsibilities. It was unclear if these efforts were coordinated or if each laboratory was conducting an independent program.

"AL143502 Robotics Containment Analysis Automation-S (LANL)

AL213203	"	"	"	"	(SNL) [sic]
ID413203	"	"	"	"	(WINCO) [sic]
OR143502	"	"	"	"	(ORNL) [sic]
RL313201	"	"	"	"	(PNL) [sic]
RL413201	"	"	"	"	(WHC) [sic]

"As part of the New Approach and as stated in the report on page 3-14 'With the development of the focus areas within EM, coordination of similar activities should be more clearly understood.' "

"Regarding establishment of priorities, EM-50 does publish a technology development 'needs summary' that describes the types of programs and technologies that it is pursuing. However, the most recent needs summary (dated March 1994) identifies needs for 100 different projects being conducted through 11 separate programs. No overall priority was assigned to any of these projects or programs.

"The statement about continuity of technology development efforts is based on review of TTPs over a span of several years. It was very difficult to track a TTP from one year to the next and to determine the 'history' of the project. TTP numbers and titles changed and it was not possible to determine why funding may have been discontinued for a given project (e.g., low priority, preliminary results not encouraging). Since the time of the analysis of TTPs for the Crosswalk Report, EM-50 has published its 1994 Program Summary (dated October 1994), which does list TTPs and funding levels from 1992 to 1994. This information is useful, though it still provides no explanation of why funding was discontinued for specific projects."

In addition, we found an October 13, 1994, Booz Allen Hamilton, Inc. (Booz Allen) review of the September 1994 draft which appeared to support the possibility that potentially useful information may have been deleted from the report. Specifically, the Booz Allen review stated that:

"This version of the document is generally well written and presents good suggestions for improvement of the overall EM technology development programs. It should be noted, however, that the general flavor of the document is critical of EM-50. Notwithstanding the above comment, we agree that many of the deficiencies noted in the document have an element of truth to them and that the criticisms made by the authors of this crosswalk are largely constructive in nature. They also offer sound suggestions which attempt to rectify the shortcomings in the DOE/EM system."

Early Comments on the Crosswalk Report by EM-50 Officials

We interviewed EM-50 officials and reviewed relevant documents to determine if EM-50 officials had expressed concerns regarding the "9 one-liners" prior to the October 1994 Crosswalk Report. (b)(6),(b)(7) (C)

A February 7, 1994, memorandum from [redacted] (b)(6),(b)(7) (C) Program Integration (EM-43), forwarded a copy of the January 1994 draft Crosswalk Report to EM-50 for review comment. EM-50 officials responded to this request for comment with a February 28, 1994, memorandum from [redacted] (b)(6),(b)(7) (C) Environmental Restoration Research and Development Division (EM-551), to [redacted] (b)(6),(b)(7) (C) Program Integration (EM-43). The memorandum included comments and supplemental information on three of the "9 one-liners". The memorandum did not state that any of the "9 one-liners" should be deleted. (b)(6),(b)(7) (C)

Also, the February memorandum stated that:

"This document is useful in showing where there may be some duplication in technology development between EM-50 and EM-40. It will also be helpful in the technology focus area approach we are embarking on to bring closer coordination to environmental technology development activities within EM as well as with other involved parties."

However, we noted that [redacted] (b)(6),(b)(7) (C) memorandum also expressed overall concerns with the January Crosswalk Report, stating that "... We strongly recommend that the document not be published in its current status, since it does not adequately represent the EM-50's technology development programs." The memorandum further stated that EM-30 work was absent from the report. We noted that the October 1994 Crosswalk Report was modified to include EM-30 information. (b)(6),(b)(7) (C)

In a March 23, 1994, memorandum from [redacted] (b)(6),(b)(7) (C) an Office of Research and Development official (EM-541), to [redacted] (b)(6),(b)(7) (C) provided five comments on the Crosswalk Report. One of the comments was in response to one of the "9 one-liners" that cited a lack of peer reviews on EM-50 projects. The comment was that:

"5) Many findings about EM-50 TD [Technology Development] efforts are based on whether a corresponding TTP was or was not identified. This method has the potential for incorrect findings. For, example, a lack of peer review was cited. However, such activities do occur, without specifically being called out via a TTP [Technical Task Plan]. For example, the In Situ Remediation Integrated Program has increased its peer review activities, but one would not see this by searching the TTP titles."

(b)(6),(b)(7)
(C)

(b)(6),(b)(7)
(C)

[redacted] authors of the October 1994 Crosswalk Report, sent a May 3, 1994, RUST Geotech memorandum to [redacted] a RUST Geotech [redacted] regarding a trip they had taken to DOE Headquarters to discuss the Crosswalk Report. The memorandum stated that during their trip on April 25 and 26, 1994, they interviewed EM-54 [redacted] EM-541, and EM-55 [redacted] officials. The memorandum did not mention that any concerns were expressed by these officials regarding the "9 one-liners." [redacted] told us in a June 5, 1995 interview that he did not bring up the "9 one-liners" with RUST Geotech officials when they interviewed him.

(b)(6),(b)(7)
(C)

(b)(6),(b)(7)
(C)

(b)(6),(b)(7)
(C)

RECOMMENDATION

(b)(6),(b)(7)
(C)

3. We recommend that the [redacted] consider an independent review of the information changed or deleted from the report by an organization other than EM-40 or EM-50 to determine if corrective actions are appropriate. The results of any review should be provided to the Office of Inspections.

(b)(6),(b)(7)
(C)

The [redacted] stated that:

"We concur with this recommendation, and plan to organize a team of EM representatives from offices other than EM-40 or EM-50 to review the specific findings in the Executive Summary of the October 1994 draft report prepared by RUST Geotech, and specific provisions in the text that were subsequently revised or deleted, to provide input on (1) the extent to which findings in the draft Executive Summary should be considered in defining a revised mission and function for a new EM office of Science and Technology, which is being formed as an element of the Secretary's Alignment initiative; and (2) the extent to which technical findings or observations in the draft October 1994 RUST Geotech report need to be considered in defining the specific technology-development activities that will be pursued in the new Office of Science and Technology."

3. Were the disciplinary actions taken against the six RUST Geotech authors directed by EM-50 officials?

The inspection did not find evidence that any Departmental official directed that disciplinary actions be taken against the six RUST Geotech authors of the October 1994 Crosswalk Report. However, we found that the Environmental Management Deputy Assistant Secretary for Technology Development's direction to withhold EM-50 funding led, in part, to RUST Geotech management officials' decision to discipline these authors. We noted that Albuquerque Operations Office officials conducted a review of the disciplinary actions and, in a memorandum documenting the review's results, made statements which appeared to be contrary to the Secretary's policy on openness and the Department's Contractor Employee Protection Regulations.

We did not address the question of whether the disciplinary actions were appropriate. This matter would be administratively the jurisdiction of the Department's Office of Contractor Employee Protection (OCEP), if the RUST Geotech authors were to file a complaint with that Office. OCEP is the office responsible for administering Title 10 Code of Federal Regulations (CFR) Part 708, "DOE Contractor Employee Protection Program." Part 708 was established April 2, 1992, to "...protect DOE contractor and subcontractor employees from reprisals." The six disciplined authors were advised by the Office of Inspections of their rights to file a complaint with OCEP.

The following information from statements, interviews and documents is provided as support for our findings.

RUST Geotech Authors Disciplined

We interviewed Departmental and contractor officials and reviewed the relevant documents to determine if Departmental officials directed RUST Geotech management to take disciplinary action against the six authors who had prepared the October 1994 Crosswalk Report.

Letters of Disciplinary Action

(b)(6),(b)(7)
(C)

November 23, 1994, letters of disciplinary action from RUST Geotech's [REDACTED] [REDACTED] to the six authors, stated that they were disciplined because:

"This report, as published, demonstrates a serious lack of professional judgment and client sensitivity. It is full of opinions and editorial comments that are insulting to our client and not reflective of your corporation's views. The insensitivity demonstrated in this report has led directly to the projected loss of over \$2 million in program assignments and a significant amount in award fee."

(b)(6),(b)(7)
(C)

(b)(6), (b)(7)
(C)

(b)(6), (b)(7)
(C)

The disciplinary letters were addressed to [REDACTED]

(b)(6), (b)(7)
(C)

[REDACTED] also suspended for five days without pay.

We also noted evidence that three of the RUST Geotech authors' performance appraisals were reduced because of the issuance of the October 1994 Crosswalk Report. Furthermore, the information from our interviews indicates that, by direction from RUST Geotech's management, none of the authors received an annual merit raise.

RUST Geotech Managers' Statements

(b)(6), (b)(7)
(C)

(b)(6), (b)(7)
(C)

[REDACTED] signed statement that [REDACTED] "...DID NOT TALK TO ANY FEDERAL OFFICIAL'S [sic] ABOUT DISCIPLINING THE SIX RUST GEOTECH EMPLOYEES ON/OR BEFORE NOVEMBER 23, 1994" -- the date the authors were disciplined. [REDACTED] also stated in May 2, 1995, signed statement that there was no pressure on RUST Geotech from Departmental officials to discipline the six authors.

(b)(6), (b)(7)
(C)

(b)(6), (b)(7)
(C)

(b)(6), (b)(7)
(C)

We also interviewed [REDACTED] RUST Geotech [REDACTED] who signed the letters of disciplinary action cited above. [REDACTED] stated in his August 4, 1995, signed and sworn statement that "I DID NOT TALK TO ANY FEDERAL OFFICIAL'S [sic] ABOUT DISCIPLINING THE SIX RUST GEOTECH EMPLOYEES ON/OR BEFORE NOVEMBER 23, 1994" -- the date the authors were disciplined.

(b)(6), (b)(7)
(C)

(b)(6), (b)(7)
(C)

(b)(6), (b)(7)
(C)

Departmental Officials' Statements

(b)(6), (b)(7)
(C)

(b)(6), (b)(7)
(C)

(b)(6), (b)(7)
(C)

(b)(6), (b)(7)
(C)

(b)(6), (b)(7)
(C)

[REDACTED] stated in [REDACTED] May 23, 1995, signed and sworn statement that [REDACTED] did not direct the RUST Geotech authors who drafted the report be disciplined.

(b)(6), (b)(7)
(C)

[REDACTED] an Albuquerque Energy and Technology Division official, stated that [REDACTED] did not learn of the disciplinary action taken by RUST Geotech until [REDACTED] a Grand Junction Project Office Acting Team Leader, informed him of the actions which had already taken place. [REDACTED] stated in a May 30, 1995, interview that [REDACTED] was not aware of the disciplinary actions until after they occurred. [REDACTED] stated that [REDACTED] did not have any discussions with RUST Geotech officials about the disciplinary actions. [REDACTED] further stated that [REDACTED] did not direct disciplinary actions taken against the six authors by RUST Geotech officials.

(b)(6), (b)(7)
(C)

(b)(6), (b)(7)
(C)

(b)(6), (b)(7)
(C)

(b)(6), (b)(7)
(C)

In a May 2, 1995, interview, [REDACTED] stated that neither [REDACTED] nor [REDACTED] the Grand Junction Project Office, were involved with the disciplinary action of the six authors.

(b)(6), (b)(7)
(C)

(b)(6), (b)(7)
(C)

(b)(6), (b)(7)
(C)

(b)(6), (b)(7)
(C)

(b)(6),(b)(7)
(C)

(b)(6),(b)(7)
(C)

[redacted] also stated that the personnel action taken was processed internally by RUST Geotech.

