1 of 1

United States Government

Department of Energy

memorandum

DATE: October 8, 1993

REPLY TO:
ATTN OF: IG-1

SUBJECT: INFORMATION: Report on "Inspection of Selected Intelligence and Special Access Program Work-for-Others Projects"

TO: The Secretary

BACKGROUND:

At the request of the former Secretary, we conducted an inspection of six classified intelligence and special access program work-for-others projects. The purpose of this inspection was to evaluate managements' effectiveness regarding these work-for-others projects and included tests for financial integrity and adherence to applicable laws and regulations.

DISCUSSION:

The inspection disclosed that, in general, reviewed work-for-others projects reflected an absence, or lack of implementation, of proper management controls.

The inspection also disclosed that Lawrence Livermore National Laboratory spent at least \$405,000 more for a work-for-others project than the funding provided by the customer agency, with the balance being financed by Departmental appropriations and other work-for-others customers' funds. The San Francisco Operations Office accepted reimbursable agreements from this same customer agency totaling approximately \$3 million in the form of work-for-others projects on the last day of Fiscal Year 1991 without providing ample time for the review and acceptance process. Further, some of the reimbursable agreements accepted were for national laboratories for which the Operations Office was not responsible. The funds, less overhead surcharges, were later transferred to those laboratories.

Additionally, the San Francisco Operations Office had not fully implemented the minimum standards prescribed by the Department of Energy and the Operations Office for review, acceptance, and monitoring for two work-for-others projects reviewed. We also noted security procedures, beyond those

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normally used within the Department of Energy, were being used at two national laboratories to protect classified information for some of the work-for-others projects.

Department of Energy Headquarters and Operations Office management concurred with and identified corrective actions to address the recommendations.

John C. Layton
Inspector General

Attachment

cc: Deputy Secretary
Assistant Secretary for Human Resources and
Administration
Assistant Secretary for Defense Programs
Acting Associate Deputy Secretary
for Field Management
Acting Chief Financial Officer
Acting Director, Office of Nuclear Energy
Director, Office of Intelligence and National Security
Director, Office of Intelligence
Director, Office of Security Affairs
Director, Office of Emergency Planning and Operations
Director, Office of Compliance and Audit Liaison
Manager, Albuquerque Operations Office
Manager, Oak Ridge Operations Office
Manager, San Francisco Operations Office

U.S. DEPARTMENT OF ENERGY
OFFICE OF INSPECTOR GENERAL

INSPECTION OF SELECTED INTELLIGENCE AND SPECIAL ACCESS
PROGRAM WORK-FOR-OTHERS PROJECTS

REPORT NO.: DOE/IG-0335
DATE ISSUED: OCTOBER 8, 1993

OFFICE OF INSPECTIONS
WASHINGTON, D.C. 20585

INSPECTION OF SELECTED
INTELLIGENCE AND SPECIAL ACCESS
PROGRAM WORK-FOR-OTHERS PROJECTS

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INSPECTION OF SELECTED
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INSPECTION OF SELECTED
INTELLIGENCE AND SPECIAL ACCESS
PROGRAM WORK-FOR-OTHERS PROJECTS

I. PURPOSE AND OBJECTIVES

On April 1, 1992, the former Secretary of Energy was briefed by Department of Energy (DOE) management, including staff from the Office of Assistant Secretary for Defense Programs (DP); the Office of Assistant Secretary for Nuclear Energy (NE); the Office of Intelligence (IN); the Office of Emergency Planning and Operations (OE); and the Office of Administration and Human Resource Management (AD). The topic of the briefing was DOE "Intelligence and Black Program Work-for-Others." The Comptroller for the National Security Agency (NSA), who had completed work-for-others (WFO) reviews at the request of the Secretary, also participated in the briefing.

We were told by attending personnel from the DOE Office of Intelligence (the then IN-40) and the Office of Administration and Human Resource Management (AD-10) that, during the briefing, the former Secretary expressed primary concerns over management of these WFO projects within DOE as follows: (1) the identification of all intelligence and special access program WFO projects within DOE; (2) the financial integrity of the WFO projects; and (3) the effectiveness of DOE and its contractors in managing these projects. As a result of the meeting, the NSA Comptroller agreed with the former Secretary that audits of selected WFO projects, to include reviews of financial transactions, would be appropriate.

The purpose of this inspection was to review selected classified and unclassified intelligence and special access program (SAP) work-for-others projects.

The primary objectives of this inspection were to determine:

1. the financial integrity and compliance with laws and regulations of these WFO projects; and
2. DOE management effectiveness regarding these WFO projects.

As part of objective 1 above, we attempted to determine whether DOE managers of these WFO projects were:

- o properly managing the financial aspects of these WFO projects (e.g., fund receipt, expenditures for specific programs or services, reports and schedules);
- o properly establishing and operating internal control systems over accounting, financial reporting, and transaction processing; and
- o controlling for fraud, waste, or abuse in the WFO project operations.

Additionally, to the extent feasible within the scope of the work, we attempted to determine if all of these types of WFO projects were correctly identified to DOE departmental elements. We believe the former Secretary's concern over assuring the identification of all intelligence and SAP WFO projects in the Department reflected a concern that management should be aware of all of these types of projects with special security procedures. Without management oversight, such practices may create an increased vulnerability to fraud, waste, or mismanagement.

II. SCOPE AND METHODOLOGY

The scope of our inspection included:

1. Special access program work-for-others projects, which are by definition classified. SAPs can be created to protect particularly sensitive information. For this inspection, we excluded a small number of very sensitive intelligence related SAP WFO projects from consideration.
2. Other classified intelligence WFO projects, including those which require access to sensitive compartmented information (SCI); and
3. Unclassified intelligence WFO projects.

A special access program is any program established under Executive Order 12356, National Security Information, that imposes additional controls governing access to classified information involved with such programs beyond those

required by normal management and safeguarding practices. These additional controls may include, but are not limited to, access approval, adjudication or investigative requirements, special designation of officials authorized to determine a need-to-know, or special lists of persons, commonly referred to as access rosters, determined to have a need-to-know. Need-to-know means a determination, by a person having responsibility for classified information or material, that a proposed recipient's access to such classified information or material is necessary in the performance of official or contractual duties of employment.

An agency head may create a SAP to control access, distribution, and protection of particularly sensitive information classified pursuant to Executive Order 12356. Special access programs may be created or continued only at the written direction of the agency head. For special access programs pertaining to intelligence activities (including special activities but not including military operational, strategic and tactical programs), or intelligence sources or methods, this function is exercised by the Director of Central Intelligence. Each agency head is required to establish and maintain a system of accounting for special access programs.

Sensitive compartmented information is classified information concerning or derived from intelligence sources, methods, or analytical processes, which is required to be handled within formal access control systems established by the Director of Central Intelligence pursuant to the special access provisions of Executive Order 12356.

Our scope resulted in a universe of 401 projects that were initially identified to us. From this universe, we selected the following six projects for our detailed review:

(Continued on next page)

<u>PROJECT</u>	<u>PERFORMING ACTIVITY</u>	<u>PROGRAM SECRETARIAL OFFICER</u>	<u>CLASSIFIED</u>	<u>SENSITIVE COMPARTMENTED INFORMATION</u>	<u>OTHER SPECIAL ACCESS PROGRAMS</u>
A	Lawrence Livermore National Laboratory	Office of Intelligence	Yes	No	Yes*
B	Lawrence Livermore National Laboratory	Office of Intelligence	Yes	Yes	No
C	Sandia National Laboratory	Office of Intelligence	Yes	No	No
D	Los Alamos National Laboratory	Defense Programs	Yes	No	No
E	Nuclear Energy	Nuclear Energy	Yes	No	Yes
F	Oak Ridge National Laboratory	Office of Intelligence	Yes	No	No

* Per Lawrence Livermore National Laboratory, the customer was in the process of upgrading the Project from SECRET National Security Information to SECRET National Security Information with special access requirements and controls.

Because of the sensitive nature of these WFO projects, we do not refer to the specific customer agencies associated with these projects. We will, in this report, refer to the reviewed WFO projects as Projects A through F.

This inspection was conducted in accordance with the Quality Standards for Inspections issued by the President's Council on Integrity and Efficiency in March 1993. In conducting the inspection, we interviewed officials and obtained information from the following DOE Headquarters Offices: Assistant Secretary for Defense Programs; Assistant Secretary for Nuclear Energy; Administration and Human Resource Management; Chief Financial Officer; Intelligence; Security Affairs; and Emergency Planning and Operations. We also interviewed selected customer agency officials.

After selecting the six projects, we visited DOE Headquarters, the cognizant DOE operations offices (Albuquerque, Oak Ridge, and San Francisco), and national laboratories (Lawrence Livermore, Los Alamos, Oak Ridge, and Sandia) to perform our detailed inspection of each of

the WFO projects. We performed a review of financial management, to include tests of transactions recorded during the period September 1991 through October 1992. We also reviewed program management, procurement and contract management, and security management for four of the projects. Due to the nature of Projects E and F, we only reviewed general program management and funding integrity.

A more detailed description of the inspection methodology is contained in Appendix A.

III. BACKGROUND

The Department of Energy performs work-for-other Federal agencies either directly or through DOE's management and operating (M&O) contractors. In this manner, the other Federal agencies can take advantage of DOE's vast and unique research capabilities. DOE also benefits through better and more continuous use of its facilities and personnel.

Most WFO work within DOE is authorized under the Economy Act of 1932 (Act). The Act allows an agency to place an order for goods and services from another agency.

DOE Order 4300.2B, Non-Department of Energy Funded Work (Work for Others), dated July 16, 1991, established DOE policy, procedures, and responsibilities for review, acceptance, and monitoring of non-DOE funded work performed under DOE contracts.

DOE Order 2200.6, Change 2, Chapter IX, dated May 10, 1990, Financial Accounting-Reimbursable Work, Revenues, and Other Collections, established DOE policy and general procedures for accounting for reimbursable work, one category of which is WFO. DOE's policy is to accept reimbursable agreements for its goods and services and to perform work-for-others on a reimbursable basis, provided legal and regulatory authority to perform the reimbursable work exists and the Department is capable of complying with the requirements of the legal authorities relied on. Furthermore, work-for-others must not impede the primary functions and responsibilities of the performing activity, and budgetary resources for performing reimbursable work must be available from the customer.

Executive Order 12356, National Security Information, dated April 2, 1982, prescribes a uniform system for classifying,

declassifying, and safeguarding national security information. Section 4.2 of Executive Order 12356 addresses the topic of "Special Access Programs." DOE is in the process of establishing policies and procedures for DOE to authorize the creation of special access programs. The subject is addressed in draft DOE Order 5639.1, Information Security Program, which is intended to establish the DOE Information Security Program and set forth policies, procedures, and responsibilities for the control and protection of classified and sensitive information.

Appendix B contains detailed background information relative to laws, regulations, policies, and procedures.

IV. SUMMARY RESULTS OF INSPECTION

We concluded that, in general, reviewed WFO Projects A through D reflected an absence, or lack of implementation, of proper management controls. The key findings discussed in Section V, Findings and Recommendations, of our report are examples of these management control problems, and support the overall conclusion.

The following is a brief summary of some of the findings of our inspection:

- A. We found that DOE is involved in activities other than work-for-others that use SAP procedures. We also found that senior DOE management and security officials, in particular Special Security Officers, may not be aware of all SAPs that are being worked on in DOE facilities under their cognizance or that DOE employees, including Federal and contractor employees are "read-on" (are provided access to program information).
- B. Information pertaining to special access programs in the WFO project listings maintained by the Office of Assistant Secretary for Defense Programs and the Office of Intelligence was not totally accurate or comprehensive.
- C. Lawrence Livermore National Laboratory (LLNL) spent more for Project A than the funding provided by the customer agency. Through the use of an LLNL overhead account, DOE and other customers paid a portion of the Project A task overages which had been charged to the overhead account and then distributed to their

accounts. Contrary to DOE policy, LLNL was financing at least 35 percent of Project A's reimbursable work during the period inspected from DOE appropriations as well as other customers' funds. These actions may be contrary to requirements regarding the use of appropriated funds, as well as DOE's funds control policies. The excess costs charged to DOE may be unallowable costs under the management and operating contract for the operation of LLNL.

- D. We found that \$27,300 of Project A funding was never entered into the correct task's account by LLNL; therefore, the funds were used for purposes other than those intended by the customer.
- E. The DOE Albuquerque Operations Office (DOE-AL) had accepted funding in excess of the funding limitations (i.e., the total estimated cost) for the two DOE-AL projects we reviewed.
- F. The DOE San Francisco Operations Office (DOE-SF) accepted reimbursable agreements on the last day of Fiscal Year 1991 without providing ample time for the review and acceptance process, a requirement of DOE Order 2200.6, Chapter IX. Further, DOE-SF accepted reimbursable agreements in the form of WFO projects for two national laboratories for which DOE-SF was not the responsible contracting officer.
- G. Security procedures, beyond those normally used within DOE, were being used at two national laboratories to protect classified information for some of the WFO projects.
- H. DOE-SF management had not fully implemented the minimum standards prescribed by DOE and DOE-SF for review, acceptance, monitoring, and file maintenance for the two WFO projects reviewed.

In addition to the findings above, we noted:

(1) insufficient detail on billings submitted to customers; (2) internal control weaknesses; (3) an apparent absence of counterintelligence support for these sensitive WFO projects; and (4) that the DOE-AL contracting officer was not following the DOE Order relating to the closeout of a WFO project we reviewed.

The findings and related recommendations, together with management comments, are discussed in more detail in the following section.

V. FINDINGS AND RECOMMENDATIONS

IDENTIFICATION OF DOE SPECIAL ACCESS PROGRAM ACTIVITY AND INFORMATION

We expected that senior Department of Energy and management and operating contractor security personnel, in particular Special Security Officers, would be able to identify all special access program activity at the DOE facilities under their cognizance. This would have been useful in verifying whether all SAP work-for-others projects had been identified by the responsible Program Secretarial Officers. However, we found that senior DOE and management and operating contractor security officials, including Special Security Officers, may not be aware of all SAPs that are being worked on in DOE facilities or that DOE employees, including Federal and contractor employees are "read-on" (are provided access to program information). We also found that DOE can be involved in activities other than work-for-others that used SAP procedures.

Funding for Special Access Program Activity

While the scope of our inspection dealt with intelligence and special access program WFO projects, we found that DOE does have DOE or DOE contractor employees involved in projects covered by SAP procedures that are not WFO projects. In general, we found that DOE had activities in support of special access programs that were funded in three different ways. Only one of these ways, customer funded activity, is categorized as work-for-others.

1. Customer funded activity: In this case, the activity within DOE in support of the SAP was fully funded by the other agency. DOE refers to this type of activity as work-for-other Federal agencies.
2. Joint funded activity: In this case, the activity within DOE in support of the SAP was partially funded by DOE, with the remaining funds being provided by one or more other agencies. DOE Order 4300.2B, Non-Department of Energy Funded Work (Work for Others), does not apply to joint funded activity of this nature and, therefore, the activity was not categorized as

work-for-others by DOE. In the case of joint funded projects, DOE does not normally charge other Federal agencies an "added factor" charge.

