



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

# Inspection Report

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## Concerns with Consulting Contract Administration at Various Department Sites



**Department of Energy**  
Washington, DC 20585

June 7, 2013

MEMORANDUM FOR THE SECRETARY OF ENERGY

FROM:   
Gregory H. Friedman  
Inspector General

SUBJECT: INFORMATION: Inspection Report on "Concerns with Consulting Contract Administration at Various Department Sites"

INTRODUCTION AND OBJECTIVE

The mission of the Department of Energy (Department) is to ensure America's national security and prosperity by addressing its energy, environmental, and nuclear weapons challenges through transformative science and technology solutions. The work of the Department is executed at a number of contractor-operated facilities, including 17 pre-eminent national laboratories. Department contractors frequently use consultants that are deemed to possess unique capabilities to assist in advancing their various missions.

The National Nuclear Security Administration (NNSA) requested that we conduct a review to determine whether a consulting agreement awarded to Heather Wilson and Company, LLC (HWC)<sup>1</sup>, by Los Alamos National Laboratory (Los Alamos) was appropriately administered and managed. Specifically, we were asked to determine whether: (1) work products (deliverables) were produced in return for monthly payments to HWC of \$10,000; (2) invoices included itemized charges, as required by the agreement; (3) there was overlap between the services provided and work products produced by HWC on consulting agreements awarded by Sandia National Laboratories (Sandia), Los Alamos, Oak Ridge National Laboratory (Oak Ridge) and the Nevada National Security Site (Nevada); and (4) an NNSA Contracting Officer was subjected to "pressure" when Los Alamos National Security, LLC (LANS), the Management and Operating contractor for Los Alamos, requested authorization to enter into an agreement with HWC. This inspection was initiated to evaluate these matters.

RESULTS OF INSPECTION

Our inspection identified serious concerns with the administration and management of agreements with HWC for advice and consultation provided to senior managers at four Department contractor-operated sites. In fact, our testing revealed that the four facility contractors paid approximately \$450,000 to HWC even though they did not receive evidence that work performed under the agreements had been completed. These payments were fully reimbursed by the Government.

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<sup>1</sup> For ease of reference, all consulting agreements addressed in this report between Heather Wilson and Company, LLC or directly with that company's principal, are referred to as agreements with HWC.

### Deliverables and Invoices

Under the Federal Acquisition Regulation (FAR), which was incorporated into the Management and Operating contracts at the four facilities, fees for services rendered are allowable only when supported by evidence of the nature and scope of the service furnished. Examples of such evidence are consultant work products and invoices with sufficient detail regarding the time expended and nature of the actual services provided.

In spite of these requirements, we found that the Department's facility contractors failed to include, or did not enforce, terms in the consulting agreements that would have required HWC to provide details regarding the nature and scope of work performed prior to payment. Instead, we discovered that the contractors made payments to HWC based on invoices that lacked the detail necessary to support that the agreed-to services had been provided. Contractor officials at Sandia and Los Alamos asserted that some value had been received for the services rendered. To that end, contractor officials at Sandia and Los Alamos provided information to us that supported at least some consultant activity for most of the invoiced work periods we reviewed. In our judgment, the information provided did not meet even minimum standards for satisfying FAR requirements. Further, Nevada and Oak Ridge told us that there were no deliverables associated with the payments made to HWC.

Consequently, we were unable to verify that all agreed-to services had been provided by HWC. As such, we questioned the allowability of the about \$450,000 in payments by the four Department contractors. Specifically:

- 23 payments totaling \$226,378 made by Sandia between January 2009 and March 2011;
- 19 payments totaling \$195,718 made by Los Alamos between August 2009 and February 2011; and
- Payments totaling approximately \$30,000 made by Nevada and Oak Ridge.

We also noted that the services of HWC at both Sandia and Los Alamos were procured through consulting arrangements that were based on an agreement originally developed by Sandia. The original agreement specifically prohibited activity related to "business development." Despite that prohibition, however, we found that these types of activities were actually one of the purposes of the consulting activities. In fact, a senior Los Alamos official acknowledged that Los Alamos desired to use HWC's services, in part, to increase work-for-others activities. Specifically, he told us that: (i) Los Alamos had made a strategic decision to increase the market share of work involving the Department of Defense and the Intelligence Community, and (ii) the Los Alamos Director believed the expertise of HWC could help with that initiative. Federal officials at the Sandia Field Office<sup>2</sup> discovered and made us aware that Sandia had sanctioned and paid HWC for a number of activities that they considered to be prohibited under the terms of its agreement. These officials learned of these problems when they initiated a review of the issues we identified during our inspection field work.

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<sup>2</sup> During the course of our inspection, the designation for an NNSA "Site Office" was changed to "Field Office."

We noted that concerns regarding prohibited activities by HWC had been voiced early on by Federal officials. On March 8, 2010, the NNSA Sandia Field Office Manager specifically addressed the issue of prohibited activities in formal correspondence with Sandia. She advised contractor officials that an inference could be drawn from the stated need contained in the Sandia-prepared sole-source justification for HWC services, that the agreement would be used for the purpose of developing new business for Sandia in the Intelligence and Cyber arenas. The Sandia Field Office Manager's March 8 memorandum also indicated that these activities were specifically prohibited and denied Sandia's initial request for the arrangement. In response to the Sandia Field Office Manager's concerns and to secure approval to extend the period of performance for an existing agreement with HWC, Sandia modified the language in its sole-source justification to eliminate the concern raised in the March 8 memorandum. The Office of Inspector General is continuing its review of these matters.