(b)(6),(b)(7)
(C)

(b)(6),(b)(7)
(C)

[redacted] an Albuquerque [redacted] official, stated in a May 3, 1995, signed and sworn statement that "Al [Albuquerque] did not ask for disciplinary action against the Rust-Geotech [sic] authors of the report." During a May 4, 1995, interview, [redacted] Office of Program Integration (EM-43), stated that [redacted] did not discuss the disciplining of the six authors or the changes in Crosswalk staffing with any RUST Geotech officials. [redacted] further stated that [redacted] was not aware that RUST Geotech officials disciplined their authors until after the fact.

(b)(6),(b)(7)
(C)

(b)(6),(b)(7)
(C)

(b)(6),(b)(7)
(C)

(b)(6),(b)(7)(C)

(b)(6),(b)(7)
(C)

(b)(6),(b)(7)
(C)

[redacted] stated in a May 11, 1995, interview that [redacted] did not suggest or direct RUST Geotech officials to take disciplinary action against the six authors. [redacted] further stated that the disciplining of the six employees was "dumb." [redacted] also stated that the contractors were just trying to serve the customer. A December 1, 1994, facsimile informed [redacted] of the disciplinary actions against the RUST Geotech authors. The body of the December facsimile from [redacted] to [redacted] contained the following:

(b)(6),(b)(7)
(C)

(b)(6),(b)(7)(C)

(b)(6),(b)(7)
(C)

(b)(6),(b)(7)
(C)

"GJPO [Grand Junction Project Office] Actions Taken in Response to EM-50 Concerns on Draft 'Status and Analysis of Environmental Technology Management at DOE' document:

"RUST Geotech has taken significant disciplinary action against the principal staff involved:

"1. The three levels of management directly involved received one week leave without pay, for unprofessional behavior and insensitivity to client needs. Further action toward the highest directly responsible manager is pending.

"2. Three additional principle staff were given letters of reprimand, for the reasons stated above.

"3. The technology needs assessment project staff will be permanently changed.

(b)(6),(b)(7)
(C)

"Additionally, RUST Geotech has established a review board to assure that documents address appropriate sensitivities."

[redacted] responded to the December 1, 1994, facsimile with a December 6, 1994, memorandum (Attachment G) to [redacted]. The body of the December 6, 1994, memorandum contained:

(b)(6),(b)(7)
(C)

"Thank you for your facsimile of December 1, 1994, which forwarded information concerning Grand Junction Project Office contractor staff members who

supported the Department of Energy (DOE) in preparing the subject Crosswalk Report.

(b)(6),(b)(7)(C) "While the support contractor has been manifestly responsive in doing everything possible to accommodate DOE, there was [an] absence of acknowledgment from the DOE officials who directed the report." (b)(6),(b)(7)(C)

(b)(6),(b)(7)(C) [redacted] also stated in his May 22, 1995, signed and sworn statement that he had spoken to [redacted] WMX--parent company of RUST Geotech, Inc. Regarding his conversation with [redacted] stated that "At no time did I request of [redacted] that anyone at Rust [sic] Geotech be reprimanded." [redacted] further stated that [redacted] conversation with [redacted] was "...a very brief discussion in which [redacted] simply stated that [redacted] apologized for the report and recognized its subjective character. We further discussed other topics which had nothing to do with this crosswalk report." (b)(6),(b)(7)(C) (b)(6),(b)(7)(C)

Albuquerque Officials' Review of the Disciplinary Action

The inspection found that Albuquerque conducted a review of the disciplinary actions and concluded that the actions were appropriate given the circumstances. The following facts and statements provide more details about Albuquerque officials' review of the disciplinary actions.

Request for Albuquerque Officials' Review

(b)(6),(b)(7)(C) During a May 2, 1995, interview, [redacted] (b)(6),(b)(7)(C) stated that he requested [redacted] (b)(6),(b)(7)(C) to review the circumstances regarding appropriateness of the disciplinary actions taken by RUST Geotech. In a May 1, 1995, interview, [redacted] (b)(6),(b)(7)(C) stated that [redacted] was asked to look into the disciplinary actions taken by RUST Geotech by [redacted] through [redacted] (b)(6),(b)(7)(C)

Results of Albuquerque Officials' Review

(b)(6),(b)(7)(C) The results of the Albuquerque review were provided to [redacted] in a January 25, 1995, memorandum from [redacted] (Attachment H). That memorandum concluded that "Rust-Geotech's [sic] action was appropriate given the circumstances." [redacted] stated that the basis for the disciplinary action was lack of professionalism. [redacted] further stated that:

(b)(6),(b)(7)(C) "...Although the company's Management Policies manual covers employee conduct requirements it does not cover a specific situation such as this. However, the manual provides, in my judgment, adequate flexibility to Rust-

Geotech [sic] management for the action taken...Finally, loss of revenue (EM-50) in the private sector is a drastic consequence of employee conduct and that certainly was another legitimate consideration in this case..."

(b)(6),(b)(7)
(C) We did not address the appropriateness of RUST Geotech's action. However, we discussed this issue with [redacted] Office of Contractor Employee Protection (OCEP), who stated that the preparation of the Crosswalk Report by RUST Geotech authors, in [redacted] view, would be covered under protected activities of 10 CFR, Part 708. [redacted] further stated that OCEP could only initiate a review to determine whether retaliation took place if the RUST Geotech authors forwarded complaints to OCEP. (b)(6),(b)(7)
(b)(6),(b)(7)
(C)

Albuquerque's Statement on the Contractor Employees' Work Assignments

(b)(6),(b)(7)
(C) [redacted] had stated in the January 25, 1995, memorandum that it was "...incredibly poor judgment in utilizing these employees who had earlier revealed a bias." This bias, we believe, referred to a March 23, 1993, letter to the Secretary, in which three of the six disciplined authors expressed their views on Environmental Restoration and Technology Development issues. [redacted] also stated in the January 25, 1995, memorandum, that: (b)(6),(b)(7)
(C)

"It should be noted that the Rust-Geotech [sic] employees who staffed the report had corresponded to the Secretary of Energy, ostensibly as private citizens, with their very negative view of EM-50, and so there was already a fertile bed for a biased work product."

We believe that Albuquerque's criticism of RUST Geotech's assignment of these employees to prepare the Crosswalk Report may be inconsistent with DOE's policy on contractor employee protection. It is, in part, the Department's policy (10 CFR, Part 708.3) that contractor employees at DOE facilities should be able to provide information to DOE concerning mismanagement or gross waste of funds without fear of reprisal. We discussed this issue with [redacted] OCEP, who stated that the letter to the Secretary contains allegations that would appear to be protected disclosures under 10 CFR, Part 708. (b)(6),(b)(7)
(C)

(b)(6),(b)(7)
(C) The AL [redacted] stated that in documenting the results of their review of RUST Geotech's disciplinary actions, AL did not intend to make statements which appeared to be contrary to the Secretary's policy on openness.

Letter to the Secretary of Energy

We reviewed the March 1993 letter from three of the disciplined authors to the Secretary as well as the Assistant Secretary for Environmental Management's response to this letter. The March 23, 1993, letter from three of the six disciplined authors, [redacted] to the Secretary of Energy expressed the (b)(6),(b)(7)
(C)

authors' views of DOE's Environmental Restoration and Waste Management Programs. Specifically, the letter stated:

"...We have concluded that DOE has complicated the cleanup process by applying internal orders and procedures to activities for which they are not relevant. We firmly believe that DOE's lack of progress in cleanup is largely self-imposed and can be significantly improved through a change in DOE's culture...We urge you to strongly consider the following recommendations
....Review and evaluate the relationship between EM-50 Technology Development activities and the EM-30 and EM-40 programs they serve. There is very little interaction between EM-50 personnel and their intended clients in EM-30 and EM-40. If EM-50 is to be successful, client integration is essential and is largely lacking at this time..."

(b)(6),(b)(7)
(C)

(b)(6),(b)(7)(C)

(b)(6),(b)(7)(C)

Regarding the authors' comments on "client integration", we noted that [REDACTED]

[REDACTED] Office of Demonstration Testing and Evaluation, stated during a June 5, 1995, interview, that [REDACTED] did not consider EM-30, EM-40 or EM-60 to be customers of EM-50. [REDACTED] stated that the primary customers of EM-50 are the U.S. taxpayers, Congress and the industrial partners. [REDACTED] further stated that funds and projects are tracked separately within EM-30, 40, 50 and 60.

(b)(6),(b)(7)
(C)

(b)(6),(b)(7)
(C)

(b)(6),(b)(7)
(C)

Finally, we reviewed a letter from [REDACTED] Environmental Management, responding to the RUST Geotech authors' March 23, 1993, letter to the Secretary. [REDACTED] letter stated, in part, that:

(b)(6),(b)(7)
(C)

"I had the opportunity to read several parts of your letter to Secretary O'Leary. First, congratulations on your willingness to share and record your ideas. Second, I agree wholeheartedly with your desire to reduce obstacles to cleanup. Third, thanks for your support. I look forward to working with you."

We noted, however, that the authors of the letter to the Secretary had been counseled for writing this letter. In the January 25, 1995, memorandum to [REDACTED] [REDACTED] stated that the RUST Geotech authors had been counseled for writing to the Secretary and that, in the view of RUST Geotech management, these employees had been disciplined for what was deemed to be an unprofessional attack on EM-50.

(b)(6),(b)(7)
(C)

(b)(6),(b)(7)
(C)

RECOMMENDATIONS

4. We recommend that the [REDACTED] and the Manager, Albuquerque Operations Office take steps to ensure that RUST Geotech Management are aware that it is contrary to DOE Contractor Employee Protection Regulations to take adverse action, including adverse decisions on work assignments, against contractor employees who make disclosures to The Secretary or other Departmental officials in good faith.

(b)(6),(b)(7)
(C)

(b)(6),(b)(7)
(C)

The [REDACTED] concurred with this recommendation and stated that [REDACTED] will work with the [REDACTED] Albuquerque Operations Office (AL) to take steps to ensure that representatives from RUST Geotech management are aware that adverse action, including adverse decisions on work assignments, against authors who make disclosures to the Secretary or other Departmental officials in good faith. (b)(6),(b)(7)
(C)

(b)(6),(b)(7)
(C)

The [REDACTED] concurred in principle with the recommendation and stated the following:

(b)(6),(b)(7)
(C)

"... on January 20, 1995, [AL] announced the AL Associates' Concerns Program (ACP) Implementation to all AL federal and contractor employees. As part of the AL Program announcement, the [REDACTED] emphasized support for Departmental policy ensuring that both DOE federal and contractor employees must be free to voice their concerns and opinions without fear of retaliation and iterated the Secretary's declaration of 'zero tolerance' for reprisal. With the announcement, all AL Area/Project Office Managers were instructed to prominently display posters announcing the AL ACP Program, 24-hour 1-800 Hotline Number, and the DOE Contractor Employee Protection Program at DOE and DOE contractor/subcontractor sites. In conjunction with the AL ACP implementation, AL Area/Project Office Managers were instructed to encourage AL contractors to develop and implement similar employee concerns programs if an avenue for the expression of employee concerns was not already in place. Additionally, brochures announcing the program and emphasizing the Department's and AL's position of 'zero tolerance for reprisal' were provided for all AL federal and contractor employees at AL sites."

"The Grand Junction Project Office provided AL ACP and DOE Contractor Employee Protection Program materials and instructions to ... General Manager, RUST Geotech, Inc., on February 14, 1995, for posting and dissemination of Program information to RUST Geotech, Inc., employees."

(b)(6),(b)(7)
(C)

5. We recommend that the [REDACTED] Albuquerque Operations Office, take steps to ensure that AL administrative and industrial relations staff understand DOE's policy regarding reprisal against contractor employees for engaging in an activity that is protected under DOE's contractor employee protection regulations.