In the information provided to us, one of the projects we inspected was reported as a "WFO project" but could be more accurately characterized as a "joint funded project." The activity is a multi-year program which is being conducted pursuant to a classified 1975 memorandum of agreement between the customer agency and the Energy Research and Development Administration, a predecessor agency to DOE. The customer transfers funding to DOE using a Government Order, while DOE funding is contained in a dedicated budget-line in the DOE budget request. In Fiscal Year (FY) 1991, the customer and DOE each contributed approximately \$2.0 million. In FY 1992, the customer provided \$2.4 million and DOE provided \$1.0 million. The DOE funding provided deliverables essential to the successful performance of the program.

We also found evidence of another joint funded SAP project in DOE. Since, in this inspection, we did not seek to identify joint funded SAP projects, we do not have an estimate of the total number of such projects in DOE.

3. DOE funded activity: In this case, the activity within DOE in support of a SAP was totally funded by DOE appropriations. For example, DOE and contractor employees who are "read-on" and support a SAP without other agency funding would be in this category. Another example would be the many activities of the Office of Intelligence regarding classified sensitive compartmented information.

According to the Glossary of Intelligence Terms and Definitions published by the Intelligence Community Staff, sensitive compartmented information is classified information concerning or derived from intelligence sources, methods, or analytical processes, which is required to be handled within formal access control systems established by the Director of Central Intelligence pursuant to the special access provisions of Executive Order 12356. An official from the Central Intelligence Agency told us that, as part of SCI, there were at least four subordinate SAPs. To our knowledge, at least three of these SAPs were supported by the DOE Office of Intelligence.

Maintaining Information on SAPs for Physical Security Purposes

DOE Order 5632.1B, Protection Program Operations, states that levels of protection appropriate to particular safeguards and security interests are to be provided in a graded fashion in accordance with the potential risks to national security, program continuity, and the health and safety of the employees and the public.

At two DOE operations offices and three national laboratories, responsible senior security officials were interviewed regarding their knowledge of any special access programs being worked on in DOE facilities. At one operations office and two national laboratories, these officials, including two Special Security Officers, responded that they were not aware of all special access programs being worked on in the DOE facilities for which they had cognizance. At the second operations office, the officials stated that they had not, in the past, been aware of all special access programs in their facilities. However, they are now receiving, on a periodic basis, a list of work-for-others projects with SAPs so annotated.

We believe that security officials' lack of knowledge concerning special access programs in facilities for which they have security cognizance prevents the security officials from providing physical security in a graded fashion, consistent with the security interests of the SAP.

Maintaining Information on SAP Read-ons

Information in the Personnel Security Records at a DOE Operations Office. DOE Order 5631.2B, Personnel Security Program, dated May 18, 1988, stated that the Managers of Operations Offices should "Maintain personnel security files ... containing copies of investigative reports and other pertinent data on individuals granted a DOE security clearance by that office." As a part of the administrative material in the personnel security files, the Order stated that "special authorizations for sensitive or compartmented information" were to be maintained. DOE Order 5631.2C, issued on August 15, 1992, as this inspection was being performed, continued these requirements.

SAP procedures impose need-to-know or access controls beyond those normally provided by security regulations and procedures. When a person is provided with program information, he or she is given a security briefing

regarding security requirements and, after signing a security agreement, is considered to be "read-on" to the special access program. An access roster, or a list of those "read-on" to a specific special access program, is often maintained by personnel managing the SAP.

We were told, by a personnel security specialist at a major DOE operations office, that information on access to SAPs was not being maintained as part of the personnel security record. The personnel security specialist told us the only special accesses the office would be able to compile information on would be persons with access to SCI.

Information in the DOE Central Personnel Clearance Index. DOE Order 5631.2B/C also stated when access authorization has been granted, the field element "... shall make the appropriate entry into the Central Personnel Clearance Index" The Central Personnel Clearance Index (CPCI) is a computerized system used to maintain information on the status of personnel clearances granted by DOE. The CPCI is physically located at DOE's Germantown facility.

We were told by a DOE official that the CPCI contained a field to enter codes for various "special access programs." Included was a code for SCI. However, the official stated a code was not currently included for other SAPs created under the authority of Executive Order 12356. As a result, other than for SCI, the CPCI could not be used to identify DOE or DOE contractor personnel who have been "read-on" to SAPs created under the authority of Executive Order 12356.

Information Available at National Laboratories. DOE Order 5631.2B, and 5631.2C, did not identify the security clearance information to be maintained by DOE M&O contractors. A DOE Headquarters official stated that the M&O contractors had the responsibility to verify the security accesses which had been granted to personnel they sponsored. Personnel sponsored by the M&O contractor could include the employees of the M&O contractor and subcontractors. The official stated that DOE had not designated any particular method for the M&O contractors to comply with this requirement. The DOE official stated, however, that some M&O contractors had established local data bases.

At one national laboratory, we were told the M&O contractor's personnel security records were maintained in a database and, once a security clearance was granted, a hard copy was not maintained. We were also told the only special access

authorization which was entered into the database was for access to SCI.

At the intelligence activity of another national laboratory, a security officer stated the office had recently started maintaining access information for employees under their cognizance. However, the security officer stated these records would only apply to intelligence related programs supported by that office.

Conclusions

In summary:

- o One of the WFO projects inspected may be more appropriately categorized as a joint funded project.
- o The interviewed security personnel at an operations office and two national laboratories were not aware of all SAP projects being worked on in the cognizant DOE facilities. Therefore they may not be able to properly fulfill their responsibilities under DOE Order 5632.1B to provide physical security in a graded fashion consistent with the security interests of SAPs.
- o DOE Order 5631.2B/C requires the personnel security files to indicate special authorizations for sensitive and compartmented information and for the field elements to make appropriate entries into the CPCI. At the DOE operations office where we inquired, we were told the information on access to SAPs was not being maintained in the personnel security records. Additionally, as currently configured, the CPCI cannot be used to identify personnel who have been "read-on" to a SAP, other than SCI, due to lack of a designated code(s) for this purpose.
- o DOE Order 5631.2B/C did not identify any particular method for the M&O contractors to verify the security access which has been granted to personnel they sponsored. For other than SCI, information was not available at two national laboratories on all personnel with access authorizations to SAPs.

Recommendations

We recommend that the Acting Director, Office of Nuclear Energy:

1. Review the project under his cognizance to determine whether the project should more properly be categorized as a joint funded activity.

Office of Nuclear Energy officials agreed to conduct the suggested review of the project assigned to that office.

We recommend that the Manager, DOE Albuquerque Operations Office:

2. Establish procedures to inform the officials responsible for physical security of the presence of SAP activities in facilities under their cognizance so that graded protection may be developed as required by DOE Order 5632.1B.
3. Comply with requirement of DOE Order 5631.2C regarding the filing of special authorization for sensitive or compartmented information.

The Manager, Albuquerque Operations Office, concurred with Recommendation 2 and stated that the Office had incorporated the requirements into AL Order 4300.2B. The Manager nonconcurred with Recommendation 3 and stated that they routinely file all correspondence associated with granting access to sensitive compartmented information. Management officials stated that they do not believe that the DOE Order requires the Personnel Security Division to be notified when an individual is "read-in" to other special access programs and, therefore, documenting special access authorizations in the personnel security file is not required.

Management officials from the Office of Security Affairs stated DOE Order 5631.2C does require that special authorization for sensitive or compartmented information be maintained in the personnel security file. Accordingly, Recommendation 3 has not been revised.

We recommend that the Manager, DOE San Francisco Operations Office:

4. Establish procedures to inform the officials responsible for physical security of the presence of SAP activities in facilities under their cognizance so

that graded protection may be developed as required by DOE Order 5632.1B.

The Manager, San Francisco Operations Office, concurred with Recommendation 4 and stated that they will develop procedures to ensure that special access program activities are protected as required by DOE Order 5632.1B. They will coordinate with the Office of the Assistant Secretary for Defense Programs and the Office of Intelligence in identifying the SAPs.

We recommend that the Director, Office of Intelligence and National Security:

5. Prepare and coordinate an appropriate action for the Secretary to designate a Headquarters official to know of and conduct liaison with the designated DOE operations office officials knowledgeable of all SAP activity under their cognizance.

The Director, Office of Intelligence and National Security, concurred with the recommendation.

We recommend that the Director, Office of Security Affairs, in coordination with the Assistant Secretary for Defense Programs, Office of Nuclear Energy, and Office of Intelligence:

6. Establish a policy that designated officials at each facility must be aware of all SAP activity at the facility and that these officials interface with physical protection personnel to ensure graded protection.
7. Establish a policy that designated officials at each DOE operations office must be aware of all SAP activity at facilities under their cognizance.

Management officials from all offices concurred with Recommendations 6 and 7. Office of Security Affairs management officials stated that the recommended policies would be incorporated in the proposed DOE Order 5639.10, "Security of Special Access Programs."

We recommend that the Director, Office of Security Affairs:

8. Review the Central Personnel Clearance Index computer system and related procedures and determine whether the

CPCI should be used to maintain records on those DOE or DOE contractor employees with access to SAPs.

Office of Security Affairs management officials agreed to review the structure of the CPCI for incorporation of SAP information.

ACCURACY OF INFORMATION ON WFO PROJECTS

According to the Work for Others Summary Report, issued in August 1992 by the Office of Administration and Human Resource Management, the work-for-others project inventory reports maintained by certain Secretarial Officers "... provide an accurate and beneficial comprehensive WFO project listing."

Based on our review of information provided in June 1992 by the Office of Assistant Secretary for Defense Programs and in July 1992 by the Office of Intelligence on the work-for-others projects, we would not categorize the information in the inventory maintained by the Office of the Assistant Secretary for Defense Programs and the Office of Intelligence as accurate or comprehensive.

Requirement for Inventory Listing

The Office of Intelligence was established on April 6, 1990. IN, as part of its primary mission, ensures DOE's technical, analytical, and research expertise is made available to the intelligence community in accordance with Executive Order 12333. Per DOE Order 4300.2B, Change 2, Paragraph 10.i.(1), the Director of Intelligence (IN-1) reviews, validates, and, as applicable, certifies/accepts proposed intelligence-related non-DOE funded work projects.

In a memorandum dated January 31, 1991, the then Under Secretary directed each Secretarial Officer, having cognizance over facilities and contractors involved in the performance of work-for-others, to have available a summary listing of all WFO projects being carried out in those facilities or by those contractors. The summary listing was to contain the nine information items which were identified on a data sheet attached to this memorandum.

In a memorandum dated August 16, 1991, DP designated the Office of Deputy Science and Technology Advisor (Defense) as the office in DP which should be made aware of all nonintelligence special access programs being worked on

within the Department of Energy which involve national security information.

In addition, DP undertook to produce a consolidated list of active WFO projects. The two Secretarial Officers providing the majority of the input were DP and the Office of Intelligence.

Inaccurate Information Provided to the Office of Inspector General

On June 16, 1992, DP replied to our request for data with most of the requested data on a total of 11 WFO projects being considered for detailed review in this inspection. Of the 11 WFO projects, incorrect or incomplete information was initially provided for six projects.

- o For two WFO projects, the initially reported total estimated cost (TEC) was found to be incorrect. In the first case, the TEC was reported as \$18.0 million while the actual cost to date was reported as \$38.0 million. In the second case, the TEC was reported as \$459,000 while the actual cost to date was reported as \$721,000. The Office of Inspector General (OIG) requested confirmation of the reported TEC since the reported TEC for these WFO projects was less than the reported actual cost to date. Corrected TECs of \$47.7 million and \$822,000 were subsequently provided.
- o For one WFO project, both the TEC and actual cost to date were found to be incorrect. The TEC was reported as \$28.0 million and the actual cost to date was reported as \$3.43 million. The OIG had previously inspected this WFO project and, based upon our previous inspection, we believed that the reported TEC and the actual cost to date were incorrect. Corrected information of a TEC of \$90.0 million and an actual cost to date of \$67.7 million was subsequently provided.
- o For one WFO project, a description of the project and the TEC were not available.
- o For one WFO project, the security classification was incorrectly reported. DP reported that the WFO project was a special access program. However, during our subsequent inspection activity at the national laboratory where this WFO project was being executed,

we were told that the WFO project was classified but was not a SAP.

- o For another WFO project, DP reported that this project was under the cognizance of that office; however, we subsequently learned that the cognizance had been transferred to the Office of Assistant Secretary for Nuclear Energy.

A DP official stated the source of the data provided was the WFO inventory maintained by DP, as required by the Under Secretary's January 1991 memorandum.

On July 6, 1992, the Office of Intelligence replied to our request for information with most of the requested data for the WFO projects which fell within the scope of this inspection. However, during our review of the information we noted that five WFO projects reflected a TEC dollar amount equal to zero while another project showed a negative TEC dollar amount.

An official at the DOE Albuquerque Operations Office stated that deficiencies in the accuracy of the data reported to DP and IN by two of the national laboratories under DOE-AL's cognizance had been the subject of internal reports. The official stated that, in his opinion, the reporting requirements had not been given appropriate emphasis by the two national laboratories. The official further stated existing databases, without all of the required information, had been utilized by the two national laboratories. The laboratories were in the process of developing new databases with the required information.

Conclusion

During our review of data provided by the Office of Assistant Secretary for Defense Programs and the Office of Intelligence, we found incorrect information. We would not, therefore, characterize the reviewed portions of the WFO inventory reports pertaining to SAPs as accurate or comprehensive.

Recommendations

We recommend that the Acting Assistant Secretary for Defense Programs, in conjunction with the Director, Office of Intelligence:

9. Come into full compliance with the requirements of the then Under Secretary's memorandum of January 1991 concerning the information to be maintained on WFO projects.

Management officials from both offices concurred with this recommendation. Defense Programs responded that they would, in coordination with the Office of Intelligence, continue placing a high priority on efforts to assure that the WFO project information is accurate and complete.

We recommend that the Assistant Secretary for Human Resources and Administration:

10. Revise DOE Order 4300.2B to designate appropriate management officials to periodically review, for accuracy, all the information maintained in their WFO inventory reports.
11. Revise DOE Order 4300.2B to include the work-for-others inventory report requirements originally directed by the then Under Secretary's memorandum of January 31, 1991.

The Assistant Secretary for Human Resources and Administration concurred with Recommendations 10 and 11. DOE Order 4300.2B will be revised accordingly.

INAPPROPRIATE FINANCING OF REIMBURSABLE WORK

DOE Policies on Financing of Reimbursable Work

DOE Order 2200.5B, Fund Accounting, dated June 8, 1992, provides DOE accounting practices, policies, and procedures related to the administrative control of funds, and accounting for obligations. An official from the DOE Office of Chief Financial Officer said that Chapter I, Administrative Control of Funds, of DOE Order 2200.5B was intended to be the implementing regulation required by 31 USC 1514. 31 USC 1514(a) requires the head of each executive agency to prescribe, by regulation, a system of administrative control designed to restrict obligations or expenditures from each appropriation and enable the head of the agency to fix responsibility for an obligation or expenditure which exceeds these limitations.

DOE Order 2200.5B, Chapter I, states "Obligations and expenditures for each reimbursable agreement shall not exceed the budgetary resources authorized for that reimbursable agreement; if they do, an administrative violation will have occurred."