#### Duplicative Services Allegations

Due to the absence of detailed evidence of the actual services provided by HWC, we could not determine whether those services were duplicative in nature at the four Department facilities.

#### Alleged Pressure on NNSA Contracting Official

As outlined in this report, the circumstances surrounding the award and execution of the HWC consulting agreements were unusual and, in some instances, highly irregular. These factors added to the relevance and potential importance of concerns about "pressure" placed on an NNSA contracting officer during approval of the HWC consulting agreements. As part of our fact gathering process, we interviewed the NNSA officials involved, including the contracting officer. However, we were unable to identify any evidence that the contracting officer was subjected to "pressure" during the approval of the HWC agreement at Los Alamos.

#### Contributing Factors and Path Forward

The issues identified in this report occurred because contractor officials responsible for crafting and administering the consulting agreements either did not incorporate, or failed to enforce, the requirements of the FAR into the agreements with HWC. We also determined that contractor officials failed to exercise due diligence to ensure that the government received value for the payments made to HWC. In addition, considering the high profile nature of these agreements and the fact that contractor officials had been warned by Federal managers about complying with FAR requirements, Federal officials could have followed up to ensure previously identified problems were corrected, but did not do so. Notwithstanding, contractors have a responsibility to adhere to the terms of their contracts, including FAR requirements, and to follow direction provided by Federal contracting officials. In particular:

- Contracting officials at Sandia did not include requirements for specific deliverables or detailed invoices in the HWC consulting agreement or in task orders issued monthly. Even when Federal officials at the Sandia Field Office identified the lack of deliverables as a concern and directed inclusion of specific level of effort and deliverables in the task orders, contractor officials failed to fully comply with the direction. Federal officials could have followed up to ensure compliance with their direction, but did not do so.

- At Los Alamos, the HWC tasking document included formal requirements that the consulting firm submit monthly billings for the services performed, including a breakdown of the specific activities performed. There was no evidence, however, that this requirement was enforced by the contractor official responsible for monitoring performance under the consultant agreement. That official noted that there was extensive conversation with HWC early in the term of the agreement regarding hours worked. However, he acknowledged that he failed to maintain this discipline and ensure that information was available to substantiate that services were rendered, as required.

Concerns with the nature and mechanisms of the relationship between Sandia, Los Alamos and HWC were not limited to Federal officials. We found, for example, that a senior Los Alamos management official was informed of a number of issues and risks with the HWC agreement as early as March 2009. That official was advised that the consulting agreement was risky because it contained a vague statement of work, there was inadequate data to justify that the price for the services was fair and reasonable, and there was a lack of specificity for the level of effort required. The official was also advised that because of these issues, there was potential for disapproval of the agreement by Federal officials, disallowance of costs incurred, and adverse publicity. That official told us that he was unaware of what action had been taken to address these concerns.

Also troubling, we determined that there was uncertainty among various site contractor officials regarding the intent and implementation of the deliverable and invoice requirements in the FAR. We found this hard to imagine given the prominence of the FAR and the history of extensive subcontracting activities of the facility operating contractors involved. Such claimed uncertainty relating to Los Alamos was particularly unsettling given the fact that the senior Los Alamos official received very specific warnings of the potential pitfalls associated with the agreement with HWC.

We made recommendations designed to assist management with ensuring that the intent of the requirements of FAR 31.205-33, *Professional and consultant service costs*, are consistently understood and implemented across the complex, and that awareness of prohibitions against business development activities by contractors is improved. We also recommended that a determination be made with regard to the allowability of the costs associated with consulting agreements involving HWC, to include the recovery of any costs determined to be unallowable. Finally, we concluded that these matters should be considered in the contractor fee determinations, even if retroactive actions are necessary.

At the conclusion of our inspection, we briefed Department management on the results of our inspection. Subsequently, both the Sandia and Los Alamos Field Offices issued a *Notice of Intent to Disallow Cost* associated with agreements awarded to HWC by their respective site contractors. We also briefed Federal management officials at the Nevada Field Office and Oak Ridge on our results.

## MANAGEMENT AND INSPECTOR COMMENTS

Management generally agreed with the report's findings and recommendations and indicated it was in the process of implementing or completing corrective actions. Management indicated that the Department has already recovered \$442,877 from its contractors of the approximately

\$464,203 paid to HWC, and is reviewing the allowability of the additional amounts. Notably, management committed to conduct a review to determine whether revocation of previously awarded award fee was appropriate.

We found management's comments and planned corrective actions to be generally responsive to our report findings and recommendations. Because of the overt nature of Sandia and Los Alamos' actions and their failure to fully comply with Federal direction in this case, we also suggest that the Department consider whether penalties available under Department of Energy Acquisition Regulation 970.5242-1, *Penalties for unallowable costs*, should be assessed.