(b)(6),(b)(7)
(C)

The [REDACTED] concurred with this recommendation stating that:

"All AL staff were advised of the enhanced AL Associates' Concerns Program and the Office of Contractor Employee Protection Program, with emphasis on the Department's and AL's position of 'zero tolerance for reprisal' through the aforementioned program announcement, posters, and brochures. Since the

Program enhancement and announcement, the AL Associates' Concerns Program Manager has worked closely with the AL Industrial Relations and Administrative staff in the evaluation and resolution of contractor employee concerns. The AL Industrial Relations staff is not only cognizant of the Contractor Employee Protection Program, in April 1995 they communicated to all AL Area/Project Offices the Department's emphasis on complying with both the spirit and specific requirements of the Contractor Employee Protection Program during the Department's downsizing."

(b)(6),(b)(7)
(C)

(b)(6),(b)(7)
(C)

The [redacted] also [redacted] concurred with this recommendation, and stated that [redacted] will work with the [redacted] the Albuquerque Operations Office to take steps to ensure that AL administrative and industrial relations staff are advised of and understand DOE's policy regarding reprisal against contractor employees for engaging in an activity that is protected under DOE's Contractor Employee Protection Regulations.

(b)(6),(b)(7)
(C)

KEY INDIVIDUALS LIST

Albuquerque Operations Office

(b)(6),(b)(7)
(C)



Grand Junction Project Office

(b)(6),(b)(7)
(C)



RUST Geotech Incorporated

(b)(6),(b)(7)
(C)



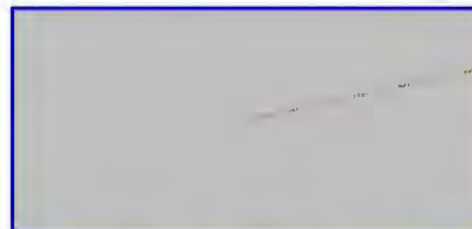
(b)(6),(b)(7)
(C)

**Headquarters Office of Contractor
Employee Protection**



(b)(6),(b)(7)
(C)

**Office of the Assistant Secretary for
Environmental Management**



(b)(6),(b)(7)
(C)

**Office of the Deputy Assistant
Secretary for Technology
Development**



(b)(6),(b)(7)
(C)

Office of Financial Management

(b)(6),(b)(7)
(C)



Office of the Deputy Assistant
Secretary for Environmental
Restoration

(b)(6),(b)(7)
(C)



Document Number 20

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U.S. Department of Energy
Office of Inspector General
Office of Audits and Inspections

Management Letter on the Federal Energy Regulatory Commission's Fiscal Year 2013 Financial Statement Audit

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OAS-FS-14-04

December 2013

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KPMG LLP
Suite 12000
1801 K Street, NW
Washington, DC 20006

November 26, 2013

Federal Energy Regulatory Commission, and
The Department of Energy, Office of Inspector General

Ladies and Gentlemen:

In planning and performing our audit of the financial statements of the Federal Energy Regulatory Commission (the Commission or FERC), as of and for the years ended September 30, 2013 and 2012, in accordance with auditing standards generally accepted in the United States of America, we considered the Commission's internal control over financial reporting (internal control) as a basis for designing our audit procedures that are appropriate in the circumstances for the purpose of expressing our opinion on the financial statements, but not for the purpose of expressing an opinion on the effectiveness of the Commission's internal control. Accordingly, we do not express an opinion on the effectiveness of the Commission's internal control.

During our audit we noted certain matters involving internal control and other operational matters that are presented for your consideration. These comments and recommendations, all of which have been discussed with the appropriate members of management, are intended to improve internal control or result in other operating efficiencies and are summarized in Exhibit A, along with management's response. Exhibit B presents the status of prior year comments and recommendations.

The Commission's response to the deficiencies identified in our audit is described in Exhibit A. The Commission's response was not subjected to the auditing procedures applied in the audit of the financial statements and, accordingly, we express no opinion on the response.

Our audit procedures are designed primarily to enable us to form an opinion on the financial statements, and therefore may not bring to light all weaknesses in policies or procedures that may exist. We aim, however, to use our knowledge of the Commission's organization gained during our work to make comments and suggestions that we hope will be useful to you.

We would be pleased to discuss these comments and recommendations with you at any time.

The purpose of this letter is solely to describe comments and recommendations intended to improve internal control or result in other operating efficiencies. Accordingly, this letter is not suitable for any other purpose.

Very truly yours,

KPMG LLP

Enclosure

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INTERNAL CONTROL AND OTHER OPERATIONAL MATTERS
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Exhibit A-Current Year Comments and Recommendations

Ineffective Controls in Place over Management Review of Journal Entries (Finding 13-FERC-JE-01)	A.1
Ineffective Controls in Place over SF 133 Reconciliation (Finding 13-FERC-BUD-01)	A.2

Exhibit B-Status of Prior Year Comments and Recommendations

Remediation of Network System Vulnerabilities (Finding 11-FERC-PT-01) Status as of 9/30/13: Open	B.1
Certification and Documentation of Time and Attendance Reports (Finding 11-FERC-HR-01) Status as of 9/30/13: Closed	N/A
Ineffective Controls in Place over the Procurement and Disbursement Processes Related to Obligations (Finding 12-FERC-BUD-01) Status as of 9/30/13: Closed	N/A

Exhibit A

CURRENT YEAR COMMENTS AND RECOMMENDATIONS**A.1 - Ineffective controls in place over management review of journal entries**
(Finding 13-FERC-JE-01)**Criteria**

Office of Management and Budget (OMB) Circular A-123, Management Accountability and Control, Section II states, "The three objectives of internal control are: effectiveness and efficiency of operations, reliability of financial reporting, and compliance with applicable laws and regulations." A-123 further states "Management is responsible for developing and maintaining internal control activities that comply with the following standards to meet the above objectives: control environment, risk assessment, control activities, information and communications, and monitoring."

The Federal Managers' Financial Integrity Act of 1982 (FMFIA) states that "Internal accounting and administrative controls of each executive agency shall be established in accordance with standards prescribed by the Comptroller General, and shall provide reasonable assurances that: (i) obligations and costs are in compliance with applicable law; (ii) funds, property, and other assets are safeguarded against waste, loss, unauthorized use, or misappropriation; and (iii) revenues and expenditures applicable to agency operations are properly recorded and accounted for to permit the preparation of accounts and reliable financial and statistical reports and to maintain accountability over the assets."

Condition

During our test work over a sample of 31 journal entries in FY2013, we identified one entry that did not completely reflect the underlying transactions, events, or conditions. Specifically, the journal entry the Commission prepared to record the FY2013 year-end adjustment to match revenue to costs did not incorporate the reversal of the FY2012 year-end adjustment.

Cause

The preparation and review of journal entries failed to detect and correct a journal entry that did not properly reflect the underlying transactions, events, or conditions of the year-end accrual. Specifically, the accrual was determined using an internal report of earned revenue that did not reflect the \$11 million of revenue over-collected in FY2012 and deferred until FY2013 for recognition.

Exhibit A

Effect

The Commission's September 30, 2013 trial balance and first draft of the financial statements submitted for external audit reflected an overstatement for accounts receivable and an understatement of transfers out of equity by \$11 million.

Recommendation

We recommend that the Federal Energy Regulatory Commission's Chief Financial Officer work with appropriate personnel to:

- 1) Develop and implement formal policies for revenue accrual and the corresponding reversing entry, including documenting the United States Standard General Ledger (USSGL) accounts to be used for the year-end accrual and the timing of the reversal during the next fiscal year to facilitate an earlier management review.

Management Response

Concur. The Chief Financial Officer (CFO) will ensure formal policies and procedures are developed for recording revenue accruals and the corresponding journal entries. The CFO will also ensure all responsible staff is adequately trained to execute the newly developed policies and procedures.

Exhibit A

A.2 - Ineffective controls in place over SF-133 Reconciliation
(Finding 13-FERC-BUD-01)**Criteria**

Office of Management and Budget (OMB) Circular A-123, Management Accountability and Control, Section II states, "The three objectives of internal control are: effectiveness and efficiency of operations, reliability of financial reporting, and compliance with applicable laws and regulations." A-123 further states "Management is responsible for developing and maintaining internal control activities that comply with the following standards to meet the above objectives: control environment, risk assessment, control activities, information and communications, and monitoring."

The Government Accountability Office (GAO)'s Standards for Internal Control in the Federal Government explains that "control activities occur at all levels and functions of the entity" and include "a wide range of diverse activities such as approvals, authorizations, verifications, reconciliations, performance reviews, maintenance of security and the creation and maintenance of relation records which provide evidence of these activities as well as the appropriate documentation."

Condition

During our test work over the fourth quarter SF-133 Reconciliation, which is used to prepare the Statement of Budgetary Resources, we noted the following errors:

- The Appropriations amount listed in the Advice of Allotments, which is the budget authority source documentation, did not agree to the amount recorded on the SF-133 reconciliation (line 1260) for a difference of \$160,461.
- The Unobligated Balance Available in the Current Period (line 2201) for fund X5105 in the amount of \$82,279 was not included in the reconciliation.

Cause

The fourth quarter reconciliation process was performed timely; however, a difference identified during the process was not properly followed up on during the reconciliation or review process. Further, the omitted line was not discovered during the reconciliation or review process.

Exhibit A

Effect

FERC's September 30, 2013 first draft of the financial statements submitted for external audit reflected an understatement of Appropriations in the Budgetary Resources Section of the Statements of Budgetary Resources of \$160,461.

Recommendation

We recommend that the Federal Energy Regulatory Commission's Chief Financial Officer work with appropriate personnel to:

- 1) Strengthen the existing policies and procedures in place for performing budgetary reconciliations through trainings and other communications to ensure that reconciliations are performed and reviewed at a level sufficient to not only detect, but also correct differences that do not appropriately reflect FERC's budgetary resources.

Management Response

Concur. The Chief Financial Officer will ensure all responsible Financial Management Division (FMD) staff is adequately trained on existing policies and procedures to ensure budgetary and other reconciliations are performed and reviewed at a sufficient level to detect and correct all potentially inappropriate balances reflected in the Commission's financial statements. In addition, the Director of the FMD will create and implement reconciliation checklists identifying all necessary tiepoints that must be reconciled as part of all reconciliation processes.

Exhibit B

B.1 - Remediation of Network System Vulnerabilities
(Finding 11-FERC-PT-01)**Current Status**

KPMG completed a finding follow-up review during July 2013 in support of the fiscal year (FY) 2013 Consolidated Financial Statement Audit and the DOE Office of Inspector General's information systems review required by the Federal Information Security Management Act of 2002.

Based on discussions with FERC officials, we noted that the following updates were planned for the existing Vulnerability Management Program, dated June 2011:

- The System Center Configuration Management Upgrade Project and Windows 7 Upgrade is planned for completion on all systems by October 2013; and,
- FERC management created a process to work directly with the Information Technology Operations group to implement longstanding security patches. The planned completion date for implementing these security patches is November 2013.

We reviewed vulnerability scan data provided by FERC and identified server and workstation systems running software applications without current security patches or security updates for known vulnerabilities. The scan data was produced in May 2013 (for servers) and June 2013 (for workstations) and reflected a point-in-time scan of server and workstation systems. The vulnerable server and workstation systems were missing security patches or security updates for known vulnerabilities that were released more than three months prior to our review. In some cases, we noted that vulnerabilities existed for which patches have been available for more than 4 years.