Chapter I of DOE Order 2200.5B also states that the general policies and procedures on financial management of and accounting for reimbursable work are covered in DOE 2200.6, Financial Accounting, Chapter IX, Reimbursable Work, Revenues, and Other Collections.

DOE Order 2200.6, Change 2, Chapter IX, Reimbursable Work, Revenues, and Other Collections, Paragraph 2.i.(1)(d), states that no reimbursable work shall continue and no costs shall be incurred beyond the amount of funding provided in the reimbursable agreement and attendant modifications. Further, Paragraph 2.i.(1)(e) states DOE shall not finance reimbursable work from its own appropriations or another customer's funds but only from the appropriation accounts of the ordering Federal agency.

DOE-SF Policy on WFO

SAN Management Directive No. 4300.2 (and SF MD 4300.2A) states that the Department of Energy's San Francisco Operations Office's Institutional Managers shall monitor overall costs of work-for-other efforts to ensure that approved funding levels are not exceeded.

The SAN Management Directive also requires contractors to "Cease performance of non-DOE funded work upon expiration of the agreement or exhaustion of funding authorized on an individual work agreement whichever occurs first." The scope of the Directive states that it applies to DOE-SF M&O contractors.

Summary of Finding

Contrary to these provisions providing that no work shall continue and no costs will be incurred beyond the amount of funding provided, we found that Lawrence Livermore National Laboratory spent more on Project A during the period inspected than the funding provided by the customer agency. For the period September 1, 1991, through October 31, 1992, LLNL spent \$1,246,860 on Project A. Funds available from the customer were \$744,878. Of the difference of \$501,982, we identified \$405,428 that was inappropriately charged to DOE program and other customer accounts.

Costing Aspects of Project A at LLNL

Project A was an "umbrella" program which had received numerous tasks from the customer since the project's inception in December 1987. The program had been divided into two subprograms, each with its own series of LLNL subaccounts within Prime Account 6461, depending upon which LLNL Group was to perform the work. This relationship is summarized as follows:

<u>LLNL Subaccounts</u>	<u>Performing LLNL Group</u>
6461-00/49	Mr. D
6461-50/99	Mr. E

The two subprograms were assigned as part of Applied Technology ("J") Division's workload in the Nonproliferation/Arms Control/International Security (NAI) Directorate.

According to the financial data provided by LLNL, Project A cost data for the inspected period (September 1991 - October 1992) was as follows:

	<u>September 1991</u>	<u>FY 1992</u>	<u>Inspected Period Total</u>
Costs Charged	\$272,916	\$973,944	\$1,246,860
Cost Adjustments	< 62,122 >	< 439,860 >	< 501,982 >
Net Costs Billed	<u>\$210,794</u>	<u>\$534,084</u>	<u>\$ 744,878</u>

Costs Charged reflect the expenses (or costs) charged to Project A during the period indicated. Cost Adjustments reflect reclassifications (or adjustments) of charges for Project A. The Net Costs Billed reflect the amounts billed (after adjustments) to the customer agency.

Even though the period covered by the data LLNL provided extended through the end of October 1992, there were no costs for the applicable Project A accounts, as specified above, for October 1992, the end of the period covered by our inspection. October 1992 costs were accounted for in a prime accounts series different from Prime Account 6461.

As of October 1, 1991, the start of Fiscal Year 1992, Project A had available funding of \$824,782. No additional funds were received for the LLNL accounts listed above during FY 1992. On February 24, 1992, the financial manager transferred \$290,698 from Project A's Subaccount 6461-00 to LLNL Subaccount 6455-51 to continue the funding for a customer task that was split out from the Project A subaccounts specified above. Thus, the net funds available to Project A, as described above, for FY 1992 totalled \$534,084. As indicated in the table above, the customer agency was billed for this precise amount in FY 1992.

As part of our financial transaction testing, all cost entries (and/or adjustments) over \$40,000 during the period inspected were reviewed.

The following cost adjustments met this criteria. They had been posted to Account 6461-00, which was used as a clearing account for work performed by the Mr. D Group during the period inspected.

<u>Month</u>	<u>Document Reference</u>	<u>Amount (Nearest \$)</u>
September 1991	P168	<\$ 51,222>
December 1991	M15685	< 50,000>
January 1992	M016695	< 52,750>
February 1992	M017766	< 51,250>
March 1992	M18472	< 48,500>
April 1992	M000542	< <u>127,384</u> >
Total Cost Adjustments		<\$381,106> <u><u> </u></u>

Institutional Research and Development (IR&D) and Lab General Expense (LGE) burdens are assessed as a percentage of the charges to an account. Since cost adjustments were applied to the WFO project, corresponding cost adjustments were applied for IR&D and LGE in the amount of <\$24,322>. Thus, the total cost adjustments reviewed, including the associated burdens, were <\$405,428>.

Each of the above cost adjustments to Subaccount 6461-00 was offset by a charge to Account 6460-51 ("J" Division/Applied Technology Program Administrative Costs). The cost transfer document, in each case, stated that the entry was either "to transfer charges made to wrong

accounts" or "moving expenses to correct accounts." No other backup information was provided on/or was attached to the cost transfer documents.

Based on an OIG request for additional information related to the adjustments, a LLNL management official responded, "I have no backup for the list of cost transfer moves from 6461-00 to 6460-51. These costs were task overages. They were moved to our program burden account (6460-51) and spread as overhead costs."

For the period September 1, 1991, through October 31, 1992, Project A spent \$1,246,860. Funds available from the customer were \$744,878. Based upon our review of transactions over \$40,000, we found Project A incurred task overages of at least \$405,428 out of the difference of \$501,982.

A memo from the Operations Manager, Applied Technology Program, to the Finance Manager, dated December 10, 1991, Supporting Documentation for Automatic Burdens, instructed how to distribute the costs in burden account 6460-51 to other users' activities for which Applied Technology was providing services. The costs were to be distributed as a specified percentage of the total costs, less LGE and IR&D costs, in the receiving accounts. According to the memo, about 25 percent of Applied Technology funding was from DOE's Office of Arms Control for work performed on 12-15 projects. The remaining 75 percent was from several WFO customers for work performed on 40-50 WFO projects.

In brief, work continued and costs were incurred beyond the amount of funding provided by the customer agency. Through the use of the overhead account, DOE and other customers paid a portion of the Project A task overages which had been charged to the overhead account and then distributed to their accounts. Contrary to DOE policy, LLNL was financing at least 35 percent of Project A's reimbursable work during the period inspected from DOE appropriations as well as other customers' funds. These actions may be contrary to requirements regarding the use of appropriated funds, as well as DOE's funds control policies.

Allowability of the Excess Costs Charged to DOE

During the time period we reviewed during this inspection, the University of California was operating LLNL for DOE under Contract W-7405-ENG-48.

The allowability of these excess charges to the contract with DOE should be reviewed. Various clauses in this M&O contract addressed the allowability of costs under the contract. Clause 6(b), Allowable and Unallowable Costs, stated in part, that "The costs allowable and reimbursable under this contract shall be those costs which are actually incurred in the performance of the work under this contract and which are necessary or incident thereto" Clause 11, Accounting and Financial Records, required the University to maintain a separate and distinct set of accounts, records, documents, and other evidence showing and supporting all allowable costs incurred.

As noted, the excess charges were for the benefit of the customer agency and not for the benefit of DOE. It may be determined that these costs were neither necessary nor incident to performance under the contract. In addition, the responsible program official acknowledged that the official had no backup for the cited cost transfers, a condition not consistent with the provision of Clause 11.

We believe that, under the terms of the M&O contract, these excess charges should be reviewed to determine if some or all of the charges may be unallowable.

Provisions of 50 USC on the Funding of Intelligence Activities

50 USC 414 states an intelligence or intelligence-related activity can only be funded by funds appropriated for intelligence work. As previously identified, this intelligence WFO project was partially funded by DOE's non-intelligence program and other WFO customers' funds through burden distributions. Such funding would appear to be inconsistent with the provisions of 50 USC 414.

Recommendations

We recommend that the Acting Chief Financial Officer, in conjunction with the Manager, DOE San Francisco Operations Office:

12. Review Project A's financial transactions for possible violations of DOE administrative control of funds regulations and take appropriate actions in accordance with DOE Order 2200.5B.

Office of Chief Financial Officer officials concurred with the recommendation, without offering any additional comments.

We further recommend that the Manager, DOE San Francisco Operations Office:

13. Instruct LLNL to make appropriate accounting adjustments to correctly state the expenses for Project A, other WFO projects, and DOE programs.
14. Notify the customer agencies of adjustments to correctly state WFO projects' expenses.
15. Review Project A (or subsequent follow-on WFO project(s)) activity since April 1992 to ensure that task overages have not continued.
16. Review the Applied Technology Program Administrative Costs (LLNL Account 6460-51) to ensure that other reimbursable projects task overages are not being charged to the account and then being inappropriately distributed to DOE or other customer accounts.
17. Direct SF Institutional (or Program) Managers to monitor overall WFO costs as required by SF MD 4300.2A, Paragraph 7.e., Item (7).
18. Direct LLNL to follow the procedures dealing with task overage issues required by SF MD 4300.2A, Paragraph 7.m., Items (9) and (14).
19. Review the excess charges to the Department of Energy to determine whether the charges are unallowable under the terms of the management and operating contract and, as appropriate, recover from the M&O contractor all unallowable charges.

San Francisco Operations Office management officials concurred with Recommendations 12 through 19. The management officials requested that we use the term Program Managers rather than Institutional Managers as used in SF MD 4300.2A. They agreed to direct Institutional (or Program) Managers to monitor work-for-others costs as required by SF MD 4300.2A.

Further, they stated "LLNL management has recently re-emphasized to program managers the importance of consistently following the procedures set forth in DOE

Orders and Directives. LLNL will also carefully re-examine its financial systems designed to monitor and track WFO project funding. Actions necessary to strengthen or improve systems will be taken."

USE OF FUNDS FOR OTHER THAN INTENDED PURPOSES

DOE Order 2200.5A, Chapter III, Paragraph 5.h.(2), states that funds provided under reimbursable agreements are to be used solely for the intended purposes, and in accordance with legal and other limitations imposed on the use of funds as specified in the agreements.

We found that a portion of the funds for one of the six projects reviewed was used for other than the purposes intended. LLNL placed \$305,000 of Project A funding in the wrong account. Customer funds in the amount of \$27,300 (i.e., \$305,000 less adjustments of \$249,000 and \$28,700) were never entered into the correct task's account; therefore, the \$27,300 was used for purposes other than those intended by the customer. A discussion of selected funding transactions for the project follows.

Project A at LLNL

Project A was an "umbrella" program which had received numerous tasks, not necessarily related, from the customer since the project's inception in December 1987. The program had been divided into two subprograms with a separate series of LLNL subaccounts within Prime Account 6461, and different groups to perform the work. The subaccounts and performing group were as follows:

<u>LLNL Subaccounts</u>	<u>Performing LLNL Group</u>
6461-00/49	Mr. D
6461-50/99	Mr. E

The two subprograms were assigned as part of Applied Technology ("J") Division's workload in the NAI Directorate.

As a proposal was generated for a specific customer task, LLNL assigned a proposal number such as AT-FY-XXX (with FY being the applicable fiscal year and XXX being a three digit number). One or more funded proposals were then

assigned to a specific 6461 subaccount in the 6461 series of accounts.

Funds received for Project A were accounted for using Accounts 6461-00 or 6461-50, depending on whether the Mr. D or Mr. E Group performed the work. Costs were accumulated in the specific, active 6461 subaccounts within the two series of costing subaccount ranges (01/49 or 51/99). Customer billings were recorded in Accounts 6461-00 or 6461-50 as offsets to the accumulated monthly costs recorded in the two series of costing subaccount ranges.

Funds for work identified in Proposals AT-90-120 and AT-90-121 were accepted by the DOE-SF Contracting Officer in April 1991 and were assigned to Subaccount 6461-33, since the Mr. D Group was to perform the work. Subsequent funding was accepted during May 1991. The applicable LLNL accounting entries relative to the receipt of this funding were as follows.

(Continued on next page)

Applicable LLNL Accounting Entries

LLNL Finance Date/ PO Number	LLNL Proposal Number	<u>LLNL Entries</u>	
		<u>Account</u> 6461-00	<u>Account</u> 6461-50

(To record funding received for Proposals AT-90-120 and AT-90-121, the following entry was made.)

04/29/91	AT-90-120/121	\$205,000	
S1I578141			

(However, the next increment of funding received in June 1991 for Proposals AT-90-120 and AT-90-121 was placed in the other series of LLNL accounts. The following entry was made.)

06/07/91	AT-90-120/121		\$305,000
S1I9118400			

(In June 1991, a partial adjustment of the funds was made, in the terms of the LLNL documentation, "To move funds mistakenly put in 6461-50." The following entries were made.)

06/23/91		\$249,000	\$<249,000>
S1I9118400			

(In March 1992, another partial adjustment of the funds was made, in terms of LLNL documentation, "To move funds mistakenly put in 6461-50." The following entries were made.)

03/16/92		\$28,700	\$<28,700>
S1I9118400			

An analysis of the above entries disclosed customer funds in the amount of \$27,300 (i.e., \$305,000 less the adjustments of \$249,000 and \$28,700) were never entered in the LLNL accounts to support Proposals AT-90-120/AT-90-121 as intended by the customer. Therefore, the \$27,300 was used for purposes other than those intended. Further, \$28,700 of the funds intended for these two proposals were not moved to the proper LLNL account until March 16, 1992, nearly nine months after LLNL management was aware that funds had been mistakenly put into Account 6461-50.

Recommendations

We recommend that the Manager, DOE San Francisco Operations Office:

20. Direct DOE-SF Institutional (or Program) Managers that institutional and program oversight, as specified in SF MD 4300.2A, Paragraphs 7.e.(10) and 7.g.(10), includes assurance that customer funds are used solely for intended purposes, as specified in DOE Order 2200.5A.
21. Direct LLNL to establish and implement written procedures dealing with the sole use of customer funds for intended purposes.

San Francisco Operations Office management officials concurred with these recommendations. Institutional (or Program) Managers will provide specified oversight for assigned projects, including the assurance that customer funds are used solely for intended purposes. Further, LLNL has been directed to, and will, reevaluate its procedures and reaffirm the guidance provided to the programs dealing with sole use of customer funds for intended purposes.

ACCEPTANCE OF FUNDS IN EXCESS OF FUNDING LIMITATIONS

DOE Order 2200.6, Change 2, Chapter IX, Paragraph 2.d.(7), states that reimbursable agreements accepted by DOE for reimbursable work shall be managed and accounted for in accordance with the funding limitations of the reimbursable agreement. We found that DOE-AL had accepted funding in excess of the funding requirements total proposed for both DOE-AL projects reviewed.

A discussion of the excess funding accepted by DOE-AL for Project C at Sandia National Laboratory, Albuquerque (SNL), and Project D at Los Alamos National Laboratory (LANL) follows.

Project C at SNL

Based on SNL's Proposal No. 9290705BA, the DOE-AL Contracting Officer accepted the customer's reimbursable work (Customer Project Authorization No. T/9261) on September 15, 1989. The original agreement was executed based on a proposed total estimated cost of \$15,602,000,

after the work portion of the funding requirement was increased for DOE's added factor of 3.2 percent. (See Appendix B for additional information on the "added factor rate.")