Management's formal comments are included in Appendix 2.

Attachment

cc: Deputy Secretary  
Acting Administrator, National Nuclear Security Administration  
Acting Chief of Staff  
General Counsel  
Director, Office of Science  
Director, Office of Management

# **REPORT ON CONCERNS WITH CONSULTING CONTRACT ADMINISTRATION AT VARIOUS DEPARTMENT SITES**

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# CONCERNS WITH CONSULTING CONTRACT ADMINISTRATION AT VARIOUS DEPARTMENT SITES

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## CONSULTING CONTRACT ADMINISTRATION

Our inspection identified a number of issues regarding the deliverables and invoices necessary to support the approximately \$450,000 paid to Heather Wilson and Company, LLC (HWC)<sup>1</sup> for advice and consultation provided to senior managers at four Department contractor-operated sites.

Federal Acquisition Regulation (FAR) 31.205-33, *Professional and consultant service costs*, Section (f), states that fees for services rendered are allowable only when supported by evidence of the nature and scope of the service furnished. Evidence necessary to determine that work performed is proper and does not violate law or regulation includes: Section (f) (2), Invoices or billings submitted by consultants, including sufficient detail as to the time expended and nature of the actual services provided; and Section (f) (3), Consultants' work products and related documents, such as trip reports indicating persons visited and subjects discussed, meeting minutes, and collateral memoranda and reports.

We noted that these requirements were incorporated into the Management and Operating contracts through the Department of Energy Acquisition Regulation (DEAR) 970.5232-2, *Payments and advances*. However, we found that responsible site contractor officials either did not incorporate the requirements of the FAR into the agreements with HWC and/or failed to exercise due diligence to ensure they obtained the required evidence necessary to support the payments for the services rendered.

### Sandia Deliverables and Invoices

We determined that between January 2009 and March 2011, Sandia National Laboratories (Sandia) authorized 23 payments totaling \$226,378 for services rendered by HWC without the evidence of deliverables and detailed invoices to support the allowability of these payments.

Sandia entered into a Consulting Agreement with HWC in January 2009 and then converted this agreement into a Contract Purchase Agreement in March of 2009. Under these agreements, HWC was to advise Sandia leadership on, among other things, corporate strategic objectives, the business environment within which Sandia programs operate, and operational constraints. In executing this Contract Purchase Agreement, Sandia issued individual *Firm-Fixed-Price* task orders to HWC monthly for a minimum of 50 hours per month, at a cost of \$10,000 per month. However, we determined that HWC was paid the \$10,000 per month without submitting deliverables to the designated Sandia Delegated Representatives (SDRs).

While Sandia broadly outlined the tasks to be performed in its Contract Purchase Agreement with HWC, it did not initially include requirements for specific deliverables. Our review found that from March 2009 until May 2010, there was no reference to deliverables in the

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Contract Purchase Agreement. In April 2010, the Sandia Field Office<sup>2</sup> raised concerns regarding the absence of specific requirements for deliverables and directed Sandia to resolve the issue. In response, in May 2010, Sandia modified the Contract Purchase Agreement to include a specific requirement for deliverables, stating that:

Task Orders shall contain a requirement for a deliverable such as a Progress Report or statement of completion of work for the task order, and indication of which tasks are ongoing, and what progress has been made on the ongoing tasks.

In spite of this direction and the Sandia Field Office's previously expressed concerns with the HWC agreement, we noted that the task orders issued under the Contract Purchase Agreement contained significant omissions/deficiencies. First and foremost, we found that the language regarding deliverables incorporated in the Contract Purchase Agreement was never included in any of the subsequently issued task orders. We also observed that task orders did not sufficiently describe work assignments. Specifically, even though task orders were issued on a monthly basis, several task orders included language that gave exactly the same direction to HWC. Symptomatic of the lack of specificity in the task orders, the SDR responsible for accepting deliverables and reviewing invoices told us that there were no reports or deliverables associated with the HWC agreements. The SDR indicated that the process to confirm that HWC's tasks were completed was informal, and that the SDR would occasionally have conversations or receive e-mails regarding the activities of HWC at Sandia.

Similar to the issue with the lack of deliverables, we determined that responsible Sandia contractor officials did not incorporate the invoice requirements of the FAR into the Contract Purchase Agreement with HWC. As a consequence, none of the 23 invoices submitted by HWC contained details as to the time expended and nature of the actual services provided as required by the FAR. For example, a typical invoice would only include language such as "Consulting services for 11/1/10 – 11/30/10" at a cost of \$10,000 and a breakdown of any specific costs associated with travel for that month.

The SDRs with whom we discussed these issues were unable to provide evidence of deliverables or documentation showing that the minimum 50 hours per month of services were rendered. Further, we found that the relevant contract file did not contain information on deliverables. In an effort to account for activity under the Task Orders, Sandia conducted a search for evidence of the services provided by HWC and developed an after-the-fact schedule of activities. We noted that the schedule showed the hours that HWC spent on activities for each month of the Contract Purchase Agreement. Examples of such activities included meetings with Sandia executives, participation on advisory panels, and unspecified meetings in the Washington, DC area. Sandia, however, did not present us with direct evidence and, as such, this information was not sufficient to support the payments made to HWC.