FERC officials informed us that, during FY 2013, the site began using the plug-in modification date, which represents the date of the most recent update to the scanning tool plug-in from the vendor, for the updated Vulnerability Management Program. FERC management also stated that policies and procedures are being updated to support the methodology for using the plug-in modification date for applicable security updates/patches instead of the patch publication date. KPMG listed both the patch publication and the plug-in modification dates in the tables below, to include the earliest and most recent missing update/patch next to each application name identified as missing on one or more servers or workstations in Table 1 (dates represented as a range):

Exhibit B

Table 1 – Examples of High Risk Vulnerabilities Identified in FY 2013

Identified Vulnerabilities	Risk Rating	Update/Patch Publication Date¹	Plug-in Modification Date²	Overdue Remediation Timeframe
Client Productivity Applications including Adobe and Microsoft	High	April 2009 - March 2013	March 2012 - March 2013	Greater than 90 days prior to scan date
Antivirus Applications including McAfee	Critical/High	October 2009 - November 2010	June 2011 - August 2012	Greater than 90 days prior to scan date
Utility Applications including Oracle Java, HP, and VMWare	High	March 2010 - March 2013	June 2012 - March 2013	Greater than 90 days prior to scan date
Web Browser Applications including Google and Mozilla	High	April 2012 - March 2013	July 2012 - March 2013	Greater than 90 days prior to scan date

Our FY 2013 review disclosed that FERC continued to update policies and procedures related to the implementation of the site's Vulnerability Management Processes. However, at the time of our review, FERC had not fully updated existing security patch management and vulnerability management processes and technical controls to address the recommended actions. Vulnerabilities similar in type, frequency and risk level to those identified during FY 2012 continue to exist in the FERC information technology environment. Therefore, the finding remains **open**.

¹ KPMG utilizes the patch publication date, which represents the date that the application vendor released a security update or patch for the identified vulnerability, for vulnerability and risk analysis purposes. If the patch publication date is not available, for example if the vendor has not yet released a patch, KPMG utilizes the vulnerability publication date, which represents the date that the vulnerability became publicly known.

² Note that neither the vulnerability publication date, patch publication date, nor the plug-in modification date provide an indication of the duration of time that vulnerability existed on the identified systems or on other systems within the environment. The patch publication and plug-in modification dates provide information related to the relevant vulnerability, patch and scanning tool updates in comparison to the point-in-time assessment.

Exhibit B

Recommendation

We continue to recommend that the Executive Director, Federal Energy Regulatory Commission:

1. Update, as needed, and implement existing vulnerability and patch management procedures to ensure that security vulnerabilities are remediated and verified in a timely manner, in accordance with the Vulnerability Management Program.

Management Response

We appreciate the opportunity to respond to the transmittal of the prior year finding and recommendation. The FERC continues to take positive actions to ensure the confidentiality, integrity and availability of its mission critical systems and data. Though the FERC continues to identify, track and remediate vulnerabilities within our environment, we concur in principal with the Vulnerability Management recommendation provided. FERC understands vulnerability management is an ongoing effort that requires continuous attention with the support of effective technologies. To support this effort, FERC is continuing to update all policies and procedures surrounding vulnerability management and completing its upgrade of the Microsoft System Center Configuration Manager and deploying Microsoft Windows 7 to user workstations. FERC understands the importance of maintaining an effective security posture and will continue to actively mitigate risks within our environment.

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2. What additional information related to findings and recommendations could have been included in the report to assist management in implementing corrective actions?
3. What format, stylistic, or organizational changes might have made this report's overall message more clear to the reader?
4. What additional actions could the Office of Inspector General have taken on the issues discussed in this report that would have been helpful?
5. Please include your name and telephone number so that we may contact you should we have any questions about your comments.

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U.S. Department of Energy
Office of Inspector General
Office of Audits and Inspections

Audit Report

Management Letter on the Federal Energy Regulatory Commission's Fiscal Year 2012 Financial Statement Audit

OAS-FS-13-07

December 2012



KPMG LLP
Suite 12000
1801 K Street, NW
Washington, DC 20006

November 26, 2012

Federal Energy Regulatory Commission, and
The Department of Energy, Office of Inspector General

Ladies and Gentlemen:

In planning and performing our audit of the financial statements of the Federal Energy Regulatory Commission (the Commission or FERC), as of and for the years ended September 30, 2012 and 2011, in accordance with auditing standards generally accepted in the United States of America, we considered the Commission's internal control over financial reporting (internal control) as a basis for designing our auditing procedures for the purpose of expressing our opinion on the financial statements but not for the purpose of expressing an opinion on the effectiveness of the Commission's internal control. Accordingly, we do not express an opinion on the effectiveness of the Commission's internal control.

During our audit we noted certain matters involving internal control and other operational matters that are presented for your consideration. These comments and recommendations, all of which have been discussed with the appropriate members of management, are intended to improve internal control or result in other operating efficiencies and are summarized in Exhibit A, along with management's response. Exhibit B presents the status of prior year comments and recommendations.

Our audit procedures are designed primarily to enable us to form an opinion on the financial statements, and therefore may not bring to light all weaknesses in policies or procedures that may exist. We aim, however, to use our knowledge of the Commission's organization gained during our work to make comments and suggestions that we hope will be useful to you.

We would be pleased to discuss these comments and recommendations with you at any time.

This communication is intended solely for the information and use of the Commission's management, the Department of Energy's (Department or DOE) Office of Inspector General (OIG), and others within the Commission, and is not intended to be and should not be used by anyone other than these specified parties.

Very truly yours,

KPMG LLP

Enclosure

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INTERNAL CONTROL AND OTHER OPERATIONAL MATTERS
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Exhibit B-Status of Prior Year Comments and Recommendations

Certification and Documentation of Time and Attendance Reports (Finding 11-FERC-HR-01) Status as of Status as of September 30, 2012: Open	B.1
Remediation of Network System Vulnerabilities (Finding 11-FERC-PT-01) Status as of Status as of September 30, 2012: Open	B.2
Accrued Liabilities and Undelivered Orders (Finding 10-FERC-BUD-01) Status as of September 30, 2012 - Closed	

CURRENT YEAR COMMENTS AND RECOMMENDATIONS

A.1 - Ineffective Controls in Place over the Procurement and Disbursement Processes Related to Obligations (Finding 12-FERC-BUD-01)

Criteria

Office of Management and Budget Circular A-123, *II Standards* (A-123) states "The three objectives of internal control are: effectiveness and efficiency of operations, reliability of financial reporting, and compliance with applicable laws and regulations." A-123 further states "Management is responsible for developing and maintaining internal control activities that comply with the following standards to meet the above objectives: control environment, risk assessment, control activities, information and communications, and monitoring."

The Government Accountability Office's Standards for Internal Control in the Federal Government explains that "control activities occur at all levels and functions of the entity" and include "a wide range of diverse activities such as approvals, authorizations, verifications, reconciliations, performance reviews, maintenance of security and the creation and maintenance of relation records which provide evidence of these activities as well as the appropriate documentation."

U.S. Code, Title 31, Section 1501 states that "an amount shall be recorded as an obligation of the United States Government only when (1) supported by documentary evidence of a binding agreement between an agency and another person (including an agency) that is (a) in writing, in a way and form, and (b) for a purpose authorized by law and executed before the end of the period of availability for obligation of the appropriation or fund used for specific goods to be delivered, real property to be bought or leased, or work or service to be provided."

Additionally, the Federal Acquisition Regulations 13.303-1(c) states "the use of BPAs [blanket purchase agreements] does not exempt an agency from the responsibility for keeping obligations and expenditures within available funds."

Condition

During our testwork over a sample of 26 obligations in Fiscal Year 2012, we identified one obligation that was not recorded timely and one obligation that had incorrect invoices associated with it. Specifically:

- **Obligation Not Recorded Timely:** One obligation had an invoice which included services provided prior to the period of performance stated on the obligating document, indicating

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that funds were not obligated timely in the financial management system for the work or service being provided, even though a blanket purchase order existed for the contractor.

- **Obligation with Incorrect Invoices:** We noted the following for the one obligation that had incorrect invoices associated with it: 1) the original obligation related to a fixed-price contract with option years in which an invoice was not properly split between two periods of performance in the first year causing insufficient funds in the following option years and 2) a current year invoice was not properly identified as having two separate purchase orders and therefore not applied against the correct obligations.

Cause

The review and oversight procedures in place to ensure that all obligations and disbursement transactions are recorded properly to the correct obligation were not adhered to by Commission staff.

Effect

Obligations and disbursement transactions that are not recorded accurately and in a timely manner increase the risks that: (1) goods and/or services are acquired and/or received prior to an authorized contract or purchase order supporting the recording of an obligation and (2) non-compliance with the Anti-Deficiency Act.

Recommendation

We recommend that the Federal Energy Regulatory Commission's Executive Director work with appropriate personnel to enforce the policies and procedures that are in place through trainings and other communications to ensure that obligations are recorded timely and invoices are applied against the appropriate obligating documents.

Management Response

Concur. The Chief Financial Officer (CFO) will ensure all responsible CFO staff is adequately trained on existing policies and procedures that provide for the accurate reporting of obligations and disbursements. In addition, the CFO will continue to work closely with the Commission's Contracting Officer Representatives to ensure these officials strictly adhere to proper processes concerning the authorization of vendor services.

B.1 - Certification and Documentation of Time and Attendance Reports
(Finding 11-FERC-HR-01)

Current Status

In Fiscal Year (FY) 2011, we reported that Federal Energy Regulatory Commission (FERC) lacked the proper review by a certifying official of OPM Form 71s and Timecard Reports, which could lead to the improper recording of Time and Attendance (T&A) records.

In FY 2012, during our control testwork over T&A records, we noted two errors in our sample of 22 employees. For one exception, a Certifying Official (CO) approved an employee's OPM Form 71s for one hour more of sick leave than the employee recorded on his timecard. We further noted the CO approved the sick leave after the fact, and the discrepancy went unnoticed during the CO's review. For the second exception, the CO approved an employee's annual leave; however, the employee recorded it as regular hours on his timecard. This discrepancy also went unnoticed during the CO's review.

Recommendation

We continue to recommend that the Director of FERC's Office of Human Resources and Payroll, Application and Integration Division emphasize to the certifying officials the established policies and procedures to ensure that they are properly performing their review of the approved leave, overtime, and timecard reports.

Management Response

Concur. The Office of the Executive Director will be clarifying procedures surrounding the importance of accuracy of certification of time and leave records. We will provide guidance and procedures as necessary for leave and time approving officials, timekeepers and administrative officers on their roles and responsibilities for the accurate reporting of time and leave.

Additionally, in the next one or two months, the Office of the Executive Director will be implementing a new automated time and leave system. The new time and leave system will provide automated application controls to further assure FERC is in compliance with required time and leave processes.

B.2 - Remediation of Network System Vulnerabilities (Finding 11-FERC-PT-01)

Current Status

In June 2012, we conducted a limited internal vulnerability assessment at the Federal Energy Regulatory Commission (FERC). This work concentrated on selected systems, applications and network devices within the FERC unclassified network, including the general support systems, other systems directly supporting the site's financial processes and systems selected for the Federal Information Security Management Act (FISMA) evaluation. During our assessment, we noted that FERC continued to make improvements in implementing the existing Vulnerability Management Program (VMP), dated June 2011. We were informed that, to further enhance the VMP, FERC officials had initiated the following project in Fiscal Year (FY) 2012:

- System Center Configuration Management (SCCM) Upgrade Project: FERC is in the process of upgrading SCCM, a Microsoft system configuration tool used to manage patch and software deployment, from SCCM 2007 to SCCM 2012. FERC officials stated that, due to the known software flaw in SCCM 2007, some SCCM clients (workstations) did not automatically receive the released software patches. Therefore, FERC network engineers had to perform manual updates to the clients that were missing security patches. We were informed that the SCCM upgrade is scheduled to be completed by late October 2012.

We also noted that FERC had identified and continued to monitor the vulnerabilities through its VMP and Plan of Action and Milestone (POA&M) programs. Our review of the VMP POA&M disclosed that 35 high and medium risk vulnerabilities had not been remediated based on the VMP defined remediation timeframe (see Table 1 below).

FERC officials stated that due to resource constraints, these vulnerabilities were monitored and tracked through the POA&M process for remediation.