Through August 14, 1991, DOE-AL had accepted customer funding of \$14,541,000. The funding was in turn obligated to SNL's contract with DOE, Contract DE-AC04-76DP00789. In late Calendar Year 1991, the customer and SNL agreed that a revised proposal, primarily to increase TEC, was in order.

SNL did not provide DOE-AL with a revised proposal (SNL Proposal No. 92920812) until August 27, 1992. The revised proposal, with a revised TEC of \$28,485,000, was not approved by the DOE-AL Contracting Officer until September 25, 1992.

In the meantime, the customer continued to send funding documents, in this case Military Interdepartmental Purchase Requests (MIPRs), to DOE-AL. From November 14, 1991, to June 30, 1992, the customer forwarded seven MIPRs, totaling \$9,960,500, to DOE-AL. In accordance with DOE policy, DOE-AL should not have accepted funding documents totaling more than \$15,602,000, the approved funding requirement, until the revised proposal was reviewed and approved. The DOE-AL Contracting Officer correctly held five of the seven MIPRs, totaling \$4,821,500, until the revised proposal was approved.

On May 18, 1992, however, the DOE-AL Contracting Officer accepted the other two MIPRs. The first MIPR (No. F62400-91-1049/3), for \$550,000, brought cumulative funding to \$15,091,000, which was still within the funding limitation. However, the second MIPR (No. F62400-92-2056), for \$4,589,000, brought cumulative funding accepted by DOE-AL to \$19,680,000, or \$4,078,000 more than the funding requirement/agreement limitation of \$15,602,000.

The DOE-AL Contracting Officer and other DOE-AL management officials stated that MIPR NO. F62400-92-2056, for \$4,589,000 was accepted due to an administrative error. DOE-AL tracks funding document actions for each WFO project via a "Funding Acceptance Log." As cumulative funding was carried forward from page one to page two of the Project Authorization No. T/9261 Funding Acceptance Log, the initial funding of \$4,126,000 was overlooked. Thus, the carry forward amount was understated by this amount.

Project D at LANL

Based on LANL's Proposal No. DPW-89-53, with a proposed TEC of \$2,135,000, the DOE-AL Contracting Officer accepted the customer's reimbursable work and initial funding of \$400,000 (MIPR No. W43P6Q-89-EW046) on June 22, 1989.

Through September 28, 1989, DOE-AL had accepted customer funding totaling \$2,000,000. The funding was in turn obligated to LANL's contract with DOE, Contract W-7405-ENG-36. The customer prepared MIPR No. W43P6Q-90-EW029, for \$200,000, on December 11, 1989. Based on information in DOE-AL files and conversations with DOE-AL management, the cognizant DOE-AL management official was aware that acceptance of this MIPR would exceed the approved funding requirement of \$2,135,000 by \$65,000. According to a record in the WFO project file, the cognizant DOE-AL management official had discussed this situation with the customer in mid-February 1990. The customer was told that DOE-AL would accept MIPR No. W43P6Q-90-EW029 with funding of \$200,000, but would not accept additional funds until DOE-AL had endorsed a revised proposal. The MIPR was accepted on February 23, 1990, bringing cumulative funding to \$2,200,000, or \$65,000 more than the funding requirement/agreement limitation of \$2,135,000.

In addition to the administrative aspects of funds control, the value of the MIPRs accepted is important since the MIPR serves as a written document to substantiate the proper obligation in the customer agency's accounting records. DOE Order 2200.5B, Fund Accounting, states that "An obligation occurs ... when a legal responsibility arises for which the Department must expend funds. No amount shall be reported as an obligation unless it is supported by documentary evidence of transactions authorized by law" The Order states that the MIPR "shall be recorded as a valid obligation for the full amount stipulated in the agreement as of the date of acceptance." Thus, the dollar amount stated on the MIPR should represent the true liability of the customer agency.

In this case, DOE had formally agreed to perform work with an estimated cost of \$2,135,000; yet DOE accepted \$2,200,000, or \$65,000 more than was required.

In a similar manner, DOE modified the M&O contract to provide the full \$2,200,000 when DOE had approved only \$2,135,000 worth of work to be performed.

Conclusions

Acceptance of Project C funding in an amount above the funding limitation (i.e., funding requirements total proposed) appears to have been an administrative error. Acceptance of Project D funding in an amount above the approved funding requirement was contrary to DOE policy.

Regardless of the reasons for accepting funding over that required by the approved proposals, the effect was to erroneously record the apparent obligations in the accounting records of both DOE and the customer agencies. The customer agencies obligations were overstated since the accepted MIPRs served as the obligation document and the MIPRs overstated the liability of DOE and the customer agencies. When the funds were transferred to the M&O contractors via contract modifications, the obligations in the DOE accounting records were likewise overstated.

Recommendations

We recommend that the Acting Chief Financial Officer, in view of DOE-AL's comments on Recommendation 23:

22. Define "funding limitations" as used in DOE Order 2200.6, Chapter IX, Paragraph 2.d.(7). In particular, clarify if total estimated cost on an Interagency Agreement is a funding limitation.

Office of Chief Financial Officer officials concurred with the recommendation without offering any additional comments.

We recommend that the Manager, DOE Albuquerque Operations Office:

23. Direct employees to strictly adhere to the provisions of applicable DOE Orders when accepting reimbursable work, including approved funding requirements.
24. Review existing procedures for recording and tracking reimbursable funding actions and make appropriate changes to increase the likelihood that administrative errors do not go undetected.

Albuquerque Operations Office management concurred in principle with Recommendation 23 and concurred with Recommendation 24. Management officials did not agree that the intent of the referenced paragraph in DOE

Order 2200.6 was to prohibit acceptance of funding in excess of the performing organization's total cost estimate. However, they agreed that regarding the cost estimate as a funding limitation was a good management principle for assuring that funds were not accepted for work not described in Department of Energy approved technical proposals. They also stated that they had adhered to that principle in most instances.

Accordingly, DOE-AL management officials stated that they will formally notify WFO staff that funding in excess of the performing organization's TEC shall not be accepted. In addition, the FUNDING ACCEPTANCE LOG currently maintained in each WFO project file will be modified to include a note reminding responsible WFO staff to consider the TEC as a funding limit.

Since the total estimated cost is an integral part of the reimbursable agreement to perform specified work and the accepted funding document is used to document an obligation of funds (i.e., the legal liability), we believe that the TEC does represent the maximum funding (or funding limitation) which can be accepted for a specific work-for-others project. Funds provided by the customer agency in excess of the documented TEC do not meet the requirement for a valid obligation document and, therefore, should not be accepted. Accordingly, we have made a recommendation to the Acting Chief Financial Officer to define "funding limitation" as used in DOE Order 2200.6, Chapter IX.

ACCEPTANCE OF WFO PROJECT FUNDING LATE IN THE FISCAL YEAR AND FOR LABORATORIES NOT UNDER DOE-SF COGNIZANCE

Acceptance of a WFO project is governed in part by Chapter IX, DOE Order 2200.6, Reimbursable Work, Revenues, and Other Collections, and in part by DOE Order 4300.2B, Non-Department of Energy Funded Work (Work for Others).

The applicable portion of DOE Order 2200.6 states that departmental elements accepting reimbursable agreements, one form of which is WFO, shall establish firm cutoff dates prior to the end of the fiscal year to provide ample time to review, accept, obligate, distribute, and record reimbursable agreements.

DOE Order 4300.2B states that WFO can only be undertaken when a determination of the six criteria specified (as described in Appendix B) has been made and certified in writing by the responsible contracting officer. The Order states that the responsible contracting officer is the Departmental official with direct responsibility for administering the contract for the operation of a DOE research or production facility. The responsible contracting official for Sandia National Laboratories, Albuquerque, and Los Alamos National Laboratory is at the DOE Albuquerque Operations Office, since those M&O contracts are administered by that Office. Likewise, the responsible contracting officer for the Lawrence Livermore National Laboratory is at the DOE San Francisco Operations Office.

We found that DOE-SF had accepted reimbursable agreements in the form of WFO projects on the last day of FY 1991 without providing "ample" time for the review and acceptance process. We also found that DOE-SF had accepted some of these reimbursable agreements, in the form of WFO projects, for SNL and LANL, two laboratories for which DOE-SF was not the responsible contracting officer.

Project A at LLNL

The customer for Project A (a multi-tasked project) submitted sixteen purchase orders to the DOE Office of Intelligence (then DP-40) via a letter dated September 20, 1991. The sixteen purchase orders were as follows:

(Continued on next page)

<u>Order No.</u>	<u>Funded Amount</u>	<u>Performing Laboratory</u>
POS1I713856	\$224,000	LLNL
POS1I567599	300,000	LLNL
POS1I565785	195,000	LLNL
POS1I565784	112,000	LLNL
POS1I565786	340,000	LLNL
POS1I565780	298,000	LLNL
POS1I719383	139,000	LANL
POS1I565787	50,000	LANL
POS1I567388	240,000	SNL
POS1I614111	240,000	SNL
POS1I614110	120,000	SNL
POS1I614103	35,000	LANL
POS1I9120301	184,600	SNL
POS1I614109	230,000	SNL
POS1I614112	50,000	LANL
POS1I614113	<u>133,400</u>	LANL
 Total	 <u>\$2,891,000 *</u>	

* \$1,469,000, \$407,400, and \$1,014,600 for LLNL, LANL, and SNL, respectively.

The Director, Office of Intelligence, completed the actions specified in DOE Order 4300.2B, Paragraph 10.i., for intelligence-related non-DOE funded work projects. The purchase orders were forwarded to DOE-SF's LLNL Site Office via a cover memorandum dated September 25, 1991. The memorandum instructed that the pertinent DOE Operations Office was responsible for completing the remainder of the certifications specified in DOE Order 4300.2B, Paragraph 8, covering policy determinations.

The DOE-SF LLNL Site Office Intelligence WFO Program Manager and DOE-SF Contracting Officer reviewed the purchase orders. They signed the applicable portions of the SAN Reimbursable Work Approval Form (SAN Form) on September 26 and September 30, 1991, respectively. The completed SAN Form evidenced consideration of the review factors relative to the policy determinations required by DOE Order 4300.2B, Paragraph 8, including the determination that the work was consistent with and complementary to the mission of the organization(s) to which the work was to be assigned. However, the completed SAN Form made no mention of work being performed by LANL or SNL, only by LLNL. The DOE-SF Contracting Officer's file did not contain evidence

that DOE-SF had contacted DOE-AL, LANL, or SNL prior to completing the SAN Form.

The DOE-SF Contracting Officer accepted the funding on September 30, 1991. LLNL's contract with DOE, Contract No. W-7405-ENG-48, was modified via MOD A186 to include the funding, including those funds separately identified for SNL and LANL, on the same day.

Reasons for DOE-SF Accepting Funds

The DOE-SF Contracting Officer stated that the LANL and SNL funding was accepted because of the Office of Intelligence memorandum and the customer's letter discussed above. LLNL management told us that the LANL and SNL funds were obligated to the LLNL contract because it was too close to the end of the fiscal year for DOE-AL to adhere to its cutoff dates established in accordance with DOE Order 2200.6. LLNL management further stated that, while the LANL and SNL WFO projects paralleled work being done at LLNL, LLNL would never have been involved with the LANL and SNL WFO projects and funding at all if DOE-AL would have accepted the funds.

Application of Cost Burdens

On December 20, 1991, the Director, Office of Intelligence, sent a memorandum to the Program Leader, Special Projects Program, LLNL. The Director requested that LLNL forward purchase orders to LANL and SNL for efforts specified in the customer's Statements of Work, with the understanding that LLNL would manage the funds for all these efforts. For managing the funds, LLNL could allocate up to about 5.5 percent for Institutional Research and Development (IR&D) and Lab General Expense (LGE) burdens.

LLNL transferred the funds to LANL and SNL on January 8, 1992, via LLNL "SANL Administrative Services Memorandum Requests." LLNL deducted \$21,819 and \$54,340 from the LANL and SNL funds, respectively, for the IR&D and LGE burdens discussed above. The funds were subjected to similar LANL and SNL burdens after their receipt at the performing laboratories.

Conclusions

Since a portion of the accepted funds was intended for laboratories for which DOE-AL is the responsible contracting officer, DOE-SF accepted funds that the DOE-SF

Contracting Officer had no authority to accept. The requirement in DOE Order 4300.2B, Paragraph 8, that the written determination be made by the responsible contracting officer, was also not met.

By allowing only three working days (or five calendar days) to process the customer's purchase orders, DOE-SF did not allow ample time prior to the end of the fiscal year to review, accept, obligate, distribute, and record the reimbursable agreement.

Recommendations

We recommend that the Manager, DOE San Francisco Operations Office:

25. Accept future reimbursable agreements only for the management and operating contractors for which DOE-SF is the responsible contracting officer, unless appropriate exceptions to DOE Order 4300.2B have been properly approved.
26. Adhere to the requirements of DOE Order 2200.6 in establishing cutoff dates such that the dates provide ample time for processing reimbursable agreements.

San Francisco Operations Office management concurred with the recommendations without offering any additional comments.

INSUFFICIENT INVOICE DETAIL

DOE Order 2200.6, Change 2, Chapter IX, Paragraph 2.i.(3)(a), states that "Approved Treasury forms or the Treasury's On-Line Payment and Collection System must be used for expenditure transfers between DOE and other Federal agencies." For the six WFO projects we inspected, Standard Form 1080 (Voucher for Transfers Between Appropriations and/or Funds) was being used by DOE for this purpose.

Per Paragraph 2.i.(2)(c), the cognizant field element may assign all collection and accounting activities for the work to the performing M&O contractor. Otherwise, the M&O contractor transfers the amount to be billed to DOE accounts, and the DOE field element performs the receivable and collection activities.

Concerning the content of the bill, Paragraph 2i(3)(d) states only that "Billings based upon accrued and recorded costs will be issued monthly or in accordance with reimbursable agreements and will include the date that goods and services were provided, in addition to the 'as of' billing date."

During our discussions with personnel from two customer agencies, the lack of detailed information on Standard Form 1080 (SF 1080) billings received from DOE or DOE M&O contractors was addressed. The customers stated that the bills often contained little or no information under the Item or Description of Services section and only a one-line entry for the amount billed.

A discussion of the various billing practices we reviewed at the visited sites follows.

Projects A and B at LLNL

In accordance with DOE Order 2200.6, DOE-SF had assigned receivable and collection activities to LLNL for reimbursable work performed by the M&O contractor. Under the Item or Description of Services section of completed SF 1080s, LLNL listed the major elements of cost (e.g., payroll, payroll burden, stores, purchases, travel, overhead, DOE added factor, etc.) and the current month's charges for each cost element. The cost elements charges were totaled to arrive at the amount billed. Thus, LLNL was providing detailed information to the customers billed.

Projects C at SNL and D at LANL

DOE-AL had not assigned the receivable and collection activities to either SNL or LANL for reimbursable work performed by these M&O contractors.

SNL provided reimbursable work invoices to DOE-AL for use in billing customers. These invoices reflected only an amount for the costs incurred for the current month, before the DOE added factor was applied.