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<sup>2</sup> During the course of our inspection, the designation for an NNSA "Site Office" was changed to "Field Office."

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In reviewing correspondence between the Sandia Field Office and Sandia contracting officials in April 2010 concerning requirements for details regarding services rendered, we noted that Sandia took the position that time records were not required because the task orders were *Firm-Fixed-Price*. Also, when the Sandia Field Office questioned the type of transaction controls implemented by Sandia to ensure the minimum of 50 hours per month were provided, Sandia indicated that it was confident that the minimum hours were being performed because the line customers were assigning and monitoring tasks and performance. However, during our inspection, we found no documentation of this monitoring. To the contrary, the Sandia official responsible for monitoring the task orders with HWC told us that the process for ensuring that work was performed as required was informal and included no reports or deliverables. We further noted that a Sandia Field Office official commented that this seemed to indicate that Sandia was paying HWC a retainer fee for no specified service or tasks.

The issues regarding Sandia's inability to substantiate that it received value for payments made to HWC occurred because Sandia contractor officials did not initially require that the agreement comply with FAR requirements and subsequently failed to adequately respond to the Sandia Field Office's directions regarding the agreement. As noted previously, Sandia never included deliverables or requirements for detailed invoices in the HWC consulting agreement or in task orders issued monthly. Even when Federal officials at the Sandia Field Office identified the lack of deliverables as a concern and directed inclusion of specific deliverables in the task orders, contractor officials failed to fully comply with the direction. Considering the high profile nature of this agreement, Federal officials could have followed up to ensure compliance with their direction, but did not do so. Notwithstanding, Sandia has a responsibility to adhere to the terms of its contract, including FAR requirements, and to follow direction provided by Federal contracting officials.

A Sandia official made a number of statements that, in our judgment, were intended to justify actions taken related to the management and administration of the HWC consultant agreement. For example, the Sandia official who participated in revising the language requiring deliverables under the Contract Purchase Agreement with HWC told us that the statement of work for each new task issued and agreed upon formed the basis for the required "Progress Reports." This official also attempted to justify the terms of the HWC agreement by noting that, at Sandia, many consultant type agreements do not involve any written deliverables other than the time record of hours of service performed. However, in this unique situation, we were told that in lieu of a time record, which would have been the more traditional approach, the types of records such as the statements of work and e-mails were sufficient to provide the evidence of HWC's successful completion of tasks.

While the statement that many Sandia consulting agreements are vague as to specific deliverables was in itself disturbing, we found the remaining assertions highly questionable. In particular, the statement that a task order, standing alone without evidence of completion, is sufficient to demonstrate that a task had been successfully completed, in our opinion, turns logic on its head. On a final note regarding Sandia's handling of the agreement with HWC, we discovered internal correspondence that reveals how, at least some, Sandia officials viewed this particular consulting agreement. Sandia officials noted in internal correspondence in

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November 2009 that the HWC arrangement needed to be considered a "consulting agreement" for the purposes of reporting to the National Nuclear Security Administration (NNSA). Most importantly, the Sandia official emphasized the point that the arrangement with HWC was unusual, stating, "We don't do business with anyone else like this and would prefer that this contract go away." As a result of the weaknesses identified at Sandia, the evidence of the nature and scope of the services furnished is significantly lacking and, thus, we consider the fees paid to HWC as questioned costs. We believe that a determination needs to be made as to whether the fees paid to HWC by Sandia are allowable per the requirements of the FAR and the Management and Operating contract.

#### Los Alamos Deliverables and Invoices

Similar to the conditions we observed at Sandia, we found that, between August 2009 and February 2011, Los Alamos National Laboratory (Los Alamos) authorized 19 payments totaling \$195,718 for the services of HWC without evidence of deliverables and detailed invoices to support the allowability of these payments.

We noted that, in August 2009, Los Alamos entered into an agreement with HWC. This agreement was embodied in a single task order issued under the terms, conditions and authority of the Sandia Contract Purchase Agreement. In this agreement, HWC was required to provide, among other things, advice and consultation to senior management on the strategic direction of threat reduction programs at Los Alamos, as well as on how the Laboratory may better position itself to assist with new technologies in the area of nuclear deterrence. As with Sandia, the task order also contained a requirement that HWC complete a minimum of 50 hours per month at a cost of \$10,000 per month.

While we noted some early attempts to establish specific deliverables for the HWC task assignment, such specificity was never included in the final statement of work. In particular, we noted that the draft statement of work included a section entitled "Deliverables," which stated that:

The deliverables the Subcontractor shall provide will vary based on the scope of the tasking by [Los Alamos]. Deliverables provided may be in the form of oral advice and assistance; attendance at a meeting; a white paper; or other forms of deliverables as appropriate pursuant to the [Los Alamos] request for assistance. The Subcontractor will periodically (but no less than once a quarter) update the [Los Alamos] Director, the Principal Associate Laboratory Director for Weapons Programs, and the Principal Associate Laboratory Director for Global Security, individually or separately, with a briefing on the assignments and activities performed under this subcontract.