Table 1 - Vulnerability Remediation Timeframe

Risk Rating	Remediation Timeframe
Critical	14 days
High	30 days
Medium	60 days
Low	As capability permits

Therefore, this finding remains open until FERC fully implements the corrective actions.

The status of the prior year's open conditions is as follows:

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During our FY 2011 review, we determined that FERC had not fully implemented the VMP procedures for the General Support System (GSS). We noted that several network systems were running server and client applications without current security patches for known vulnerabilities. The affected systems included servers and workstations used by financial application users and system administrators with privileged levels of access to the GSS and financial systems. We also determined that, although FERC had identified and tracked the vulnerabilities in its Vulnerability Tracking Tool, the remediation process had not been fully implemented within the appropriate timeframe, in accordance with the VMP.

Our FY 2012 review disclosed that several systems were running applications without current security patches for known vulnerabilities (see Table 2 below). The affected systems included workstations used by financial application users and system administrators with privileged levels of access to the GSS and financial systems.

Table 2 – Examples of High Risk Vulnerabilities Identified in FY 2012

Identified Vulnerabilities	Risk Rating	VMP Remediation Timeframe	Affected Network Systems	Patch/ Upgrade Release Date	Current Remediation Status	Overdue Remediation Timeframe
Client Productivity Applications including Adobe	High	30 days	33 of the 337 (10 percent) workstations selected for scanning	Prior to February 2012	A project is underway to upgrade from SCCM 2007 to SCCM 2012 by late October 2012	Greater than 90 days prior to our testing
Utilities including Microsoft Patches	High	30 days	105 of the 337 (31 percent) workstations selected for scanning	Utilities: Prior to February 2012 Microsoft patches: 2007 through 2011	A project is underway to upgrade from SCCM 2007 to SCCM 2012 by late October 2012	Greater than 90 days prior to our testing

We determined that FERC had initiated the SCCM upgrade project and continued to identify and monitor vulnerabilities through the VMP, POA&Ms and Vulnerability Tracking Tool. However, at the time of our testing, the remediation process had not been fully implemented within the appropriate timeframe in accordance with the VMP. Therefore, the finding remains open.

Recommendation

We continue to recommend that the Executive Director, Federal Energy Regulatory Commission:

1. Update, as needed, and implement existing vulnerability and patch management procedures to ensure that security vulnerabilities are remediated and verified in a timely manner, in accordance with the VMP.

Management Response

We appreciate the opportunity to respond to the transmittal of the prior year finding and recommendation. The Federal Energy Regulatory Commission (FERC) has taken many positive actions to improve its cyber security practices and to maintain a strong network defense against malicious intruders and other external threats. Though the FERC has always tracked vulnerabilities within our environment with vigilance, we concur in principal with the Vulnerability Management recommendation provided. The vulnerabilities identified in this year's audit had already been identified by FERC staff and acknowledged by FERC management. FERC understands that this is a technical issue caused by the Microsoft System Center Configuration Manager (SCCM) 2007 application. We are currently in the process of remediating this technical issue by upgrading the SCCM application to the latest version which will help mitigate patch deployment failures. The FERC continues to actively monitor and track all known vulnerabilities within our infrastructure. The FERC understands the importance of maintaining a strong security posture and will continue to actively mitigate risks within our environment.

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U.S. Department of Energy
Office of Inspector General
Office of Audit Services

Special Inquiry

Review of Allegations Regarding Hiring and Contracting in the Office of Energy Efficiency and Renewable Energy

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OAS-SR-10-04

September 2010

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Department of Energy

Washington, DC 20585

September 22, 2010

MEMORANDUM FOR THE SECRETARY

FROM:


Gregory H. Friedman
Inspector General

SUBJECT:

INFORMATION: Special Inquiry: "Review of Allegations Regarding Hiring and Contracting in the Office of Energy Efficiency and Renewable Energy" Report Number: OAS-SR-10-04

INTRODUCTION

In April 2010, the Office of Inspector General (OIG) began receiving multiple allegations concerning hiring and contracting practices within the Office of Energy Efficiency and Renewable Energy (EERE). These allegations included:

1. Improprieties in the hiring of a contract employee to a senior Federal career position, including concerns that the contract employee was pre-selected or otherwise had an unfair advantage;
2. Performance of inherently governmental duties, including the supervision of Federal employees, by the same contract employee; and,
3. Award of work to a contractor without adequate competition.

Although a number of other allegations with similar concerns were received, the OIG chose to focus its attention on those outlined above because of their overall importance to the integrity of the EERE mission, especially its role in the implementation and execution of the Department of Energy's responsibilities under the American Recovery and Reinvestment Act of 2009 (Recovery Act). Consequently, we initiated a fact-finding inquiry into these matters. To this end, we interviewed 31 current and former Department employees, including issue area specialists, and identified and reviewed applicable Federal regulations. We also analyzed over 250,000 emails, the results of which yielded evidence, presented in our report, pertaining to the specific allegations included in the scope of our inquiry. Our analysis of emails also disclosed another area of concern that is outlined in this report.

RESULTS OF SPECIAL INQUIRY

We concluded that the allegation related to pre-selection of a senior EERE official was substantiated. Our inquiry identified a number of actions by management officials that contributed to a concern expressed by many in the EERE career workforce that the contract employee in this case performed a number of inherently governmental functions. We were

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unable to substantiate the allegation regarding lack of adequate competition in contractor work awards. We did, however, find that the contract employee developed a statement of work that was tasked to the contractor for which he worked. This apparent conflict provided the opportunity for inappropriate manipulation of contract taskings to the financial benefit of the contractor's employer. While this potential existed, we did not substantiate that the related work was actually overstated. Detailed results of our inquiry are contained in the Attachment.

Federal Position Selection Process

We identified a number of circumstances surrounding the hiring action that were troubling, actions that understandably led the complainants to believe, and for us to conclude, that the contract employee was, in fact, pre-selected. Evidence gathered from a number of sources, including the Federal selecting official, demonstrated that the contract employee was granted preferences and advantages that were not granted to other applicants. For example:

- The selecting official expressed specific intentions to make the contract employee a Federal employee several months before the contract employee's eventual appointment to the position;
- The contract employee was provided specific knowledge about the applicable position in advance of the general public. The contract employee actively participated in key aspects of the hiring action such as preparing the Position Description and developing questions to be answered during the application/interview process for the position for which the contract employee was ultimately hired; and,
- A memorandum justifying the selection of the contract employee for a Federal position stated that the contract employee was currently serving as the selecting official's deputy; was responsible for all operations in the program; and, oversaw all project implementation for the program.

When interviewed, the selecting official told us that the contract employee was not pre-selected and that a number of other candidates were considered. The selecting official ultimately acknowledged that the contract employee's involvement in the hiring action could be seen as an unfair advantage and expressed the view that, in hindsight, the contract employee should have been excluded from any action associated with the hiring process.

Based on the fact pattern in this case, we are referring the matter regarding pre-selection to the U. S. Special Counsel (Special Counsel) for a determination as to whether prohibited personnel practices should be prosecuted under the Special Counsel's authority. Additionally, complainants and other witnesses raised concerns about the selection of other contractor employees by the same selecting official for Federal positions within EERE. We are forwarding these matters to the Special Counsel as well.

Contract Employee Performing Inherently Governmental Duties

We found conflicting evidence regarding complaints that the contract employee improperly performed inherently governmental duties. As with the selection process, we identified factors that contributed to a belief by the complainants and others that the contract employee was effectively functioning as a Federal employee. In particular, our inquiry established that the contract employee was actively involved in the management of the applicable EERE program by participating in high level management meetings where policy and strategic decisions were made; assisting in the development and implementation of policy-oriented program goals; participating actively and intimately in the hiring process for new employees; and, developing performance standards for Federal employees. We placed substantial weight on the fact that the individual was commonly referred to as the "deputy" by the Acting Program Manager, as noted previously. All-in-all, these circumstances gave rise to a belief held by many career EERE employees that the contract employee was performing inherently governmental duties.

In responding to our interview questions, various witnesses, including members of EERE senior management, expressed a very different view. They asserted that the contract employee was providing consulting services and all program decisions were made by Federal employees; tasks performed by the contract employee were ultimately approved by a Federal employee; and, any "direction" the contract employee communicated to Federal employees was from the Acting Program Manager rather than the contract employee. However, it was clear that the extent of the contract employee's responsibilities contributed to the perception that the complainants and witnesses had concerning inherently governmental duties.

Improper Awarding of Work to a Contractor without Competition

We were unable to substantiate the allegation that work was improperly awarded to a contractor without competition. Evidence disclosed that the questioned work was awarded to a current contractor through the modification of existing task orders. The work appeared to be within the scope of the existing contract and the decision to task the work to the contractor was a matter within management's discretion. We did, however, identify an internal control weakness that permitted the subject of the allegation regarding pre-selection to develop a statement of work for additional work that was ultimately assigned to the contractor for which the employee worked. This control weakness provided the opportunity for the contract employee or similarly situated employees to manipulate contract taskings to the financial benefit of their own employer. However, we did not identify any inappropriate escalation of work in this case.

Other Matters

In addition to the specific allegations addressed during our inquiry, we also found evidence of a disturbing practice related to Federal participation in support service contractor hiring. Specifically, we identified situations in which EERE officials requested contractors to hire specific individuals and assign them to support its contracts. In other cases, EERE requested that contractors hire individuals until they could be brought on as permanent Federal employees. In some instances, the individuals were actually hired by the support service contractor, while in another, the contractor resisted attempts by Federal officials to specify which employees it hired.

In a May 2010 email, a procurement official, after learning of these practices, cautioned a senior EERE manager that staffing is the responsibility of the prime contractor and that Federal employees should not participate in interviewing potential contract employees.

WORK ATMOSPHERE

Our inquiry focused on identifying the facts surrounding specific allegations concerning an individual contract employee and contractor. In doing so, we were mindful that these activities occurred during EERE's early efforts to implement the Recovery Act. The Recovery Act significantly expanded EERE programs and funding, resulting in the need to immediately hire a large number of Federal employees and expand the use of contractors in implementing EERE's programs. Several witnesses discussed the pressure EERE was under to implement the Recovery Act programs and expressed their belief that this pressure led to the Program's reliance on less than optimal Federal hiring and contracting practices. Additionally, the selecting official in this case was new to the Federal government and claimed to be unfamiliar with Federal rules and regulations for hiring of employees.

Because of the significance of the Recovery Act and the relevance of the Department's hiring and contracting practices to the success of the Recovery Act's energy components, the Department should take prompt action to ensure that the issues raised in our report are thoroughly reviewed and addressed. We have made several recommendations designed to help improve the integrity of the hiring and contractor management process. Due to the nature of this report, it was not formally coordinated with management prior to release. Management's formal comments, or management decision on our recommendations, will be appended to the report when received.

Consistent with the requirements of the Inspector General Reform Act of 2008, the information contained in this report, in an appropriate format, will be made publicly available.

Any request for release of the details in this matter will be handled by the OIG in accordance with the Freedom of Information Act (Title 5, U.S.C. Section 552) and the Privacy Act (Title 5, U.S.C. Section 552a).

cc: Deputy Secretary
Chief of Staff
General Counsel
Chief Human Capital Officer
Director, Office of Management

Attachment

~~OFFICIAL USE ONLY~~SPECIAL INQUIRY INTO EERE RELATED ALLEGATIONS

Beginning in April 2010, the Office of Inspector General (OIG) received multiple allegations concerning hiring and contracting within the Office of Energy Efficiency and Renewable Energy (EERE). These allegations included:

1. Improprieties in the hiring of [REDACTED] a contract employee, to a senior Federal career position, including concerns that [REDACTED] was pre-selected or otherwise had an unfair advantage;
2. Performance of inherently governmental duties, including the supervision of Federal employees, by [REDACTED] while a contract employee; and,
3. Award of work to a contractor, New West Technologies, LLC (New West Technologies) without adequate competition.