LANL provided reimbursable work cost transfer detail documents to DOE for use in billing customers. These cost transfer detail documents only reflected an amount for the costs transferred for the current month, before the DOE added factor was applied.

DOE-AL used the SNL reimbursable work invoices and the LANL cost transfer detail documents as source documents for preparing customer bills. DOE-AL computed the applicable DOE added factor amount and added this amount to the SNL or LANL cost transfer amount. DOE-AL then billed the customer using a computer-generated SF 1080. No information was recorded under the Item or Description of Services section and a one-line entry was recorded for the amount billed.

The DOE Office of Organization and Management Systems (AD-12), with assistance from a team of officials from other DOE offices, conducted a management review of DOE-AL's work-for-others activities during June 1991. Their report, Work-for-Others Management Review - Albuquerque Field Office, was dated June 12, 1991. Part IV.B., Finding 8 was as follows:

Intelligence sponsors have expressed a concern to the DOE-IG regarding the lack of detail provided in the articles or services section of intelligence WFO project vouchers. Reviews of FMD vouchers for intelligence WFO projects revealed that none of them have descriptions for the billed items (e.g., labor, equipment).

The team recommended that DOE-AL, in consultation with DOE's Office of Intelligence, revise the procedures for recording, at the unclassified level, a description of the articles or services provided for the billed items.

Project E at DOE Headquarters

Costs for Project E were primarily incurred by a non-M&O prime contractor. Other charges included DOE Headquarters travel and support costs as well as M&O contractor costs. The receivable and collection activities for Project E were being performed by DOE's Office of Headquarters Accounting Operations (CR-521.2).

The prime contractor provided an SF 1034, Public Voucher for Purchases and Services Other Than Personal, to bill DOE for incurred costs. Under the Articles or Services Section of completed SF 1034 Continuation Sheets, the prime contractor listed the major elements of cost (e.g., direct labor, overhead, direct charges parts and materials, direct charge travel, capital equipment, etc.) and the current period's charges for each cost element. The cost elements were totaled to arrive at the amount on the SF 1034.

Headquarters Accounting Operations used the submitted SF 1034s as source documents for preparing customer bills. CR-521.2 computed the applicable DOE added factor amount and added this amount to the SF 1034 amount. DOE then billed the customer using a computer-generated SF 1080. DOE only listed the WFO project number and title as well as the total amount billed in the Description of Services section of the completed SF 1080. The prime contractor's completed SF 1034s, including continuation sheets, were attached to completed SF 1080s. This provided the customer with detailed billing information.

For other charges, Headquarters Accounting Operations computed the applicable DOE added factor amount and added this amount to the submitted charges. Headquarters Accounting Operations also billed the customer for these charges using a computer-generated SF 1080. The only information recorded in the Description of Services section of the completed SF 1080s was the WFO project number and title as well as the total amount billed. For these charges, the customer was not provided major elements of cost details.

Project F at Oak Ridge National Laboratory (ORNL)

In accordance with DOE Order 2200.6, the DOE Oak Ridge Operations Office had assigned receivable and collection activities to Martin Marietta Energy Systems (Energy Systems) for reimbursable work performed by ORNL and other facilities of the M&O contractor. Energy Systems only listed the title of the work-for-others project in the Item or Description of Service section of the completed SF 1080. There was also a one-line entry for Energy Systems' current cost as well as a one-line entry for the applicable DOE added factor. The cost amount and the DOE added factor was totaled to arrive at the amount billed.

Energy Systems' management confirmed that selected customers were not satisfied with the lack of billing detail. In those cases, Energy Systems routinely provided back-up to the SF 1080 which detailed the major elements of cost.

Policy on Information to be Contained in DOE Billings

DOE Order 2200.6, which contains the DOE financial management policies and procedures, does not provide guidance on the level of detail required for DOE billings. Paragraph 2i(3)(d) states only that "Billings based upon accrued and recorded costs will be issued monthly or in accordance with reimbursable agreements and will include the date that goods and services were provided, in addition to the 'as of' billing date."

Federal Acquisition Regulation (FAR) Subpart 17.5 on Interagency Acquisitions provides that the order may be placed on any form or document that is acceptable to both parties. The FAR states that the order should include a payment provision. Thus, the FAR also provides minimal guidance on the content of billings.

Department of Energy Acquisition Regulation (DEAR) Subpart 917.5 prescribes DOE procedures when DOE obtains interagency acquisitions under the Economy Act of 1932. DEAR Subpart 917.505-71 discusses cost reimbursement standards. Cost reimbursement standards include direct and indirect costs. The DEAR also provides examples (or major elements) of direct costs that can be directly identified and so presumably should be included on bills received for payment by DOE. The examples are similar to the major elements of cost discussed above under Projects A and B at LLNL and work performed by the non-M&O contractor for Project E.

We believe that DOE should establish a policy on the billing detail required on Standard Form 1080, or other billing mechanism, when DOE performs services for a customer agency. A reasonable base to use in developing this policy would appear to be the level of detail expected, as discussed in the DEAR, when other Federal agencies render a billing to DOE.

Recommendations

We recommend that the Acting Chief Financial Officer:

27. Develop a policy and revise DOE Order 2200.6, and any other applicable orders, to require appropriate cost detail (e.g., at the major elements level) when rendering SF 1080 billings to reimbursable work customers.

We recommend that the Director, Office of Headquarters Accounting Operations:

28. Provide appropriate cost detail, as determined in Recommendation 27, to reimbursable work customers when rendering SF 1080 billings.

Office of Chief Financial Officer management officials concurred with Recommendations 27 and 28.

We recommend that the Manager, DOE Albuquerque Operations Office:

29. Direct SNL and LANL to provide appropriate cost detail (e.g., at the major elements level) on the reimbursable work invoices and cost transfer detail documents, respectively.
30. Provide appropriate cost detail (e.g., at the major elements level), when available, to reimbursable work customers when rendering SF 1080 billings.

Albuquerque Operations Office management officials concurred with Recommendations 29 and 30. Once SNL and LANL start providing appropriate cost detail per Recommendation 29, DOE-AL will attach that information to the SF 1080 billings rendered to WFO customers. This information would provide the customers with appropriate cost detail.

We recommend that the Manager, DOE Oak Ridge Operations Office:

31. Direct Martin Marietta Energy Systems to provide appropriate cost detail (e.g., at the major elements level) to reimbursable work customers when rendering SF 1080 billings.

Oak Ridge Operations Office management concurred with this recommendation. They further commented that Martin Marietta Energy Systems began providing appropriate cost detail with SF 1080 billings in Fiscal Year 1993.

NOTED INTERNAL CONTROL WEAKNESSES

Systems of internal control include the plan of organization and methods and procedures adopted by management to ensure that resource use is consistent with laws and regulations; that resources are safeguarded against waste, loss, and misuse; and that reliable data are obtained, maintained, and fairly disclosed in reports.

Adequate internal controls are essential to achieving management and program goals and to providing for full accountability over the available resources. Internal controls help to achieve the positive aims of management and assist in preventing negative consequences from occurring.

Notwithstanding these requirements, we identified areas where internal controls were not working as intended. It should be noted that our review of internal controls was limited to those related to the reviewed transactions as described in Appendix A. Because our review was limited, it would not necessarily have disclosed all internal control deficiencies that may have existed.

Revision of DOE Order 2110.1A

DOE Order 2110.1A, Pricing of Departmental Materials and Services, was issued on July 14, 1988. The Order provides policy for establishing prices and charges for materials and services sold or provided by the Department, either directly or through Departmental contractors, including management and operating contractors, to external organizations.

In memoranda dated January 22 and March 22, 1990, the DOE Controller, subsequently designated the Acting Chief Financial Officer, provided guidance on the implementation of a "Departmental Added Factor Rate" of 3.2 percent which was to be implemented for FY 1992. The Departmental Added Factor Rate was to be applicable to all work-for-other Federal agencies unless a waiver was granted. Per the March 22, 1990, memorandum, DOE's Management Accounting and Pricing Division was to revise applicable sections of DOE Order 2110.1A to be consistent with the new policy.

The DOE Order on pricing policy has not been revised to reflect the implementation of a Departmental Added Factor Rate for work-for-other Federal agencies. On May 18, 1992, the most recent revision (Change 2) to DOE Order 2110.1A

was published. The purpose of the change was solely intended to update administrative organization titles per SEN-6D-91, "Departmental Organization and Management Arrangements." Therefore, Change 2 did not revise this paragraph to take into account the implementation of the Departmental Added Factor Rate for work-for-other Federal agencies.

Projects A and B at LLNL

During the time period we reviewed during this inspection, the University of California was operating DOE's Lawrence Livermore National Laboratory under Contract W-7405-ENG-48. Clause 65 (Use of DOE Facilities for Non-DOE Funded Work) allowed the University to perform non-DOE funded work-for-other Federal agencies, consistent with applicable DOE rules and regulations. DOE Order 2200.6, Change 2, Chapter IX, Paragraph 2.i., states that it is imperative that prudent management and control techniques be employed to ensure that reimbursable work is authorized, performed, and accounted for in accordance with applicable budgeting and accounting policies and procedures.

Our review of selected financial transactions at LLNL identified areas where internal controls were not working as intended.

- o Distribution of Costs - A requirement of financial internal control systems is that the systems and all transactions processed through the systems should be clearly documented. An aspect of this requirement is that applicable rules, including basis of distribution, should be consistently applied.

During our review of Projects A and B at LLNL, we noted that the administrative (or burden) costs in several accounts within the NAI Directorate were being distributed to DOE programs and non-DOE customers. These accounts were as follows:

(Continued on next page)

<u>Account</u>	<u>Description</u>
5386-10	Applied Technology ("J") Division Mr. E. Group
5386-25	Applied Technology ("J") Division Mr. D. Group
5720-01	Intelligence ("Z") Division
6460-51	Applied Technology ("J") Division
6681-00/03	NAI Directorate

During FY 1992, LLNL developed written procedures for the distribution of Accounts 6460-51 and 6681-00/03. However, Accounts 5386-10, 5386-25, and 5720-01 did not have procedures describing the bases of distribution, resulting in distribution rates that varied from month-to-month.

- o Travel Advance - Per DOE Order 2200.6, Change 2, Chapter IX, Paragraph 2.i.(1)(e), DOE shall not finance reimbursable work from its own appropriations, but only from the appropriation accounts of the ordering Federal agency. During our review of selected travel claims for Project B, we noted that an overseas travel advance was charged to a DOE program account rather than the applicable Project B account. Since the travel advance entry of \$1,626.66 was never properly corrected, DOE was still charged with a portion of Project B's travel expenses.
- o Executive Compensation - Per DOE Contract W-7405-ENG-48, Appendix A, Part II, Paragraph IV.E., any increases to salary over a specified salary threshold (i.e., executive compensation) must be approved by DOE prior to going into effect. During our review of Project A labor costs, we noted that the customer was charged increased rates for two "executive compensation" employees prior to DOE approving the increases. As a result, the customer was overbilled approximately \$2,571, which represented a labor charge of \$1,181 and associated burdens of \$1,390.

Project C at SNL

American Telephone and Telegraph Company (Technologies) formed a Delaware corporation known as Sandia Corporation to operate DOE's Sandia National Laboratory in Albuquerque, New Mexico under Contract DE-AC04-76DP00789. Article XI - General, Paragraph 3., of this contract required the Sandia Corporation to "use a system of accounting and property control conforming to sound accounting principles, followed by Technologies and adapted to provide accounting and property information required by the [DOE] Contracting Officer." Accounting and property controls are segments of an organization's internal or management control system.

Our review of selected financial transactions for Project C at SNL identified areas where internal controls were not working as intended.

- o Purchases Forecast - Sandia Laboratories Instruction 6650 (dated June 29, 1987) and Sandia Purchasing Instruction 8.02-1 (dated August 31, 1989) prescribed the use of forecasts to both plan and control purchases, including subsequent payments. A forecast is an estimate of the monthly timing of future purchase costs. Due to improper forecasting, Sandia made payments for three months of maintenance services beyond the subcontract termination date. These three payments totaled \$2,754.19, or approximately 7 percent above the amount specified in the reviewed subcontract.
- o Time Card Changes - Sandia Laboratories Instruction 4115 (dated May 1, 1989) stated that erroneous timecard entries must be lined out and initialed by the supervisor. During our review of selected timecards, we noted five timecards which had erroneous entries but did not have the supervisor's initials.

Project D at LANL

During the time period we reviewed during this inspection, the University of California operated DOE's Los Alamos National Laboratory under Contract No. W-7405-ENG-36. We did not identify a contract clause that specifically required LANL to have a system of internal control.

However, Clause 11-Accounting and Financial Records, Paragraph (h), Internal Audit, of this contract did require LANL to perform an internal audit program consistent with

the guidelines contained in the Institute of Internal Auditors publication "Standards for the Professional Practice of Internal Auditing," (Standards). Part 300 of the Standards, Scope of Work, states that the scope of internal audit work should encompass the examination and evaluation of the adequacy and effectiveness of the organization's system of internal control. (emphasis added)

Our review of selected financial transactions for Project D at LANL identified areas where internal controls were not evident or were not working as intended.

- o Journal Vouchers - A system of internal accounting control includes separation of duties so preparation and authorization of transactions are executed by different individuals. During our review of a sample of 10 journal vouchers, we noted one journal voucher did not have "prepared by" or "approval" signatures; the stated total debit and credit amounts were incorrect on the same journal voucher; and the same individual both prepared and approved another journal voucher.
- o Effort Reports - The Office of Inspector General released Report No. INS-O-88-2, entitled Inspection of Labor Charging Procedures at Los Alamos National Laboratory, on September 12, 1988. Recommendation 1 of the report recommended LANL supervisors approve employees' periodic time sheets. DOE-AL responded that they would direct LANL to pursue the implementation of a system that would involve the distribution of time by a supervisor, who with employee confirmation, would make the labor distribution for the reporting period. Per LANL's Financial Management Handbook, Part FM 4061, effort reports are now used to distribute employees' time.

During our review of time charges to Project D, we were informed that LANL's Applied Technology Division (AT) used bi-weekly time sheets, in addition to the effort reports required by LANL, to account for employees time. We were further informed, and did confirm during our review, AT supervisors were neither reviewing nor approving the employees' bi-weekly time sheets or effort reports.

- o Recording Costs - Per DOE Order 2200.6, Change 2, Chapter IX, Paragraph 2.i.(1)(d), no reimbursable work shall continue and no costs shall be incurred beyond

the amount of funding provided in the reimbursable agreement and attendant modifications. Per Paragraph 2.i.(1)(e), DOE shall not finance reimbursable work from its own appropriations or another customer's funds but only from the appropriation accounts of the ordering Federal agency. Additionally, a system of internal accounting control requires transactions and other significant events to be promptly recorded and properly classified.

During our review of Project D, we noted LANL had recorded Project D costs in a holding account rather than in the account established to collect Project D costs. LANL management informed us the holding account was used to ensure that Project D costs would only be recorded in the Project D account up to the amount of available funds. We were further told that, should the costs result in an overcosting of the Project, the overcosted amount in the holding account would be charged to AT's overhead account, and subsequently distributed to others.

Recommendations

We recommend that the Acting Chief Financial Officer:

32. Revise DOE Order 2110.1A, and any other applicable DOE guidance, to correctly reflect the current DOE policy relative to the Departmental Added Factor Rate.