We found, however, that this language was not included in the final statement of work and deliverable requirements were never created. The language was deleted from the final task order even though a Los Alamos contracting official informed the NNSA Contracting Officer that deliverables would be established in individual task assignments. When we asked for the

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specific monthly tasks from August 2009 to February 2011, Los Alamos was not able to provide any documentation showing what tasks and activities HWC was directed or scheduled to perform on a monthly basis.

Similar to our findings at Sandia, HWC was paid \$10,000 per month without submitting deliverables to the designated Los Alamos Subcontract Technical Representative (STR). This Los Alamos official was responsible for technical and performance oversight during execution of the agreement to include deliverables, submittals and execution of the work carried out by HWC. Our examination revealed that this official lacked the information necessary to support the approval of payments to HWC.

In fact, despite task order requirements to do so, none of the 19 invoices submitted by HWC contained sufficient detail as to the time expended and nature of the actual services provided as required by the FAR. Notably, the agreement provided, in pertinent part, that:

The Subcontractor may submit monthly billings for the services performed. A breakdown of the specific activities performed for [Los Alamos] must be included on or with each invoice. [Los Alamos] shall pay the Subcontractor, upon submission of acceptable invoices or vouchers, the prices stipulated in this subcontract for work delivered or rendered, less any deductions provided in this subcontract.

The invoices, however, lacked a breakdown of the specific activities performed for Los Alamos by HWC. For example, a typical invoice would include language such as "Consulting services 8/1/2010 through 8/31/2010 - \$10,000," without any further evidence of the nature and scope of the service furnished. The only breakdown of the specific activities on any of the invoices was for travel-related expenses.

It was clear that the task order requirement related to invoicing was not enforced. The STR told us that in the first 2 or 3 months of the agreement there was a lot of dialogue with HWC regarding hours, but that this discipline was not maintained for the rest of the invoices. The STR also told us that the invoices were approved without the required detail. The STR was not able to provide evidence of deliverables or details on invoices, and our review confirmed that the contract file did not contain information on deliverables.

At our request, Los Alamos conducted a search to identify any information that may have supported whatever work was performed by HWC each month. Los Alamos acknowledged that there were no specific deliverables, but indicated that HWC did provide consulting services on a wide variety of issues. The Los Alamos search resulted in the collection of records, primarily e-mail correspondence, that according to Los Alamos "...demonstrate in part the services provided." Los Alamos noted that, "While time records were not maintained by [HWC], the records demonstrate some level of activity in every month of the task order." However, as with Sandia, this information was, in our judgment, insufficient to support the basic FAR requirements and the payments made to HWC.

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Problems with the management of the HWC agreement occurred, in part, because of the failure of the STR to properly carry out assigned duties. Specifically, the STR did not require that HWC provide deliverables as evidence of the nature and scope of the service furnished. The STR told us that during the period of performance there was no expectation that deliverables would be provided. The STR also told us that the interactions with HWC were more about relationships and trust, and therefore, they relied on the principal's reputation. The STR acknowledged that payments were authorized without requesting the required deliverables. The STR said that, in hindsight, Los Alamos probably should have at least requested monthly reports from HWC. In addition, the STR acknowledged the requirements of the task order for a breakdown of the specific activities performed for Los Alamos as well as responsibility for reviewing the invoices prior to authorizing payments. The STR said that the invoices were approved without the required detail.

The failure of Los Alamos officials to adequately manage the HWC consulting task is particularly disturbing in light of information we uncovered related to prior knowledge regarding potential problems with the agreement. In particular, we found that a senior Los Alamos management official learned of a number of issues and risks with the HWC agreement as early as March 2009. That official was advised that the consulting agreement was risky because it contained a vague statement of work, that the retainer agreement was not recognized in the Los Alamos procurement system, there was inadequate data to justify that the price for the services was fair and reasonable, and there was a lack of specificity of level of effort required. The official was also advised that because of these issues, there was potential for disapproval of the agreement by Federal officials, disallowance of costs incurred, and adverse publicity. That official told us that he was unaware of what action had been taken to address these concerns.

As a result of the weaknesses identified at Los Alamos, the evidence of the nature and scope of the services furnished is significantly lacking and, thus, we question the costs paid to HWC under the Los Alamos task order. As such, we recommended that a determination be made as to whether the fees paid to HWC by Los Alamos are allowable per the requirements of the FAR and the Management and Operating contract.

#### The Nevada National Security Site and Oak Ridge National Laboratory

We also identified similar concerns at the Nevada National Security Site (Nevada) and Oak Ridge National Laboratory (Oak Ridge). Specifically, we determined that between July 2010 and December 2011, HWC was paid approximately \$30,000 without the evidence of deliverables and detailed invoices necessary to support the allowability of those payments.

The Nevada consulting agreement was issued on April 4, 2010, and ended on February 28, 2011. The statement of work required HWC to provide advisory services on multiple topics for the President of National Security Technologies, LLC, the Management and Operating contractor. The agreement identified a requirement for deliverables, defining deliverables as trip reports, other reports, and written advice. However, the individual tasks stated that the deliverables would consist of "verbal updates" as deemed necessary by the Nevada Director,

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Homeland Security and Defense Applications, or the National Security Technologies, LLC, President. In response to our request for deliverables at Nevada, we were told that no deliverables could be located or identified for this agreement. Also, our review of the agreement found that it did not contain the FAR requirement that invoices or billings submitted by HWC include sufficient detail as to the time expended and nature of the actual services provided.