Although a number of other allegations with similar concerns were received, the OIG chose to focus its attention on those outlined above because of their overall importance to the integrity of the EERE mission. Consequently, we initiated a fact-finding inquiry into these matters. To this end, we interviewed 31 current and former Department employees, including issue area specialists; analyzed over 250,000 emails; and identified and reviewed applicable Federal laws and regulations.

We concluded that the allegation of pre-selection of [REDACTED] was substantiated. We also identified a number of actions by management officials that contributed to a perception held by many in the EERE career workforce that [REDACTED] performed a number of inherently governmental functions while [REDACTED] was a contract employee. While we did not substantiate the allegation regarding the lack of competition, we discovered that other management actions contributed to an atmosphere in which EERE work tasks assigned to a support service contractor could have been improperly manipulated.

Our report presents email evidence that pertain to the specific allegations included in the scope of our inquiry. Our analysis of emails also disclosed another area of concern related to Federal interference in the hiring of support service contractor employees that is outlined in this report.

Improprieties in the Hiring of a Contract Employee

Complainants alleged that there were improprieties in the hiring of [REDACTED] for a career Federal position, noting concerns that [REDACTED] was pre-selected or otherwise had an unfair advantage. Specifically, it was alleged that [REDACTED] EERE, had pre-selected [REDACTED] for a career Federal position and had not followed standard hiring practices.

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Attachment (continued)

Background

[REDACTED] was selected for a position as a [REDACTED]

[REDACTED] Prior to beginning [REDACTED] Federal service, [REDACTED] was employed as [REDACTED] at New West Technologies, a contractor providing support services for EERE under contract DE-EE0000002 with New West-Energetics Joint Venture, LLC (New West-Energetics), a joint venture between New West Technologies and Energetics Incorporated. From August 2009 until [REDACTED] appointment as a Federal employee [REDACTED] of the New West-Energetics contract, provided direct assistance to [REDACTED] as well as other senior EERE leadership.

[REDACTED] had applied for multiple positions within OWIP including:

- GS-301-14 Lead Energy Technology Program Specialist under Vacancy Announcement ARRAHQ-10-DirHir-EE0-0031. This was a non-supervisory term appointment, not to exceed 3 years, to support American Recovery and Reinvestment Act (Recovery Act) activities. [REDACTED]
- GS-301-15 Lead Energy Technology Program Specialist under Vacancy Announcement ARRAHQ-10-DirHir-EE0-0028. This was a non-supervisory term appointment, not to exceed 3 years, to support Recovery Act activities. [REDACTED]
- GS-301-15 Supervisory Energy Technology Program Specialist under Vacancy Announcement HQ-10-DE-10-EE10-0028. This was a permanent Federal career position. [REDACTED]

The facts developed during our review substantiated the original allegation. We concluded that circumstances surrounding this hiring action were troubling and led the complainants and other witnesses, understandably, to the presumption that [REDACTED] was pre-selected. In our opinion, [REDACTED] was granted preferences and advantages which indicated that the hiring action was not fair and was inconsistent with the Office of Personnel Management and the Department of Energy's personnel procedures which required that all applicants receive fair opportunity. Our review identified the following key facts related to the [REDACTED] hiring action.

Intent to Hire

We found evidence that [REDACTED] intended to hire [REDACTED] as early as October 2009. During October/November 2009, [REDACTED] initiated action to hire [REDACTED] and two other contract employees, [REDACTED] into "EJ" (senior technical

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(C) advisor positions) without competition. [redacted] intent was evidenced by the following excerpts from emails [redacted] initiated:

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(C) • "Given the long time lead needed to hire folks into OWIP, would it be possible to hire the following folks as EJ's into the recovery team (so that they can be feds)? We're finding a lot of trouble with these contractors - because they want to and are capable of managing folks - but Feds hate that. I know you had 2 spots originally - can we push it up? I see very specific excellent spots for [redacted] on OWIP - they need to apply and be picked - and we just need them to be feds." (October 27, 2009 re: EJ Positions)

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(C) • "...I'd really like to make a few of my folks EJ's - as the hiring process is just so darned long. I'd like to make [redacted] EJ's - they will all apply for OWIP positions too but the process is long and there is no guarantee...." (November 2, 2009 email re: EJ Positions)

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(C) • "...we'd like to hire several EJ positions - see resumes attached and salary histories below. The HR process for hiring them into OWIP is just too slow. Particularly for [redacted] (sic), we need them to be Feds asap. How can we expedite this process?" (November 8, 2009 email re: EJ Positions)

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(C) • "...when are you both avail on friday to discuss some needed EJ positions for owip? This would be for [redacted] all of whom are crucial to the functioning of owip....I need competent bodies now who can help..." (November 19, 2009 email re: EJ Positions)

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(C) Ultimately, [redacted] was not successful in hiring [redacted] or the other two contractors (b)(6),(b)(7)
(C) into EJ positions. However, all three were eventually hired through vacancy announcements; [redacted] as a career employee, and [redacted] as term employees. Emails (b)(6),(b)(7)
(C) from [redacted] suggest that [redacted] wanted to hire [redacted] in specific roles and (b)(6),(b)(7)
(C) [redacted] communicated this intent to him. Specifically:

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(C) • On December 23, 2009, forwarding an email announcing the opening of Vacancy Announcement ARRAHQ-10-DirHir-EE0-0031 for the GS-301-14 term position, [redacted] stated, "I'm pretty sure you saw this, but I think this is the role for you :) happy applying!" [redacted]

(b)(6),(b)(7)
(C) • In March 2010, [redacted] announced under Vacancy Announcement ARRAHQ-10-DirHir-EE0-0028. However, in a February 25, 2010, email to [redacted] discouraged [redacted] from accepting (b)(6),(b)(7)
(C) that position based on [redacted] assurance that [redacted] would be selected for the permanent [redacted] (b)(6),(b)(7)
(C) [redacted] Specifically:

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- On February 24, 2010, [REDACTED] received an email from the subject matter expert reviewing the applications for this vacancy announcement stating that [REDACTED] would complete [REDACTED] work by the following Monday.

- On February 25, 2010, [REDACTED] forwarded the subject matter expert's email to [REDACTED] adding the message, "[REDACTED] if you can wait til mon I think that is prudent- once you are on this list will be the position we want for you. If we sign the other 0028 now then we'll have to clean up the 15 and 14 and will cause confusion."

In our judgment, the only reasonable conclusion one can draw here is that [REDACTED] intended to hire [REDACTED] for the [REDACTED] even before seeing the list of qualified candidates. Ultimately, [REDACTED] received and accepted an offer of the [REDACTED] position. The "15 and 14" referred to in the email were the [REDACTED]

Participation in Key Aspects of Hiring Action

We also found that as part of [REDACTED] duties supporting [REDACTED] and the OWIP program, [REDACTED] not only had specific knowledge of the vacancies [REDACTED] applied for in advance of the general public, but actively participated in the hiring action. Specifically:

- [REDACTED] participated in the preparation of the Position Description and application questions for the position for which [REDACTED] was eventually hired as well as other positions for which [REDACTED] applied. [REDACTED] therefore, had access to this information prior to other candidates, giving him a longer period to prepare his application. In fact, when [REDACTED] forwarded the position description and questions to [REDACTED] for approval, [REDACTED] also forwarded the documents to his non-Department email;

- [REDACTED] assisted in the development of the questions that were to be used for interviews of the candidates competing for the [REDACTED] position; and,

- [REDACTED] was provided other nonpublic information about vacancy announcements for which [REDACTED] applied. For example, during the competition, [REDACTED] provided [REDACTED] with the Certificate of Eligibles listing the candidates who were deemed qualified for the [REDACTED] position for which [REDACTED] was ultimately selected. During this process, [REDACTED] forwarded other emails to [REDACTED] concerning the status of the hiring action.

Justification of Selection

Finally, we found that the Human Resource professionals responsible for the personnel action in question raised concerns with the March 29, 2010, memorandum written by [REDACTED] to [REDACTED] justify the selection of [REDACTED] over other candidates. Human Resource officials working on the vacancy announcement found fault with the original justification memorandum, indicating that the justifications for excluding other candidates were weak. Additionally, Human Resources

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Attachment (continued)

took exception to a statement in the draft memorandum stating that [redacted] was "Requested to be hired for this position by EERE [redacted] and EERE [redacted] Human Resources officials directly involved in the process informed [redacted] that a request from senior leadership to hire [redacted] was not a proper justification for the decision. Ultimately, [redacted] made changes to the memorandum which strengthened the objections to the other candidates and deleted the reference to [redacted]. The final justification memo was dated April 13, 2010.

During our inquiry, [redacted] told us that the statement concerning the request of [redacted] was true. However, both [redacted] denied involvement in the hiring of [redacted] stating that they did not review the qualifications of any of the candidates, did not participate in any of the interviews and did not direct [redacted] to select [redacted]. They both acknowledged that from their experience, [redacted] was a well qualified candidate. Due to the conflicting testimony, we could not determine whether [redacted] were actually involved in the hiring of [redacted]. However, the fact that a senior official such as [redacted] invoked their names in the justification memo and in other communications with Human Resources officials gave the appearance that [redacted] was their candidate.

The final justification memo was approved by an appropriate Human Resources official in making a final determination on the selection of [redacted]. Although this memorandum was approved, several witnesses who saw the memorandum, including other Human Resources officials, questioned some of the justifications that remained for the selection of [redacted]. Specifically, the memorandum stated that [redacted] "Currently works in [redacted] that [redacted] was "Responsible for all operations with [redacted] at this time," and that he "Oversees all project implementation of [redacted]." Witnesses stated their belief that these statements suggested that [redacted] had already been selected and was already performing the governmental functions and duties associated with the position for which [redacted] was eventually hired.

Additionally, we obtained evidence supporting the fact that [redacted] asked [redacted] to prepare the justification for [redacted] own advance in-hire. Specifically, on March 10, 2010, [redacted] sent [redacted] an email stating, "Can you put together your advance in hire too - so that we can be prepared with it. Should look like attached. Thanks." [redacted] replied, "Will do." Based on the justification [redacted] apparently prepared, [redacted] was appointed at the [redacted].

Despite these troubling circumstances, there was some important conflicting evidence. Specifically:

- [redacted] denied that [redacted] pre-selected [redacted]. [redacted] stated that while [redacted] saw [redacted] as a good candidate, [redacted] always understood that [redacted] would need to apply to vacancy announcements and be deemed a qualified candidate. [redacted] justification for selection also indicated that [redacted] did not deem any of the other candidates qualified for the position based on the interviews [redacted] conducted; and,

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- [redacted] stated that [redacted] was not pre-selected for a position and was never promised a position with EERF.

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[redacted] told us that [redacted] was new to the Federal government and unfamiliar with Federal rules and regulations for hiring of employees. [redacted] also stated that, as a new supervisor in the Federal government, [redacted] relied extensively on Human Resources to guide [redacted] through the complex process and to ensure that the process remained fair. However, when asked, [redacted] acknowledged that [redacted] involvement in the hiring action could be seen as an unfair advantage and in hindsight [redacted] as an applicant, should have been recused from doing that work.