Office of Chief Financial Officer management officials concurred with the recommendation. They further stated that a revision of DOE Order 2110.1A, which incorporated the referenced policy, had been completed and was being processed for publication.

We recommend that the Manager, DOE San Francisco Operations Office:

33. Direct LLNL to review internal controls for the areas cited and take necessary actions to strengthen internal controls.

San Francisco Operations Office management concurred with this recommendation.

We recommend that the Manager, DOE Albuquerque Operations Office:

34. Direct SNL to review internal controls for the areas cited and take necessary actions to strengthen internal controls.
35. Direct LANL to review internal controls for the areas cited and take necessary actions to strengthen internal controls.

Albuquerque Operations Office management concurred with Recommendations 34 and 35, and will direct SNL and LANL to review internal controls for the areas cited and take necessary actions to strengthen internal controls. Management stated, "In addition, AL FMD promulgated its Financial Management Assistance Review (FMAR) Guidelines in July 1992 containing review criteria for WFO financial administration. AL FMD has established a review schedule for all contractors; WFO will be reviewed in 1995."

USE OF ADDITIONAL SECURITY PROCEDURES FOR THE PROTECTION OF NATIONAL SECURITY INFORMATION

The authority for DOE to classify national security information is provided by Executive Order 12356, "National Security Information." The Executive Order also permits the agency head, in this case the Secretary, to create special access programs to control access, distribution, and protection of particularly sensitive information classified pursuant to Executive Order 12356. SAPs may be created or continued only at the written direction of the agency head. For special access activities pertaining to intelligence activities (including special activities but not including military operational, strategic, and tactical programs), or intelligence sources or methods, this function is exercised by the Director of Central Intelligence.

32 CFR 2001.70(f), "Special Access Program," published by the Information Security Oversight Office, describes the characteristics of special access programs. The CFR states that:

Such a program may include, but is not limited to, special clearance, adjudication, or investigative requirements, special designations

of officials authorized to determine "need-to-know," or special lists of persons determined to have a "need-to-know."

Similarly, DOE Order 5635.1A defines a special access program as "Any program imposing need-to-know or access controls beyond those normally provided Such a program may include, but is not limited to, ... special lists of persons determined to have a need-to-know."

Within DOE, a basic criteria for access to classified information is a "need-to-know." Need-to-know is a determination by a person having responsibility for classified information or material that a proposed recipient's access to such classified information or material is necessary in the performance of official or contractual duties of employment.

In certain cases, DOE procedures prescribe the use of methods to control access authorization beyond those normally used for National Security Information.

- o For SCI, DOE Order 5635.1A requires the use of procedures established by the Director of Central Intelligence.
- o In other cases, DOE uses a formal record of briefing on the purpose and significance, as in the Personnel Assurance Program.

However, special security statements (e.g., "read-on" or "read-off" statements) and access lists (i.e., a list of named individuals determined to have a need-to-know and who have received a special "read-on" to the classified information) are not normally used by DOE for the purpose of controlling access to national security information classified under the authority of Executive Order 12356.

At two national laboratories, we found indications that security procedures, beyond those normally used within DOE for the protection of national security information, were being utilized to protect national security information.

- o At one national laboratory, the security procedures used during a classified testing program of several months duration included a by-name access list. The laboratory Group Leader established the by-name access list of 29 individuals in a memorandum signed in October 1990. The access list named specific

personnel from the laboratory, two government agencies, and three other contractor organizations.

- o At another national laboratory, a security official told us there were what the official characterized as "big SAPs" and "little SAPs." The official stated a "big SAP" was a formal SAP with the security requirements imposed by the customer. The official stated a "little SAP" was not a formal SAP. Rather, the customer has asked them to control access to information or facilities. Whether a "read-on" or "read-off" was used depended upon the customer. In cases where read-on or read-off was required, and when the Standard Form 4414 (Sensitive Compartmented Information Nondisclosure Agreement) was not used, a form provided by the customer was used. This official estimated that there were seven intelligence related "little SAPs" at that location.

We believe the use of additional security procedures, including informal "read-on" or "read-off" statements and access lists, was not consistent with normal DOE security procedures for the protection of National Security Information. Such security procedures were more appropriate to SAPs. The use of such security procedures creates the appearance of an unauthorized SAP, since the required written direction from the agency head was neither requested nor received.

Recommendations

We recommend that the Director, Office of Security Affairs, in conjunction with DOE Secretarial Officers:

36. Identify any WFO projects or other programs imposing need-to-know or access controls beyond those normally provided by DOE security procedures. Once identified, determine the security requirements for these WFO projects or other programs.

The Director, Office of Security Affairs, concurred with this recommendation, and stated that substantial progress had been achieved in identifying previously unidentified WFO projects.

We recommend that the Director, Office of Security Affairs:

37. Establish a policy, for those WFO projects where additional security requirements have been requested

by another Federal agency, to require the other Federal agency to document their additional security requirements in accordance with Executive Order 12356 or other appropriate authority.

The Director, Office of Security Affairs, concurred with this recommendation and stated that proposed changes had been provided for incorporation into DOE Order 4300.2B. Further, a security procedure agreement will be issued for each project that may require more stringent protection than is currently being provided at Departmental sites. The agreement(s) will be documented and agreed upon by all interested parties. Additionally, external departmental WFO sponsors will be educated on the basic security requirements that the Department has in place.

COUNTERINTELLIGENCE SUPPORT FOR SPECIAL ACCESS PROGRAMS

The purpose of special access programs, as stated in Executive Order 12356, "National Security Information," is "... to control access, distribution, and protection of particularly sensitive information classified pursuant to this Order" (emphasis added) Executive Order 12356 states that agency heads may create special access programs; for SAPs pertaining to intelligence activities, this function will be exercised by the Director of Central Intelligence.

Executive Order 12333, "United States Intelligence Activities," governs the conduct of intelligence activities. The Executive Order states "Counterintelligence means information gathered and activities conducted to protect against espionage, other intelligence activities, sabotage, or assassinations conducted for or on behalf of foreign powers, organizations or persons, or international terrorist activities, but not including personnel, physical, document or communications security programs."

Since SAPs deal with particularly sensitive classified information, we believe they are likely targets for espionage and other intelligence activities.

Executive Order 12333 also states that "... the Director of the FBI shall: (a) Within the United States conduct counterintelligence and coordinate counterintelligence

activities of other agencies within the Intelligence Community."

A memorandum of understanding between the Federal Bureau of Investigation and the Department of Energy for the coordination and conduct of counterintelligence activities states, in part, that:

Executive Order 12333 ... directs that the FBI and DOE as agencies within the Intelligence Community conduct their counterintelligence activities in a coordinated and cooperative manner to protect the national security interest of the United States.

DOE Order 5670.3, Counterintelligence Program, establishes the policies and procedures for the DOE counterintelligence (CI) program. The purpose of the DOE CI program is to "... deter and neutralize foreign industrial or intelligence activities in the United States directed at or involving DOE programs, facilities, technology, personnel, unclassified sensitive information, and classified matter." The concept of operations states "Each Headquarters and field element of the CI program will be designed to counter site-specific intelligence threats directed against its personnel, information, activities, facilities, and technologies."

DOE CI Activity in Support of SAPs

We found little evidence of DOE CI activities in support of the special access programs in DOE facilities or to which DOE or DOE contractor employees were "read-on" to. No program officials, security officials, or CI officials we interviewed could specifically cite the DOE CI support being provided to SAPs at DOE facilities for which they had cognizance.

- o An official of the DOE Office of Counterintelligence (IN-20) stated that counterintelligence work has not been done with SAPs at DOE facilities or with SAPs which DOE personnel were read-on to. The official was not aware of any indications of espionage and characterized the primary function of the Office of Counterintelligence as heightening CI awareness, or being educational in nature. The official stated the day-to-day protection is under the appropriate Safeguards and Security Offices.

In order to facilitate CI efforts in cases where an inquiry is appropriate, the official cited coordination efforts such as the Letter of Agreement (LOA) between the Department of Defense (DOD) and the DOE Office of Intelligence. The purpose of the LOA was to establish procedures for coordinating CI issues and activities that are of mutual concern to DOE and DOD CI components. For example, the LOA states:

The Office of Counterintelligence (OCI), within DoE Office of Intelligence, will be the recognized counterintelligence focal point for the coordination of any CI activities, inquiries, or investigations lawfully conducted by any DoD CI Component on any persons, programs or facilities located at DoE operating locations.

- o Security officials, representing the physical and personnel security offices at a DOE operations office we visited, were unaware of any CI work being done in support of SAPs at the operations office or at national laboratories under their cognizance. At one national laboratory, a physical security specialist said an area would be protected based upon classification (e.g., confidential, secret) even though SAP activity was being performed in the area. The physical security specialist was unaware of any SAP activity at the laboratory. Based on information provided to us in June 1992 by the Office of Assistant Secretary for Defense Programs, there was at least one SAP at this laboratory.
- o We asked the Special Security Officer (SSO) at one national laboratory what CI work, if any, had been done for a SAP the SSO knew to be at that location. The SSO was not aware of any CI work. The SSO stated, in the SSO's opinion, CI work would be done at the customers discretion, probably with CI agents from the customer's organization. Within DOE, the SSO stated that, logically, any CI work would be done by the DOE Office of Counterintelligence (IN-20).

An official responsible for physical security at the same laboratory was not aware of any CI activity from customer agencies at that site.

The CI coordinator at that national laboratory was not a trained CI agent. The official stated, at that time, the CI program was mostly educational in nature and did not provide CI services to SAPs.

A related condition, as noted in an earlier portion of the report, is that DOE is not necessarily aware of what SAPs are being worked on in DOE facilities or what SAPs DOE and DOE contractor employees are actually "read-on" to. We found this condition to be true at DOE Headquarters, a DOE operations office, and a national laboratory. Without this information on the likely targets at the site, we believe the responsible managers cannot effectively develop a CI program designed to counter the "site-specific intelligence threats" as required by DOE Order 5670.3.

Responsibilities of Other Federal Agencies

We were told all special access programs at DOE facilities which involve WFO projects were created by the customer agency. As identified earlier in this report, other SAPs operate in DOE facilities or are supported by DOE appropriations or personnel. As the creator of the SAP, the customer agency also has counterintelligence responsibilities for their special access program.

DOE, the FBI, and the special access program customer agency all might, at some time, conduct counterintelligence activities at DOE facilities. We believe any CI activity at DOE facilities or involving DOE Federal or contractor employees should be coordinated with DOE CI officials. DOE CI officials we spoke to were not aware of any CI activity by other agencies. This may indicate either (1) coordination was not taking place or (2) there was, in fact, no CI activity in support of special access programs at DOE facilities.

If the DOE CI program is to deter and neutralize threats against the Department's facilities and personnel, development of information on site-specific targets and threats would be appropriate. Establishing letters of agreement, such as the agreement with DOD, is a step in this direction.

In commenting on a draft of this report, the Director, Office of Intelligence, stated that "As a result of recent changes in the world power structure, the intelligence community has observed a redirection in the collection priorities of foreign intelligence services away from

military and intelligence information and toward economic and technological data." The Director stated that the Office has chosen to include special access program personnel and projects in its larger, more generic counterintelligence program.

The Director also stated that "The development of site specific policies and procedures for classified programs, especially [special access programs] would not enhance current [counterintelligence] programs already in place in the Department and in fact would reduce current efforts due to the requirement to reassign limited resources to writing policy and procedures for these numerous and diverse efforts."

In our draft, we did not recommend that site-specific policies and procedures be developed. We believe that, as a minimum, there should be a policy statement of how CI requirements for these types of projects are to be met. The policy statement should also include policies for coordination with the FBI or the CI elements of customer agencies. We could not find such a policy statement. We have revised recommendation 38 to more clearly address the requirement for a policy statement.

The Director also commented that SAPs would be included in the larger, more generic CI program and the development of site-specific policies and procedures would not enhance current CI programs already in place. We believe that the use of the generic counterintelligence program would not be consistent with the concept of operations contained in the DOE Order 5670.3, Counterintelligence Program. The Order states that the CI program will be designed to counter site-specific intelligence threats. (emphasis added) We have, therefore, added Recommendation 39.

Recommendations

We recommend that the Director, Office of Intelligence, in conjunction with the Director, Office of Security Affairs:

38. Develop policies and procedures for providing and/or coordinating counterintelligence support to classified activities, especially SAP activities in DOE facilities, or otherwise documenting how counterintelligence support will be provided to SAPs operating within Department of Energy facilities or to which DOE employees have access.

39. Review the concept of operations concerning the counterintelligence program to counter site-specific intelligence threats, as stated in DOE Order 5670.3, for consistency with the current "generic" approach stated by the Director, Office of Intelligence.

The Director, Office of Intelligence, as well as the Director, Office of Security Affairs, concurred with Recommendations 38 and 39.

REVIEW, ACCEPTANCE, MONITORING, AND FILES MAINTENANCE OF WFO PROJECTS TO BE PERFORMED AT DOE-SF

For the classified WFO projects reviewed, the DOE San Francisco Operations Office was not in full compliance with the standards for review, acceptance, and monitoring as required by DOE Order 4300.2A/B and SAN Management Directive (MD) 4300.2/2A. In addition, based on our review of the files maintained by the contracting officers, we do not believe adequate documentation had been maintained by the DOE-SF contracting officers for the WFO projects we inspected.

DOE-SF Review of WFO Projects Before Acceptance

We reviewed the DOE-SF official files for Projects A and B which were being worked on at LLNL. The official files were maintained by the DOE-SF Contract Management Division in accordance with SAN MD 4300.2 and 4300.2A, DOE-SF's implementing policy and procedures. We noted the following:

- o For both Projects A and B, the classified proposals had not been reviewed by a contracting officer to ensure that the proposals were complete as required by SAN MD 4300.2/2A. This contracting officer review was to include, but was not limited to, work description, deliverables, due dates, cost proposal, and period of performance. DOE-SF contracting officers told us the usual DOE-SF procedure was that a contracting officer was not involved in the review of classified WFO proposals.
- o The files for both Projects A and B lacked a written statement that the work was priced in accordance with DOE Order 2110.1A or other applicable regulations. DOE Order 4300.2, versions 4300.2A or 4300.2B, depending upon when the WFO project was accepted, required non-DOE funded work to be priced in accordance with DOE

Order 2110.1A or other applicable regulations. Without a statement as to the procedures used to price the WFO project, we could not determine compliance with this requirement.

- o The files for both Projects A and B lacked written determinations signed by a contracting officer for the six applicable items required by DOE Order 4300.2A/B. The SAN Reimbursable Work Approval Form, although covering much of the same subject matter, did not conform to the requirements of Subpart 1.7 of the Federal Acquisition Regulation for a determination. Subpart 1.7 states that a determination is a conclusion or decision supported by the findings. The findings are statements of facts or rationale essential to support the determination and must cover each requirement of the statute or regulation. The FAR also requires the determination to be so labeled.

In addition to the lack of written determinations signed by the contracting officer, there were other inconsistencies for the six applicable items required by Paragraph 8.a. of DOE Order 4300.2A/B and the documents in the project files.

- o The contracting officer must make a determination, and certify in writing, that the WFO project "Is consistent with and complementary to DOE's mission and the mission of the organization to which the work is to be assigned;..."