In addition, at Oak Ridge, *Firm-Fixed-Price* consulting agreements were awarded to an independent subcontractor, HWC, requiring advisory services to the Global Security Directorate at Oak Ridge. This subcontractor was required to participate as a member of the Strategic Advisory Group, which provided insight on future directions and requirements for sponsoring agencies. The subcontractor was paid a flat rate of \$2,500 for attendance at each of the three meetings. In response to an Office of Inspector General request for deliverables at Oak Ridge, we were told that there were no deliverables or other written products generated as a result of these agreements. As with Nevada, the agreements did not contain the FAR requirement that invoices or billings submitted by the consultant include sufficient detail as to the time expended and nature of the actual services provided.

### Duplication

We found that available documentation regarding deliverables and invoices was insufficient to make a determination on whether there was overlap between the services provided and work products produced by HWC on consulting agreements at Sandia, Los Alamos, Nevada and Oak Ridge.

The primary users of the services of HWC were Los Alamos and Sandia. In fact, we determined that the services provided by HWC at these two Laboratories accounted for more than 90 percent of the approximately \$450,000 in fees paid to HWC. When Los Alamos requested to enter into a separate consultant agreement with HWC, the request was denied by the Los Alamos Field Office Contracting Officer. We noted that one of the concerns raised by the Los Alamos Field Office was that the Government could be at risk of making duplicate payments to HWC for the same services at both Los Alamos and Sandia. To address this concern, Los Alamos was directed to use Sandia's Purchase Agreement that was already in place for the services of HWC. In addition, Los Alamos was authorized to issue task orders against the Sandia Contract Purchase Agreement. In a July 1, 2009, memorandum to Los Alamos, the Los Alamos Field Office Contracting Officer, per a request from Sandia, directed Los Alamos to insert a requirement in the agreement to avoid duplication of effort. Specifically, the following language was to be inserted into the Los Alamos task order:

By accepting this order the contractor acknowledges that the work performed hereunder for [Los Alamos] is wholly separate from and not duplicative of work being performed for [Sandia].

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However, while the language was inserted into the task order, Los Alamos' use of Sandia's Purchase Agreement did not include a process to avoid duplication of effort. Specifically, Sandia was unaware of the specific services HWC provided to Los Alamos. The Los Alamos STR assumed that Sandia would be aware of the work HWC was performing for Los Alamos in order to avoid any possibility of duplication. The STR was surprised to learn that the Los Alamos task order was not issued through Sandia, and we found that the Los Alamos task order was issued separate and apart from Sandia. A Federal contracting official also confirmed that Sandia was not aware of the specific tasks HWC was performing at Los Alamos.

In addition, we were not able to identify any Department or contractor internal process whereby the four Department contractor-operated sites would have been aware that other NNSA sites had awarded consulting agreements to HWC, LLC, and that such agreements were running concurrently, in order to identify and avoid the possibility of duplication of services and work products provided. As a result of the weaknesses associated with deliverables, invoices and the implementation of the agreement between Los Alamos and HWC, there was no practical way for these Laboratories and/or the Department to assure themselves that there were no redundant payments for the same contractor services.

#### Prohibited Activities

During the course of our inspection, it became clear that Department officials were concerned that the tasks undertaken as part of the HWC engagements could violate, or could be perceived as violating, contractual prohibitions relating to business development. We noted one of the most direct manifestations of this concern in a March 8, 2010, memorandum from NNSA's Sandia Field Office Manager to the Sandia Executive Vice President. This memorandum discussed issues with Sandia's request for approval to extend the period of performance for an existing agreement with HWC.

Specifically, because of concerns with the sole-source justifications, the Sandia Field Office Manager returned the request without action. The manager warned that an inference could be drawn that the services of HWC would be used for the purposes of developing new business for Sandia in the intelligence and cyber arenas. The sole-source justification cited, in part, the need for "... high-level connections and critical engagement with key individuals." In addition, in the same memorandum, the Field Office Manager stated that the proposed extension to the consultant agreement suggests that HWC would be providing advice and making potentially prohibited contacts on behalf of Sandia. Subsequently, after some modifications to the language in the sole source justification to eliminate the concern raised in the March 8 memorandum, the extension of the contractual relationship was approved by Federal officials.

With regard to this issue, both the Sandia Contract Purchase Agreement and the Los Alamos task order stated that HWC shall not engage in any activity specifically related to obtaining, retaining, or facilitating business or business opportunities for the respective National Laboratories. Despite these prohibitions, our examination of relevant documentation at both Sandia and Los Alamos tend to indicate such activities did occur. While certainly not a complete

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record, there were aspects of this documentation that raised concerns as to whether the prohibitions regarding business development had been violated. At Los Alamos, HWC arranged meetings with and/or site visits by senior Federal officials who had the ability to impact both funding and future work at the Laboratory in the intelligence arena. In fact, a senior contractor official at Los Alamos, also designated as the Los Alamos STR for the HWC agreement, told us in an interview that the HWC principal approached the then Laboratory Director and offered the services of the company. The same Los Alamos official also acknowledged that Los Alamos had made a strategic decision to increase the market share of work-for-others involving the Department of Defense and the Intelligence Community and that the then Laboratory Director believed the consultant's background could help with this initiative.