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Potential Violations of Laws and Regulations

Based on concerns noted above, in our opinion, the process related to the hiring of [redacted] was tainted, including likely violations of the following laws and regulations:

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- 5 U.S.C. 2301(b)(1): "Recruitment should be from qualified individuals from appropriate sources in an endeavor to achieve a work force from all segments of society, and selection and advancement should be determined solely on the basis of relative ability, knowledge, and skills, after fair and open competition which assures that all receive equal opportunity;"
- 5 U.S.C. 2302(b)(6): "Any employee who has the authority to take, direct others to take, recommend, or approve any personnel action, shall not, with respect to such authority - grant any preference or advantage not authorized by law, rule, or regulation to any employee or applicant for employment (including defining the scope or manner of competition or the requirements for any position) for the purpose of improving or injuring the prospects of any particular person for employment;"
- 5 U.S.C. 2302(b)(12): "Any employee who has the authority to take, direct others to take, recommend, or approve any personnel action, shall not, with respect to such authority - take or fail to take any other personnel action if the taking of or failure to take such action violates any law, rule, or regulation implementing, or directly concerning, the merit system principles contained in section 2301 of this title;"
- 5 C.F.R. 2635.101(b)(8): "Employees shall act impartially and not give preferential treatment to any private organization or individual;" and,
- 5 C.F.R. 2635.101(b)(14): "Employees shall endeavor to avoid any actions creating the appearance that they are violating the law or the ethical standards set forth in this part. Whether particular circumstances create an appearance that the law or these standards have been violated shall be determined from the perspective of a reasonable person with knowledge of the relevant facts."

We concluded that this matter should be referred to the U. S. Special Counsel for prosecutorial determination. Because of their proximity in time and appointment by the same selecting

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Attachment (continued)

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official, we are also forwarding complaints regarding the hiring of [REDACTED] to the Special Counsel for review.

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Contract Employee Performing Inherently Governmental Duties

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Complainants alleged that [REDACTED] as a contract employee, improperly performed duties that were considered inherently governmental. Inherently governmental duties are those activities that are so intimately related to the public interest, that they must be performed by Federal employees. Specifically, complainants alleged that [REDACTED] while still a contract employee, was identified as [REDACTED] and in that role, [REDACTED] improperly directed Federal employees. Additionally, one complainant questioned [REDACTED] involvement in other activities considered to be inherently governmental, including participating in the development of Federal employee performance standards.

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We found that the [REDACTED] may have violated Federal Acquisition Regulation (FAR) 7.503(c)(9) which identifies "the selection or non-selection of individuals for Federal Government employment, including the interviewing of individuals for employment" as an inherently governmental function. We determined that [REDACTED] participated on panels that interviewed candidates for Federal employment. [REDACTED] and several other witnesses expressed their belief that his participation in the interviews was allowable because final decisions on hiring were made by [REDACTED]

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We also, through evidence gathered from multiple sources, substantiated a number of other practices that lead the complainants and others to believe that [REDACTED] was performing inherently governmental functions. Specifically, a number of parties and [REDACTED] confirmed that [REDACTED] had been publicly identified as [REDACTED] identification as a [REDACTED] was further supported by the written statement to that effect found in [REDACTED] memorandum justifying the selection of [REDACTED] for Federal employment. Additionally, complainants and witnesses stated that [REDACTED] was not always identified as a contractor and this led to some people erroneously concluding that [REDACTED] was a Federal employee. Complainants and witnesses expressed concern that a support service contract employee could be designated as a deputy for a Federal program, a function they considered to be inherently governmental by its very nature.

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Further, witnesses told us that in addition to [REDACTED] also referred to [REDACTED] a career Federal employee, as [REDACTED]. However, our inquiry determined that neither [REDACTED] nor [REDACTED] was ever formally appointed to be [REDACTED] because a [REDACTED] position did not even exist. In fact, [REDACTED] and [REDACTED] both stated that Human Resource officials had advised [REDACTED] that the term [REDACTED] did not exist in the organizational chart and [REDACTED] should stop referring to [REDACTED] and [REDACTED].

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It is understandable how the identification of [REDACTED] would give an appearance that [REDACTED] was performing inherently governmental duties. However, the regulations state that the mere appearance of performing inherently governmental duties, in the absence of actually performing them, is not a violation. Therefore, to determine whether violations occurred, we performed steps to determine what activities [REDACTED] was involved in.

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Attachment (continued)

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(b)(6),(b)(7)
(C) Our inquiry established that [redacted] was actively involved in the management of the [redacted] and other OWIP programs. Specifically, [redacted] participated in high-level management meetings where policy and strategic decisions were made, assisted in the development and implementation of program goals, participated in the hiring process for new employees. Of particular interest was our finding that [redacted] worked on performance standards for Federal employees. The breadth of [redacted] role within OWIP, public statements concerning [redacted] role as program and the inconsistent identification of [redacted] status all gave rise to the concern that [redacted] was performing a wide range of inherently governmental duties including directing Federal employees. (b)(6),(b)(7)
(C) (b)(6),(b)(7)
(C) (b)(6),(b)(7)
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(b)(6),(b)(7)
(C) However, we received testimony and documentary evidence to the contrary. For example, we were told that:

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(C) • [redacted] was providing consulting services and all program decisions were made by Federal employees;

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(C) • While [redacted] worked on position descriptions and performance agreements, those documents were ultimately approved by a Federal employee; and, (b)(6),(b)(7)
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(b)(6),(b)(7)
(C) • Any "direction" [redacted] communicated to Federal employees was from [redacted] or other EERE senior leaders rather than [redacted] (b)(6),(b)(7)
(C)

(b)(6),(b)(7)
(C) Although the evidence we gathered does not conclusively establish wrongdoing, it was clear that the extent of [redacted] responsibilities led to the perception that the complainants and witnesses had concerning inherently governmental duties. Concerns about the role of contractors in the Federal government, as illustrated by the facts in this case, are currently an area of emphasis for the Office of Management and Budget (OMB). OMB is currently in the process of issuing new guidance in the form of a proposed policy letter on Work Reserved for Performance by Federal Government Employees. This guidance may clarify the matters raised in this case.

Improper Awarding of Work to a Contractor without Competition

It was alleged that work was inappropriately awarded to New West Technologies without competition. Specifically, New West Technologies was tasked to provide support to the Golden Field Office (Golden) in processing grant awards under the Recovery Act. Complainants indicated that New West Technologies employees were "forced on" Golden. Also, Golden already had a support contractor, Navarro Research and Engineering, Inc. (Navarro), which should have been tasked with this work.

The facts developed during our inquiry disclosed that the questioned work was performed by New West Technologies under an existing contract EERE had with New West-Energetics Joint Venture, LLC (New West-Energetics) a joint venture between New West Technologies and Energetics Incorporated, through the modification of existing task orders. The work was within the scope of the existing contract and the decision to task the work to the contractor appeared to be within management's discretion.

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EERE awarded a competitively bid contract (DE-EE0000002) to EnergyWorks Joint Venture, LLC, now known as New West-Energetics, on June 25, 2008, to provide technical, engineering, analytical, and management support services to EERE's Office of Assistant Secretary and Deputy Assistant Secretary for Technology Development. In February 2010, EERE management determined that Golden needed contractor assistance to meet its goals for the issuance of Recovery Act Grants. At that time, a decision was made to provide that assistance through the modification of Task Order 74 on the New West-Energetics contract at an expected cost of approximately \$5.2 million. We were informed that additional work at Golden was also tasked under Task Orders 5 and 82. We determined that the work at Golden was within the scope of the New West-Energetics contract and found no evidence that tasking the work under the contract was prohibited by any laws or regulations.

We confirmed that Golden did have an existing contract with Navarro and asked why the work was not tasked to that contractor. The Contracting Officer and EERE management asserted that the task went to the New West-Energetics contract instead of Navarro for the following reasons:

- Contractor assistance needed at Golden included support of the National Environmental Act Policy (NEPA) reviews of Recovery Act projects, and EERE wanted the expertise of ICF International, a subcontractor on the New West-Energetics contract that had provided NEPA support to EERE's HQ offices. Navarro did not have NEPA experience;
- Because of the urgency caused by the Recovery Act, EERE wanted to get contract assistance in place as soon as possible and it was deemed that modifying an existing task order on the New West-Energetics contract would be the fastest approach; and,
- Navarro was reaching the ceiling on its contract.

We were also told by several witnesses that an additional factor in using the New West-Energetics contract was to allow EERE management at Headquarters to execute greater control over the work being performed due to concerns about the performance of Golden in implementing the Recovery Act grant programs.

(b)(6),(b)(7)
(C) Although we did not substantiate the allegation that work was improperly awarded to New West Technologies, we identified a separate concern related to task order assignments. Specifically, we found that [REDACTED] a New West Technologies employee, was actively involved in developing the statement of work for the additional tasks to New West Technologies under the New West-Energetics contract. We concluded that this was an obvious conflict which, whether (b)(6),(b)(7)
(b)(6),(b)(7)
(C) intended or not, provided the opportunity for [REDACTED] to improperly influence Federal taskings to [REDACTED] employer. While this potential existed, we did not substantiate that [REDACTED] (b)(6),(b)(7)
(C) acted inappropriately in this regard.

Other Matters

In addition to the specific allegations discussed in our report, we also found evidence of a disturbing practice related to Federal participation in support service contractor hiring. Specifically, we identified situations in which EERE officials requested contractors to hire

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specific individuals and assign them to support its contracts. In other cases, EERE requested that contractors hire individuals temporarily until they could be brought on as permanent Federal employees. We found that, in some cases, after extending Federal job offers to these individuals, EERE would request that contractors hire them and assign them to its contract so that they could be brought on board more quickly than the Department's own hiring process. In some instances, the individuals were actually hired by the support service contractor, while in another, the contractor resisted attempts by a senior Federal official to specify which employees it hired. In a May 2010 email, a procurement official, after learning of these practices, cautioned a senior EERE manager that staffing is the responsibility of the prime contractor and that Federal employees should not participate in interviewing potential contract employees.

WORK ATMOSPHERE

Our inquiry focused on identifying the facts surrounding specific allegations concerning an individual contract employee and contractor. In doing so, we were mindful that these activities occurred during EERE's early efforts to implement the American Recovery and Reinvestment Act of 2009 (Recovery Act). While a formal cause and effect relationship could not be established, we noted that the Recovery Act significantly expanded the EERE programs and resulted in the need to immediately hire a large number of Federal employees and to expand the use of contractors in implementing EERE's programs. Several witnesses discussed the pressure EERE was under to implement the Recovery Act programs and expressed their belief that this pressure led to the Program's reliance on less than optimal Federal hiring and contracting practices.

RECOMMENDATIONS

Because of the significance of the Recovery Act and the relevance of the Department's hiring and contracting practices to the success of the Recovery Act's energy components, the Department should take prompt action to ensure that the issues raised in our report are addressed. Consequently, we recommend that the Deputy Secretary of Energy, in conjunction with applicable staff organizations:

1. Determine and administer appropriate administrative and/or disciplinary action to address the violations related to the hiring of [REDACTED];

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2. Conduct an independent evaluation of EERE's hiring practices, including the hiring of contract employees for Federal positions. As part of that review:

- Develop and implement appropriate controls to prevent such violations in the future; and,
- Determine whether similar violations occurred in the cases of [REDACTED] and [REDACTED];

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(b)(6),(b)(7)
(C)

3. Ensure that new supervisors receive adequate training on Federal hiring rules and regulations;

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4. Review, modify, and/or stress adherence to policies and procedures as they relate to prohibitions from interference or directing contractors to hire specific individuals; and,
5. Review and modify policies and procedures for the identification and role of contractor employees, including controls designed to prevent them from developing task orders for their own contracts. Also, specifically determine whether the support service contract employee participation on interviewing panels violates FAR or other requirements concerning inherently governmental functions.

A formal response is required to this report. When received, management's response will be appended to the report.