For intelligence related WFO projects, a DOE-SF contracting officer stated reliance was placed upon the statement provided by DOE's Office of Intelligence. For example, a September 25, 1991, memorandum from the DOE Office of Intelligence relative to Project A stated "The work request is consistent with and complementary to the DOE intelligence mission and the intelligence mission of the designated Field Intelligence Element appointed to perform the work."

The actual statement provided by the Office of Intelligence concerning the "DOE intelligence mission and the intelligence mission of the designated Field Intelligence Element" is not identical to the required statement concerning "DOE's mission and the mission of the organization."

- o The contracting officer must also make a determination, and certify in writing, that the WFO project "Would not place the facility in direct competition with the domestic private or public sectors..." (emphasis added) In addition to the determination by the contracting officer, DOE Order 4300.2B required a written statement from the customer agency that the work requested would not place DOE and its contractor in direct competition with the private sector. However, the Order was silent regarding a statement from the customer agency concerning direct competition with the public sector.

For the portion concerning competition with the private sector, the contracting officer received a statement from the customer agency. For example, in a September 20, 1991, letter, the customer agency for Project A stated "To the best of [our] knowledge, the work requested will not place the Department of Energy nor the Laboratories in direct competition with the private sector."

The files for both Projects A and B lacked a corresponding determination or statement on competition with the public sector, as required by DOE Order 4300.2B. We also noted the "Sample Statement from a Federal Agency" contained in DOE Order 4300.2B does not have a reference to the public sector portion of the determination required by the Order.

- o For the four other required determinations, both DOE-SF contracting officers interviewed stated, for classified intelligence WFO projects, they had not reviewed the statements of work. Instead, they relied on reviews of the classified intelligence WFO projects made by other DOE-SF program management personnel.

SAN MD 4300.2 required the Director of the DOE-SF Livermore Site Office to obtain the concurrence of the cognizant program official for those projects which were over \$2 million or required more than 15 full-time equivalencies (FTE's). The SAN Form requested information on the funding profile for the WFO project, but did not specifically require information on whether the WFO project was over \$2 million or required more than 15 FTE's. For both Projects A and B, the cumulative funding exceeded \$2 million, but the increments were normally less than \$2 million. For Project A, three incremental orders in the reviewed files exceeded \$2 million. There was no indication of concurrence of a

cognizant program official in the files for either Project A or B. Since cumulative information on FTE's was not on file, this element could not be readily reviewed by DOE-SF officials or during our inspection.

Acceptance of WFO Projects

FAR Part 1.602-1 states "No contract shall be entered into unless the contracting officer ensures that all requirements of law, executive orders, regulations, and all other applicable procedures, including clearances and approvals, have been met." FAR Part 1.602-2 provides that a contracting officer shall "Request and consider the advice of specialists in audit, law, engineering, transportation, and other fields, as appropriate." For classified work, we could find no modification of the personal responsibility of the contracting officer to make the determinations and findings and otherwise to ensure the FAR requirements are complied with.

During our inspection, we interviewed two contracting officers from DOE-SF who had accepted funding for Projects A and B. Both contracting officers stated, during the review and acceptance processes for both Projects A and B, they had not been given access to the supporting classified information for these WFO projects. In accepting WFO projects, the DOE-SF contracting officers signed the SAN Forms and the funding documents, usually using the term "approved." Both said that this was the usual DOE-SF procedure for classified intelligence WFO projects.

Projects A and B were classified at the SECRET National Security Information (NSI) level. Both contracting officers we interviewed displayed DOE "Q" badges. The DOE "Q" badge indicated the contracting officers would have been authorized access to the SECRET NSI classified information for these WFO projects. However, as required by DOE Order 5635.1A, the actual access to the classified information was also subject to a "need-to-know" determination. "Need-to-know" refers to a requirement to have access to the information for the performance of official duties.

Given a contracting officer's duties and personal responsibility as stated in the FAR, we believe the contracting officers did have a valid "need-to-know" for classified information concerning the intelligence WFO projects. Thus, we believe there was only technical

compliance with the DOE requirement for contracting officer acceptance of the WFO projects. Both contracting officers interviewed indicated they were not comfortable with the current arrangement.

DOE officials from the DOE Office of Intelligence stated that IN did not have a written policy on the individuals at DOE operations offices who should be provided access to classified information concerning intelligence WFO projects. The officials stated that the IN policy reflected the standard requirements of access authorization and need-to-know. In addition, the requirements of Director of Central Intelligence Directives for SCI information and the security procedures applicable to SAP information must also be complied with.

At two other DOE operations offices we inspected, cleared contracting officers were routinely provided necessary classified information on the intelligence WFO projects for which they prepared determinations and acceptances. This included "read-on" to SAPs when required.

There were other indications that DOE-SF's acceptance process was not always complete. For example, in reviewing the official WFO project file for Project A, we noted that, in a letter dated May 22, 1991, the customer had requested a waiver of the DOE "full-funding" policy. Chapter IX of DOE Order 2200.6 states "Work performed for other Federal agencies shall be fully funded prior to commencement of work if the work is to be completed within the current fiscal year." No evidence was on file, nor was evidence subsequently provided, to show that any action was ever taken to respond to the customer's waiver request. The requested waiver was not addressed in the August 30, 1991, transmittal memorandum from the DOE Office of Intelligence; the SAN Reimbursable Work Approval Form dated September 9, 1991; nor any other documents reviewed or provided.

Monitoring of Non-DOE Funded Work

DOE Order 4300.2B provides considerable flexibility for monitoring WFO projects by the responsible DOE organization, in this case DOE-SF.

DOE Order 4300.2B states that the Department "... places reliance on DOE approved contractor systems and procedures for implementation of DOE policy and control of non-DOE funded work projects. The extent to which the responsible DOE organization relies upon the approved contractor systems in monitoring WFO (including project, scope, schedule and cost) depends on factors such as the following any of which could be the basis for DOE to more closely monitor the contractor's performance." The factors cited include the size, sensitivity, and duration of the project; past performance of the contractor; financial and cost status of the project; issues and/or problems that arise during the project; and special arrangements covered in a memorandum of understanding or statement of work.

Actual program monitoring was performed by the DOE-SF program personnel, not the applicable contracting officers. The DOE Order stated that technical oversight was the responsibility of the customer.

At DOE-SF, we found widely varying staff effort expended on monitoring WFO projects. Based upon information provided to us during this inspection, LLNL had 122 active WFO projects in the Defense Programs area and 72 active WFO projects in the Intelligence area. We were told that 2.5 FTEs were used to monitor the Defense Programs workload and one-tenth of an FTE was used to monitor the Intelligence workload. We believe that, despite the considerable flexibility afforded by DOE Order 4300.2B, one-tenth of an FTE was inadequate to monitor the Intelligence workload.

Files Maintenance

SF MD 4300.2A assigns the responsibility to maintain the DOE-SF official files for all non-DOE funded work to the Contracts Management Division.

In our review of Contracts Management Division's WFO project files for both Projects A and B, we noted that these files were not complete. The project files did not contain classified documents nor a cross reference to the place where these classified documents were actually filed.

For both Projects A and B, the WFO project management files, containing the classified information, were maintained for the Site Management Division (i.e., the Intelligence Program

Officer) by personnel of the performing M&O, Lawrence Livermore National Laboratory. Access to the LLNL facility and the security container storing the classified documents was gained through Laboratory personnel.

Recommendations

We recommend that the Assistant Secretary for Human Resources and Administration:

40. Review the requirement of Paragraph 8a(3) of DOE Order 4300.2B that a determination concerning competition with the domestic public sector must be made for consistency with the Sample Statement from a Federal Agency contained in Paragraph 8b(1). Based upon the results of this review, revise the Order and other implementing instructions as appropriate.

Management officials agreed that terms must be consistent in DOE Order 4300.2B. In the future, the term "private sector" will be used to include all entities outside the Federal sector. DOE Order 4300.2B will be revised accordingly.

We also recommend that the Manager, DOE San Francisco Operations Office:

41. Revise the policy and procedures, including SF MD 4300.2A, DOE-SF uses for the review of classified work-for-others projects to comply with DOE policies, including those concerning pricing, preparation of determinations in accordance with the Federal Acquisition Regulation, Subpart 1.7, and a statement of the determinations to comply with the requirements of DOE Order 4300.2B.
42. Revise the DOE-SF policy and procedures, including SF MD 4300.2A, to ensure, consistent with security requirements, that contracting officers are provided with sufficient information on classified work-for-others projects to meet their acceptance responsibilities as stated in the Federal Acquisition Regulation.
43. Revise the DOE-SF policy and procedures, including SF MD 4300.2A, to ensure appropriate monitoring/institutional oversight of classified work-for-others projects is performed as required by DOE Order 4300.2B.

44. Revise the files maintenance policy and procedures used by the Contract Management Division to ensure that WFO files are complete, including necessary project cross references to the location of any separately filed classified documents.

San Francisco Operations Office management officials concurred with Recommendations 41 through 44. Management agreed to revise its policies and procedures as applicable to implement the recommendations.

CLOSEOUT OF WFO REIMBURSABLE AGREEMENTS AT DOE-AL

DOE Order 2200.6, Change 2, Chapter IX, Paragraph 2.i.(4), states that the contracting officer shall, upon completion of work, notify the customer and provide an estimate of costs incurred. When the final costs are known, the contracting officer shall promptly notify the customer with a final statement of cost.

Timely notification to the customer of completed work is essential to facilitate returning any unused customer funds at closeout. This either relieves the Federal government of the obligation or, if appropriate, allows the customer agency to use the remaining funds for other purposes.

We reviewed closeout practices in detail at DOE-AL only for Project D. Project D at LANL was selected, in part, because the work had been completed and we were told the WFO project was in the process of "closing out." LANL submitted the final deliverables to the customer for Project D during April 1992. As of December 21, 1992, the closeout process for Project D had not been initiated, even though final deliverables had been submitted to the customer eight months previously. Our inspection disclosed, therefore, that the DOE-AL Contracting Officer was not following the DOE Order relating to closeout.

DOE-AL's Closeout Process

As a project nears completion, the customer should assess the quality and quantity of the deliverables and notify the DOE-AL performing management and operating contractor, if the deliverables are acceptable. Based on this notification and/or on input from the M&O project leader, the M&O accounting group will perform a final costing, prepare a final invoice, and transmit the invoice to DOE-AL for final billing.

The customer should then issue either a closeout call or a formal request for the funding balance. Once the funding balance is known, the customer should submit a funding request to deobligate the remaining funds balance. Based on this request, DOE-AL and the performing M&O will deobligate the remaining funds balance.

Since DOE-AL was relying on the customer or the M&O contractor to initiate the closeout process for WFO projects, the DOE-AL Contracting Officer was not following the DOE Order provisions.

Reasons For Not Following the DOE Order

DOE-AL's Contracting Officer may or may not know a project is ready for closeout, since DOE-AL only monitors selected sensitive and/or large projects. Thus, the burden is either on the customer or the DOE-AL performing M&O contractor to initiate the closeout process. Further, neither DOE-AL, LANL, nor SNL currently have written closeout procedures for reimbursable agreements which describe specific responsibilities of each.

Recommendations

We recommend that the Manager, DOE Albuquerque Operations Office:

45. Adhere to the requirements of DOE Order 2200.6 in the closeout of reimbursable agreements by notifying the customer of work completion and providing an estimate of costs incurred.
46. Establish written procedures, consistent with DOE Order 2200.6, for the timely closeout of reimbursable agreements.

Albuquerque Operations Office management concurred that they had not implemented a formal closeout procedure for work-for-other federal agencies, although a formal closeout procedure was in place for nonfederal entities. Management also stated, "The AL Work for Others Technologies Division will take the lead working primarily with AL's Financial Management Division, Sandia National Laboratories, and Los Alamos National Laboratory and implement a formal closeout procedure. Initial considerations indicate that formal notification to a federal customer that work has been completed and the final billing could occur

at the same time and yet constitute a timely notification. If this approach is pursued, AL will recommend a change to DOE Order 2200.6, since the current requirement is that notification should occur prior to final billing."

Detailed Description of Inspection Methodology
for an Inspection of Selected Intelligence
and Special Access Program
Work-for-Others Projects

On June 4, 1992, the Office of Inspector General requested the cognizant Program Secretarial Officers (PSOs) and Office Directors (Directors) to provide us with a list of open classified and unclassified intelligence and special access program (SAP) work-for-others (WFO) projects under their purview. In their replies, intelligence SAPs were included as classified intelligence WFO projects that, for security reasons, were not identified as SAPs. Based on our request, the cognizant PSOs and Directors provided us with information which we have summarized below.

<u>Category</u>	<u>Number of Projects</u>	<u>Total Estimated Costs</u>
Non-intelligence SAP WFO Projects	15	\$209.5 million
Intelligence WFO Projects *	<u>386</u>	<u>136.2 million</u>
	<u>401</u>	<u>\$345.7 million</u>

* Excludes a small number of very sensitive intelligence related SAP WFO projects.

As discussed in Section V of our report, "Findings and Recommendations," we found, for a sample of projects, that the information was not completely accurate. As a result, the reported number of projects and total estimated costs contained in this summary may not be accurate.

From the list of projects provided to us by the PSOs and Directors, we selected 20 projects for a more complete survey review. We selected the 20 projects using various criteria including dollar amount, project length, customer, laboratories involved, and project title. The 20 projects included 6 at Sandia National Laboratory (SNL), 6 at Los Alamos National Laboratory, 6 at Lawrence Livermore National Laboratory, one at Oak Ridge National Laboratory, and one at the Department of Energy's (DOE) Office of Assistant Secretary for Nuclear Energy (NE).

During the survey phase, we visited NE and the cognizant DOE field offices and national laboratories involved with the projects. During these visits, we received overview briefings and obtained project specific data covering the projects since inception. We were also briefed on how Headquarters, DOE field offices, and national laboratories handled WFO projects in general. It came to our attention during these briefings that the same WFO project was reported by two DOE offices. In essence, our survey review consisted of 19 projects, instead of 20. The number of projects reviewed at SNL was 5, instead of 6.

After analyzing the survey data, we selected the six projects listed below for detailed review. We chose the six using various criteria including dollar amount, location, security classification, statement of work, customer, and whether the project was an ongoing project or scheduled for completion in FY 1992.

<u>PROJECT</u>	<u>PERFORMING ACTIVITY</u>	<u>PROGRAM SECRETARIAL OFFICER</u>	<u>CLASSIFIED</u>	<u>SENSITIVE COMPARTMENTED INFORMATION</u>	<u>OTHER SPECIAL ACCESS PROGRAMS</u>
A	Lawrence Livermore National Laboratory	Office of Intelligence	Yes	No	Yes*
B	Lawrence Livermore National Laboratory	Office of Intelligence	Yes	Yes	No
C	Sandia National Laboratory	Office of Intelligence	Yes	No	No
D	Los Alamos National Laboratory	Defense Programs	Yes	No	No
E	Nuclear Energy	Nuclear Energy	Yes	No	Yes
F	Oak Ridge National Laboratory	Office of Intelligence	Yes	No	No

* Per Lawrence Livermore National Laboratory, the customer was in the process of upgrading the Project from SECRET National Security Information to SECRET National Security Information with special access requirements and controls.