The content of the email communications provided to us and the acknowledgement by Los Alamos regarding business development reflect elements that directly coincide with the very concerns raised by the Sandia Field Office Manager in March 2010. In short, one could understandably draw the inference that the tasking of HWC exceeded norms acceptable under the FAR and the terms of the agreements with Sandia and Los Alamos.

Certain matters in this area are under further review by the Office of Inspector General. However, we think it would be prudent for the Department to reinforce existing policy to prevent even the perception of the use of Federal funds for unauthorized purposes.

## RECOMMENDATIONS

To address the weaknesses outlined in our report, we recommend that the Director, Office of Management:

1. Issue a Policy Flash on the intent and implementation of FAR 31.205-33, *Professional and consultant service costs*, with a particular focus on the requirements for deliverables and details on invoices; and
2. Issue policy to improve awareness of the prohibition against lobbying and other unallowable activities by contractors (FAR 31.205-22 (a) (6)).

We recommend that the Department Contracting Officers at Sandia, Los Alamos, Nevada and Oak Ridge:

3. Determine the allowability of fees paid to HWC both in terms of FAR 31.205-33 and FAR 31.205-22, and recover any costs determined to be unallowable.

Finally, we recommend that appropriate Fee Determination Officials:

4. Determine whether adjustments to previously awarded performance fees are appropriate to address the consulting agreement administration and management issues we observed relative to the HWC agreements.



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## MANAGEMENT COMMENTS

Although it provided a number of suggested technical clarifications, management generally agreed with the report's findings and recommendations and indicated it was in the process of implementing or completing corrective actions. Management indicated that the Department has already recovered \$442,877 of the approximately \$464,203 paid to HWC, and is reviewing the allowability of the additional amounts. Management also indicated that the Department will issue policy and guidance reminding Heads of Contracting Activities and Contracting Officers of the applicability of FAR 31.205-33, *Professional and consultant service costs*. In addition, management has issued guidance to Heads of Contracting Activities and contracting personnel that the use of appropriated funds to lobby Congress or influence certain Federal contracting and financial transactions is strictly prohibited. Finally, management has agreed to look into whether the contractors engaged in any conduct that would support a decision to revoke the completed award fee determinations and authorize revising the fees retroactively. Management comments have been provided in their entirety in Appendix 2.

## INSPECTOR COMMENTS

Management's comments and planned corrective actions are generally responsive to our report findings and recommendations. However, with regard to management's response to Recommendation 4, we would like to note that DEAR 970.5242-1, *Penalties for unallowable costs*, states that if during the review of a submission for settlement of costs incurred, the Contracting Officer determines that the submission contains an expressly unallowable cost or a cost determined to be unallowable, the Contracting Officer shall assess a penalty. During its review of whether to revoke previously awarded award fee, we urge Federal officials to consider the penalty provisions relating to unallowable costs claimed by contractors and determine whether these penalties should be applied in this case.

### **OBJECTIVE, SCOPE AND METHODOLOGY**

#### **OBJECTIVE**

The National Nuclear Security Administration (NNSA) requested that we determine whether: (1) work products (deliverables) were produced in return for monthly payments to Heather Wilson and Company, LLC (HWC) of \$10,000; (2) invoices included itemized charges, as required by the agreement; (3) there was overlap between the services provided and work products produced by HWC on consulting agreements awarded by Sandia National Laboratories (Sandia), Los Alamos National Laboratory (Los Alamos), Nevada National Security Site (Nevada) and Oak Ridge National Laboratory (Oak Ridge); and (4) the NNSA Contracting Officer was subjected to "pressure" when Los Alamos National Security, LLC (Los Alamos), the Management and Operating contractor for Los Alamos, requested authorization to enter into an agreement with HWC.

#### **SCOPE**

We conducted our inspection fieldwork from September 2012 to March 2013, at Sandia in Albuquerque, New Mexico; Los Alamos in Los Alamos, New Mexico; Nevada in Mercury, Nevada; and Oak Ridge in Oak Ridge, Tennessee.

#### **METHODOLOGY**

To accomplish the inspection objective, we:

- Reviewed Federal Acquisition Regulation (FAR) 31.205-33, *Professional and consultant service costs*;
- Reviewed site policies and procedures related to the administration of contracts after award;
- Collected and reviewed appropriate NNSA documentation authorizing Los Alamos to enter into an agreement with HWC;
- Collected and reviewed appropriate contract documentation, including task orders, statements of work, and contractor invoices; and,
- Interviewed Sandia, Los Alamos, Nevada and Oak Ridge officials.

This inspection was conducted in accordance with the Council of the Inspectors General on Integrity and Efficiency, *Quality Standards for Inspection and Evaluation*, January 2012. Those standards require that we plan and perform the review to obtain sufficient, appropriate evidence to provide a reasonable basis for our findings and conclusions based on our inspection objective.