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Document Number 23

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U.S. Department of Energy
Office of Inspector General

Special Report to Management

Purchase Card Transactions of a Los Alamos National Laboratory Buyer

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Quarter 00

April 2000



Department of Energy

Washington, DC 20585

April 12, 2004

MEMORANDUM FOR THE MANAGER, LOS ALAMOS SITE OFFICE

FROM:

Herbert Richardson, Principal Deputy Inspector General

SUBJECT:

INFORMATION: Special Report to Management on "Purchase Card Transactions of a Los Alamos National Laboratory Buyer" (S04IS002)

BACKGROUND

This report supplements the Office of Inspector General's (OIG's) public report on *Los Alamos National Laboratory's Purchase Card Program Corrective Actions* (DOE/IG-0644, April 2004). The public report on corrective actions provides the results of our review of Los Alamos National Laboratory's efforts to correct weaknesses reported by several external reviewers and by this office in our reports, *Special Inquiry on Operations at Los Alamos National Laboratory* (DOE/IG-0584, January 2003) and *Internal Controls over Personal Computers at Los Alamos National Laboratory*, (DOE/IG-0597, April 2003.) The public report on corrective actions describes a number of positive steps taken by the Laboratory to strengthen its purchase card program. This report provides specific details on the actions of a single purchase cardholder that, due to Privacy Act considerations, could not be included in the public report.

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In late 2002, the Laboratory was the subject of intense scrutiny as a number of questionable purchase card transactions came to light. This included an allegation that one employee, [REDACTED] had attempted to buy an automobile with a Laboratory purchase card. Based on reviews performed under the auspices of the University of California, the University concluded that the evidence did not support the allegation regarding the purchase of an automobile; however, certain aspects of this matter remain under Federal criminal investigation and are specifically excluded from the scope of this report.

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Weaknesses highlighted by the University during its review of [REDACTED] transactions prompted us to conduct an independent review to determine whether [REDACTED] transactions, as a Laboratory procurement official, were in compliance with the Laboratory's policies and whether corrective actions had been initiated to resolve questionable transactions. Although still employed at the Laboratory, [REDACTED] has been on leave since the summer of 2002 and not been authorized to make any purchase card transactions since that date.

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RESULTS OF REVIEW

(b)(6),(b)(7)(C) We found that, during the 45 month period ending in June 2002 in which [REDACTED] was an active purchase cardholder, [REDACTED] violated established Laboratory controls over purchase cards. Specifically, our examination revealed several items that were purchased even though they appeared on the Laboratory's internal list of items that should not be procured using purchase cards. Further, we identified instances where the Laboratory could not explain the business purpose for the transaction or provide adequate supporting documentation. In addition, we noted that [REDACTED] used an undocumented records archiving routine that made retrieving support for transactions difficult. (b)(6),(b)(7)(C)

(b)(6),(b)(7)(C) During our review, we found that the Laboratory had taken corrective action regarding [REDACTED] transactions that had been questioned by prior review teams. Further, we found that the Laboratory had adequately resolved the transactions identified by the prior review teams as requiring additional review.

(b)(6),(b)(7)(C) We conducted our field work at Los Alamos from November 2003 through March 2004. Our review included interviewing Laboratory and NNSA Officials, reviewing relevant purchase card documents, as well as selecting and testing a wide range of randomly and judgmentally selected purchase card transactions. On a sample basis, we evaluated approximately 11,000 transactions valued at over \$15 million that were completed during the final 45 months that [REDACTED] was an active cardholder. Based on this body of work, we made four recommendations designed to address the concerns raised in this report. This includes a recommendation to re-evaluate [REDACTED] employment status given the findings in this and prior reports. (b)(6),(b)(7)(C)

On a separate track, the Office of Inspector General is currently conducting an inspection to determine the adequacy of internal controls at the Laboratory over use and inventories of certain personal computers.

MANAGEMENT REACTION

Management concurred with our recommendations and indicated that a corrective action plan will be prepared to address the recommendations. Management's verbatim comments are included in an appendix to this report.

We consider management's comments to be responsive to our recommendations. Because this is a non-public report, the recommendations are tracked internally by our Office of Inspections and Special Inquiries. Since action is pending on the recommendations, they will remain open in our system, and updates on the status of corrective actions should be provided to us every 30 days until the recommendations are closed.

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Attachment

cc: Deputy Secretary
Administrator, National Nuclear Security Administration
Director, Policy and Internal Controls Management (NA-66)

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**SPECIAL REPORT TO MANAGEMENT ON PURCHASE CARD
TRANSACTIONS OF A LOS ALAMOS NATIONAL LABORATORY BUYER**

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**Examination of
Purchase
Card Activity**

From October 1998 until June 2002, [redacted] was [redacted] purchase cardholder at the Los Alamos National Laboratory (Laboratory). Specifically, [redacted] purchased over 11,000 items, costing more than \$15 million and accounting for over 13 percent of all funds expended through the Laboratory's purchase card program. Based on allegations of misuse, [redacted] was placed on investigative leave during the summer of 2002 and has not held a purchase card since that time. [redacted] purchase card transactions have been the subject of multiple reviews, including those performed by an External Review Committee (Committee)¹ chartered by the University of California (University), a follow-up evaluation to the Committee's review completed by the Laboratory, and our current examination of [redacted] transactions.

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Independent Examination of Transactions

We conducted an independent evaluation of [redacted] purchase card activity that included testing 254 separate transactions. Our sample was drawn from purchases previously reviewed by the Committee, items that had been reviewed by the Laboratory, and two samples selected independent of prior work. We used random as well as targeted sample selection techniques. We also scanned all of [redacted] transactions in the purchase card system to identify additional, potentially improper transactions for examination. Our examination included verifying the business purpose, documentation, and when applicable, the existence of purchased items.

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Through our testing of 254 transactions, we found that [redacted] violated established Laboratory controls over purchase cards. We observed 21 purchases that did not follow established procedures. Specifically, we found:

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- Seventeen transactions for items that were purchased even though they appeared on the Laboratory's internal list of items that should not be procured using purchase cards. These items included automotive parts, a mini-utility service vehicle, tools, a computer, a gas grill, and a refrigerator. Laboratory officials told us that the "unauthorized list" was developed to prevent the purchase of items that should be controlled, could easily be converted to personal use, or should be procured by other means for efficiency or health and safety reasons. Laboratory officials told us that a number of the items we discovered had a valid business

¹ The External Review Committee was comprised of two independent experts, supplemented by forensic accounting services provided by the public accounting firm of PricewaterhouseCoopers, LLP.

purpose and were appropriate. We noted, however, that the transactions were inconsistent with guidance in effect at the time of the purchase.

- Four transactions for which the Laboratory could not explain the business purpose, confirm accountability, or provide adequate documentation. For example, the Laboratory could not provide a reasonable business purpose for five bicycles that cost between \$430 and \$830. One bicycle costing \$430 could not be located, and the requesting official told us that he believed it had been stolen. We noted, however, that no action had been taken to report the suspected theft. Laboratory officials were also unable to provide adequate documentation regarding the cost of a calibration tool or a rack mount kit.

Evaluation of Other Reviews

Consistent with our review objective, we also evaluated the work performed by the Committee chartered by the University. The Committee had concluded that [REDACTED] had violated established controls for purchase card transactions on a number of other occasions. The Committee also found that [REDACTED] purchased items that were unauthorized, had unclear business purposes, or were not supported by sufficient documentation. In addition, the Committee reported that [REDACTED] had not reconciled [REDACTED] purchase card records for two months in 2000 and that [REDACTED] did not always track disputed items.

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Based on an examination of the work performed by the Committee, we determined that the review was comprehensive and could be relied upon. Our conclusion was based on an examination of the draft report, reviews of the working papers on which the report was based, and interviews of key members of the review team that supported the Committee's efforts. In general, we arrived at the same conclusions as the Committee.

In addition to the general control weaknesses cited in this report, the Committee provided the Laboratory with 5 lists containing over 8,400 transactions including 67 transactions made by [REDACTED] that required additional review and disposition. The Laboratory reviewed the transactions – an effort that was later examined by the University's chief auditor – and determined that all 67 transactions related specifically to [REDACTED] were allowable. Our test work indicated that the Laboratory had adequately addressed the transactions highlighted by the

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Organization of Purchase Card Records

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Committee. We based our conclusion on the results of tests on a sample of the 8,400 items, including 6 items purchased by [REDACTED]. We verified the Laboratory's assertion that all of these transactions had either been reconciled to supporting documentation and determined to be allowable or were in the process of being reimbursed to the Department.

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(C)

In addition, we noted that [REDACTED] used an undocumented records archiving routine that made retrieving support for purchase card transactions difficult. The Laboratory had great difficulty in providing supporting documentation because of the methods [REDACTED] used to archive [REDACTED] records. For [REDACTED] older records, [REDACTED] used a paperless system used by the Laboratory to store accounting records. However, [REDACTED] sent [REDACTED] records to be scanned without documenting an indexing system that was needed to retrieve the documents. In addition, several of [REDACTED] more recent records were not archived and were not organized in a fashion to allow for easy retrieval. It should be noted that the non-archived records had been reviewed several times, a fact that may have caused them to become out of order. Nonetheless, the undocumented method of scanning supporting documents and the disorganization of non-archived records contributed to delays of about six weeks in our examination while the Laboratory searched for the documents needed to support the transactions under review.

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Verification of Certain Property

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Despite a number of efforts, we noted that Laboratory officials were unable to locate a few of the property items purchased by [REDACTED]. Regulations in place at the time required purchasers to notify property officials when property was purchased to ensure that accountability for such property was established. However, we found a single transaction in which three computers purchased by [REDACTED] had not been assigned property identification numbers, tagged, or included in the property system. During a recent inventory, one of the computers was located, entered into the system and tagged. However, at the completion of our fieldwork, the Laboratory had yet to locate the remaining two computers. These missing computers demonstrate property control or inventory weaknesses comparable to those we identified in our *Inspection of Internal Controls Over Personal Computers at Los Alamos National Laboratory* (DOE/IG-0597, April 2003).

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Coordination with the United States Attorney

We provided this information to the U.S. Attorney for evaluation. No further action has been taken to date. For this reason, we believe that management needs to determine whether administrative action should be taken with regard to [REDACTED].

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RECOMMENDATIONS

To correct the specific issues noted in this report, we recommend that the Los Alamos Site Office Manager:

1. Review specific transactions identified in this report for cost allowability.
2. Direct the Laboratory to ensure purchase card documentation is stored in a fashion to pennit timely retrieval and examination.
3. Direct the Laboratory to continuc its efforts to locate the missing property items identified in this report. If the items are ultimately unable to be located, require the Laboratory to file an incident report and reimburse the Department as appropriate.
4. Determine what administrative action, if any, should be taken against [REDACTED] given the findings of this and previous reviews.

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MANAGEMENT REACTION

Management's conunents on the report are included in an appendix.

Appendix

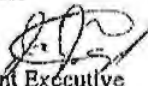


Department of Energy
National Nuclear Security Administration
Washington, DC 20585

April 8, 2004



MEMORANDUM FOR William S. Maharay
Deputy Inspector General
for Audit Services

FROM: Robert C. Braden 
Senior Procurement Executive

SUBJECT: Comments on IG's Draft Report on Purchase Card
Transactions of a LANL Buyer

The National Nuclear Security Administration (NNSA) appreciates the opportunity to have reviewed the draft Special Report, "Purchase Card Transactions of a Los Alamos National Laboratory Buyer." NNSA, and more specifically the Los Alamos Site Office and the Laboratory, has reviewed this draft report and agrees with the report and the corresponding recommendations. The Manager, Los Alamos Site Office will direct the Laboratory to prepare a corrective action plan for the recommendations. As soon as the corrective action plan has been reviewed and approved by the Site Manager and appropriate Headquarters personnel, it will be forwarded to your office.

Should you have any questions related to this response, please contact Richard Speidel, Director, Policy and Internal Controls Management. He may be contacted at 202-586-5009.

Attachment

cc: Michael Kane, Associate Administrator
for Management and Administration
Ralph Erickson, Manager, Los Alamos Site Office