After selecting the six WFO projects, we visited the cognizant DOE field offices, national laboratories, and Headquarters element to perform our detailed inspection of the projects. For the six WFO projects, we performed a review of financial management, including tests of selected financial transactions recorded during the period September 1991 through October 1992. We reviewed all transactions over \$40,000 that were recorded during this period. Additionally, we randomly selected one month during this timeframe for detailed financial testing, reviewing each recorded transaction during that month.

Our inspection also considered program management, procurement and contract management, and security management for four of the WFO projects. Due to the nature of WFO Projects E and F, our inspection focused upon general program management, funding integrity, and the procedures used to bill the customer agencies. We also reviewed contract administration pertaining to the prime contract for supplying of selected WFO Project E deliverables.

Detailed Background for an Inspection of
Selected Intelligence and Special Access Program
Work-for-Other Projects

The work-for-other (WFO) Federal agencies program in the Department of Energy (DOE) is sizeable. According to the Work for Others Summary Report, issued in August 1992 by the Office of Administration and Human Resource Management, the Fiscal Year (FY) 1991 funding for DOE's Federal agencies WFO program was \$1.8 billion. This was 7.5 percent of the total FY 1991 obligations reported in the DOE portion of the Budget of the United States Government for FY 1993.

AUTHORITY FOR ACCEPTING REIMBURSABLE AGREEMENTS

DOE Order 2200.6, Financial Accounting, Chapter IX, Reimbursable Work, Revenue and Other Collections, states "Before accepting a reimbursable agreement, the Department must review the specific legal or statutory authority for performing the work." The Order states "Reimbursable work ... refers to work or services performed ... for another Federal ... customer for which the DOE is compensated by a specific type of offsetting collection The reimbursable work or services performed by DOE are financed by the funds of the ordering Federal customer" Hence, the Work-for-Other Federal Agencies program is a form of reimbursable work.

The DOE brochure "Department of Energy Work for Other Federal Agencies," published in October 1989 by the then Assistant Secretary, Management and Administration, cites the following principal governing laws and Federal regulations.

Economy Act of 1932 (31 U.S.C. 1535) authorizes an agency to place orders for goods and services, subject to availability, with another government agency when the head of the ordering agency determines that it is in the best interests of the government to do so and that the ordered goods or services cannot be provided by contract as conveniently or cheaply by a commercial enterprise.

Atomic Energy Act of 1954 authorizes the conduct of research and development and training activities for non-DOE entities, provided that private facilities or laboratories are inadequate for that purpose. The Act authorized such charges as may be appropriate for the conduct of those activities.

Energy Reorganization Act of 1974 gave the Nuclear Regulatory Commission special access to DOE research and development facilities. The term "special access", as used in this sense, does not connote a "special access program" as authorized by Executive Order 12356.

Federal Acquisition Regulation, Part 6, "Competition Requirements," requires that no agency shall contract for supplies or services from another agency for the purposes of avoiding the competition requirements of Part 6 of the FAR.

Project Order (41 U.S.C. 23) provided another basis for Federal agencies to order work and materials. A project order enables an order or contract for the "manufacture of material" to be placed with a Government-owned establishment. The chief difference in the use of a project order is the requirement for the accepting agency to perform virtually all work in-house, since the Government-owned establishment must actually perform the manufacturing process. Only incidental support contracting is permitted. The funds for the project order agreement are not required to be deobligated at the end of the period of availability of the appropriation if the performing agency has not incurred valid obligations under the arrangement.

Several other parts of the Federal Acquisition Regulation (FAR) applied to our inspection of WFO projects.

FAR Part 1.602-1 states "No contract shall be entered into unless the contracting officer ensures that all requirements of law, executive orders, regulations, and all other applicable procedures, including clearances and approvals, have been met."

FAR Part 1.602-2 provides that a contracting officer shall "Request and consider the advice of specialists in audit, law, engineering, transportation, and other fields, as appropriate."

Even though classified or extremely sensitive information is involved, we could find no modification of the personal responsibility of the contracting officer to make the determinations and findings and otherwise to ensure the FAR requirements are complied with.

FAR Part 4 addresses administrative matters including policies and procedures relating to the administrative

aspects of contract execution, distribution, reporting, retention, and files. Subpart 4.4 addresses safeguarding of classified information within industry. Subpart 4.4 provides that if the contracting agency is not covered by the Defense Industrial Security Program (DISP) and has prescribed a security clause, the contracting officer must use the agency prescribed clause.

Since DOE is not covered by the DISP and has promulgated its own contract clauses regarding security, DOE procedures must be used for safeguarding classified information within industry. The purpose of the Department of Energy Acquisition Regulation (DEAR) is to implement the FAR where implementing instructions are needed and to supplement the FAR when coverage is not provided in the FAR. DEAR Subpart 904.4 provides guidance on "Safeguarding Classified Information Within Industry."

FAR Part 17 addresses special contracting methods and Subpart 17.5 addresses work performed under the Economy Act of 1932. The FAR requires that all parties involved in the work must have a clear understanding of the work to be performed, delivery requirements, including the expected schedule, and other items necessary to measure successful completion of the work. The sponsoring agency is responsible for providing special contract terms or other limitations. Latitude in the documentation is permitted as long as it is acceptable to both parties.

DOE POLICIES AND PROCEDURES FOR ACCEPTING AND ADMINISTERING WFO PROJECTS

Review, Acceptance, and Monitoring of Non-DOE Funded Work

DOE Order 4300.2A, Non-Department of Energy Funded Work, dated December 19, 1986, established DOE policy, responsibilities, and procedures for review, acceptance, and monitoring of non-DOE funded work performed by the Department's contractors. The principal application was to management and operating (M&O) contracts under which most of the non-DOE funded work is performed.

The initial criteria for accepting work from outside sources was designed to ensure, among other goals, that WFO (1) was consistent with DOE's mission; (2) would not adversely impact on the execution of assigned programs; (3) would not place the facility in direct competition with the private or public

sector; (4) would not create a detrimental future burden; and (5) was consistent with the legislative authority of DOE. The Order required the customer agency to certify that its use of the DOE complied with the Economy Act of 1932.

On March 27, 1991, DOE Order 4300.2A was revised. This revision did not modify the principal application nor criteria discussed above. However, one additional criteria was added dealing with humane treatment of human or animal subjects involved in research or other activities of the Government. The revised order also now contains minimum standards for review, acceptance, and monitoring of non-DOE funded work.

DOE Order 4300.2B was issued as a replacement order on July 16, 1991. The two primary changes to the previous order were: (1) a sample statement was provided for other Federal agencies use which states that the submitted agreements are pursuant to the authority of the Economy Act of 1932; and, (2) a paragraph stating that all intelligence-related non-DOE funded work proposals will be reviewed and approved by the Director, Office of Intelligence (IN-1) for conformance with Executive Order 12333. This inspection report references DOE Orders 4300.2A and 4300.2B, as appropriate.

Funds Provided Under Reimbursable Agreements

DOE Order 2200.5B, Fund Accounting, dated June 8, 1992, provides DOE accounting practices, policies, and procedures related to administrative control of funds; accounting for appropriations; accounting for other funds to include special funds, trust funds, deposit funds, and revolving funds; and accounting for obligations. The Order states "Obligations and expenditures for each reimbursable agreement shall not exceed the budgetary resources authorized for that reimbursable agreement; and if they do, an administrative violation will have occurred."

Pricing of Work-for-Others Projects

DOE Order 2110.1A, Pricing of Departmental Materials and Services, dated July 14, 1988, provides policy for establishing prices and charges for materials and services sold or provided by the Department, either directly or through Departmental contractors, including M&O contractors, to external organizations. The Order states that, "The policy of the Department of Energy shall be to establish prices and charges to the other Federal agencies at the Department's full cost less depreciation and the Department's added factor except: (1) when the charges are to become part of the cost of a product or

service to be provided by the other Federal agency to organizations and persons outside the Federal Government or (2) when the material or service has a price established by DOE or (3) when the charges are for work involving excess data processing capacity and/or related dedicated services, e.g., application systems, programmers or analysts, software unique to a particular application, and remote terminals and modems."

The then DOE Controller provided guidance on the implementation of an "added factor rate" in memoranda dated January 22, 1990, and March 22, 1990. A "Departmental Added Factor Rate" of 3.2 percent was implemented for FY 1992, and is applicable to all work-for-other Federal agencies, unless a waiver is obtained. However, as discussed in the report, DOE Order 2110.1A has not been revised to reflect the implementation of the Departmental Added Factor Rate.

Financial Accounting for Reimbursable Work

DOE Order 2100.10, dated October 17, 1983, was entitled "Reimbursable (Funds-in) Policy and Procedures." A successor Order, 2100.10A, dated August 15, 1988, was entitled "Financial Policy and Procedures for Reimbursable Work." The Order established financial policies and procedures for reimbursable work. These policies and procedures applied to DOE and its management and operating contractors when entering into a WFO agreement and subsequently incurring, recording, and billing WFO costs.

On May 10, 1990, Change 2 to DOE Order 2200.6, Financial Accounting, was issued. Change 2 cancelled DOE Order 2100.10A and incorporated the financial policies and procedures for reimbursable work into DOE Order 2200.6, Financial Accounting, Chapter IX, Reimbursable Work, Revenues and Other Collections.

The Order states "...it is imperative that DOE employ prudent management and control techniques to ensure that reimbursable work is authorized, performed, and accounted for in accordance with congressional, OMB, GAO, and DOE budgeting and accounting policies and procedures." Further, "It is the policy of DOE to accept reimbursable agreements for its goods and services and to perform work for others on a reimbursable basis, provided legal and regulatory authority to perform the reimbursable work exists and the Department is capable of complying with the requirements of the legal authorities relied on. Furthermore, work must not impede primary functions and responsibilities of the performing activity, and budgetary resources for performing reimbursable work must be available."

Per the Order, a valid reimbursable agreement shall be used as a budgetary resource when performing work for other Federal agencies. The reimbursable agreement shall provide full funding if the work is to be completed in the current fiscal year. For work that transcends fiscal years, full funding for the current fiscal year plus the first 3 months of the following fiscal year shall be required.

Exceptions to the requirement for full funding from Federal agencies for projects to be completed in the current fiscal year (or current fiscal year plus 90 days for projects transcending the fiscal year) may be granted by Heads of Field Elements for their respective organizations and the Controller in consultation with the cognizant Secretarial Officer for Headquarters Elements. In no case shall an exception be granted which necessitates the use of DOE funds to finance reimbursable work performed for others. Additionally, exceptions shall not be granted which would cause advanced funding to be less than amounts necessary to provide for an orderly phasedown and termination of the reimbursable agreement.

Customer's Brochure

The brochure entitled "Department of Energy Work for Other Federal Agencies" was issued by the Assistant Secretary, Management and Administration, DOE in October 1989. The brochure provides information about DOE's acceptance and performance of work for other Federal agencies. The brochure's stated purpose is to give those (i.e., customers), who will be requesting DOE and its contractors to perform work for them, a basic understanding of the guidelines and requirements governing the acceptance and execution of WFO.

SECURITY POLICIES AND PROCEDURES APPLICABLE TO WFO

Various security policies and procedures apply to DOE programs, including the WFO program.

DOE's Authority to Classify Information

DOE uses two separate authorities for classification of (1) restricted data and formerly restricted data and (2) national security information.

Restricted data and formerly restricted data is classified by the Secretary of Energy under authority of the Atomic Energy Act of 1954, as amended. For this category of classified information, DOE has not established procedures for the designation of special access programs.

National Security Information is classified under the authority of Executive Order 12356, "National Security Information." For this category of classified information, the Executive Order authorizes the agency head to create special access programs (SAPs) to protect particularly sensitive information. Special access programs may be created by the Secretary of Energy, in which case the Secretary must establish the security procedures to be used by the SAP. In the case of intelligence activities, including special activities (but not including military operational, strategies and technical programs), the function is exercised by the Director of Central Intelligence (DCI). In this case, the DCI must establish the security procedures to be used by the SAP.

Sensitive compartmented information (SCI) is classified information concerning or derived from intelligence sources, methods, or analytical processes, which is required to be handled within formal access control systems established by the Director of Central Intelligence pursuant to the special access provisions of Executive Order 12356.

DOE Security Policies and Procedures

DOE orders in the 5600 series provide the primary guidance on DOE security standards and operating procedures for safeguarding and controlling classified documents and information. However, these series of orders provide little procedural guidance on programs requiring special security procedures which are commonly referred to as special access programs. The guidance currently contained in DOE orders, as shown below, refers

primarily to intelligence related activities such as those designated as SCI.

DOE Order 5631.1B, Security Education Briefing and Awareness Program, does not contain any guidance on special access programs.

DOE Notice 5670.2, Departmental Intelligence Education and Training, provides notice that the Director of Intelligence had established an Intelligence Education and Training Program. The Notice does not address the subject of special access programs.

DOE Order 5635.1A, Control of Classified Documents and Information, addresses classified information originated by another agency in prohibiting dissemination outside DOE without the consent of the originating agency. Reference to the use of procedures from other agencies is made only for the case of SCI. For SCI, the Order requires the use of procedures established by the Director of Central Intelligence. No procedural guidance is contained in the Order on the maintenance of access rosters, separate document registers, or other controls normally applied to SAPs to assist in enforcing need-to-know.

DOE Order 5650.2B, Identification of Classified Information, specifies the responsibilities, authority, policy, and procedures for management of the DOE classification system. The Order does not assign specific responsibility, authority, policy, or procedures for the management of SAPs. Rather, SAP management is apparently included in a general assignment to the Director of Security Affairs who "Oversees the implementation of the classification and declassification provisions of ... Executive Order 12356." No DOE SAP policies or procedures are specified. The Order also contains a reprint of Executive Order 12356, "National Security Information," and the final rules for the General Service Administration's Information Security Oversight Office, both of which contain information pertaining to SAPs. Neither of these two reprints contain DOE policies or procedures.

DOE Order 5610.2, Control of Weapons Data, established procedures for the control of weapon data under authority of the Atomic Energy Act of 1954. The Order defines Sigma categories as "Restricted Data and/or Formerly Restricted Data in the following categories which concern the design, manufacture, or utilization of atomic weapons, or utilization of atomic weapons or nuclear explosive devices." The Order then identified ten Sigma categories. The Order also established procedures for control of access to this classified information beyond those

normally used within DOE. The Order also states the Director of Military Application "Controls access to ... weapon data." In addition, before an individual may have access to information in a Sigma category, the Order requires (1) authorization from one of the designated approving officials, and (2) approval of the Certification by the Director of Military Application (or certain managers of designated DOE Field Offices in specified circumstances).

DOE Order 5670.2, Security of Foreign Intelligence Information and Sensitive Compartmented Information Facilities, establishes responsibilities and authorities for the protection of Foreign Intelligence Information. Except for intelligence related to SCI, the Order does not address procedures used for programs which require special security controls.

DOE is establishing policies and procedures for DOE to authorize the creation of special access programs. The subject is addressed in draft DOE Order 5639.1, Information Security Program, which is intended to establish the DOE Information Security Program and set forth policies, procedures, and responsibilities for the control and protection of classified and sensitive information.

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