## **Appendix 1 (continued)**

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We believe the evidence obtained provides a reasonable basis for our findings and conclusions based on our inspection objective. The inspection included tests of controls and compliance with laws and regulations to the extent necessary to satisfy the inspection objective. Because our review was limited, it would not necessarily have disclosed all internal control deficiencies that may have existed at the time of our inspection. Also, we relied on computer-processed data to some extent to satisfy our objective. We confirmed the validity of such data, as appropriate, by conducting interviews and reviewing source documents.

An exit conference was waived by NNSA, the Office of Science and the Office of Management.

**MANAGEMENT COMMENTS**



**Department of Energy**

Washington, DC 20585

May 17, 2013

MEMORANDUM FOR RICKEY R. HASS

DEPUTY INSPECTOR GENERAL  
FOR AUDITS AND INSPECTIONS  
OFFICE OF INSPECTOR GENERAL

FROM:

CYNTHIA A. LERSTEN  
ASSOCIATE ADMINISTRATOR  
FOR MANAGEMENT AND BUDGET

PAUL BOSCO  
DIRECTOR  
OFFICE OF ACQUISITION AND PROJECT MANAGEMENT

JOSEPH A. McBREARTY  
DEPUTY DIRECTOR FOR FIELD OPERATIONS  
OFFICE OF SCIENCE

SUBJECT:

Response to the Office of Inspector General Draft Special Report  
Titled "Concerns with Consulting Contract Administration at  
Various Department Sites"

The Department of Energy (Department) appreciates the opportunity to review the subject draft report. The draft report makes four recommendations. Below you will find the Department's response to each recommendation.

**Recommendation #1: The Director, Office of Management, should issue a Policy Flash on the intent and implementation of FAR 31.205-33, Professional and consultant service costs, with particular focus on the requirements for deliverables and details on invoices.**

**Management Response: Concur.** The Office of Management and NNSA concur with the recommendation, and will issue appropriate policy and guidance reminding Head of Contracting Activities and Contracting Officers of the applicability of FAR 31.205-33 to management and operating (M&O) subcontracts for professional and consultant services. As recommended, the document will remind contracting personnel that M&O subcontracts must adhere to the requirements of FAR 31.205-33 regarding evidence necessary to support fees for services, including but not limited to detailed invoices and deliverables as appropriate. The estimated completion date is September 30, 2013.



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**Recommendation #2: The Director, Office of Management, should issue a Policy Flash designed to improve awareness of prohibitions against business development activities by contractors.**

**Management Response: Concur as described herein.** The Department recognizes and shares the concerns expressed in the draft report about activities that were expressly prohibited in the terms and conditions of certain subcontracts with HWC, LLC. Although “business development” is not a defined term in the FAR and can be variously interpreted, the Department also recognizes the need to be vigilant that costs are not reimbursed for unallowable expenses. To address this issue, the Office of Acquisition and Project Management recently issued guidance to Contracting Officers to assist in determinations on the allowability, allocability, and reasonableness of incurred costs. In addition, on February 11, 2013, the NNSA Acting Senior Procurement Executive reminded NNSA contracting personnel, via email, that the use of appropriated funds to lobby Congress or influence certain federal contracting and financial transactions is strictly prohibited by law and by each M&O contract. On the same date, the DOE Director of the Office of Policy sent a reminder to DOE Chief Operating Officers, Heads of Contracting Activities, and contracting personnel that the use of appropriated funds to lobby Congress or influence certain federal contracting and financial transactions is strictly prohibited by law and by each M&O contract. Planned actions in response to this recommendation have been completed.

**Recommendation #3: The Contracting Officers (COs) at Sandia National Laboratories, Los Alamos National Laboratory, the Nevada National Security Site (NNSS) and Oak Ridge National Laboratory should determine the allowability of fees paid to HWC, LLC both in terms of FAR 31.205-33 and FAR 31.205-22 and recover any costs determined to be unallowable.**

**Management Response: Concur.** The Department has already recovered \$442,887 of the approximately \$464,203 paid to Heather Wilson or HWC, LLC, including \$195,586 from Los Alamos National Security, \$226,378 from Sandia, and \$20,923 from NSTec. These amounts represent the entirety of the balance paid by each of those three entities and more than 95 percent of the costs called into question in the draft report. The Department will review the allowability of all additional amounts paid to Heather Wilson or HWC, LLC and will take steps to recover any costs determined to be unallowable. The estimated completion date is September 30, 2013.

**Recommendation #4: The respective Fee Determination Authorities should determine whether adjustments to previously awarded performance fees are appropriate to address the consulting agreement administration and management issues observed relative to the HWC, LLC agreements.**

**Management Response: Concur in Principle.** The Department will look into whether the contractors engaged in any conduct that would support a decision to revoke the completed award fee determinations and authorize revising the fee retroactively. The estimated completion date is September 30, 2013.

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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 clearer to the reader?
4. What additional actions could the Office of Inspector General have taken on the issues discussed in this report, which 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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Washington, DC 20585

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