

# Inspector General

United States  
Department of Defense



More DoD Oversight Needed for  
Purchases Made Through the  
Department of Energy

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## Acronyms and Abbreviations

CEW	Cost Estimate Worksheet
COR	Contracting Officer's Representative
D&F	Determination and Findings
DFARS	Defense Federal Acquisition Regulation Supplement
DOE	Department of Energy
DOE-IG	Department of Energy, Office of the Inspector General
DTRA	Defense Threat Reduction Agency
FAR	Federal Acquisition Regulation
FPDS-NG	Federal Procurement Data System-Next Generation
GAO	Government Accountability Office
IACRO	Interagency Cost Reimbursement Order
IG	Inspector General
IGCE	Independent Government Cost Estimate
MIPR	Military Interdepartmental Purchase Request
NNSA	National Nuclear Security Administration
O&M	Operations and Maintenance
OIG	Office of Inspector General
RDT&E	Research, Development, Test, and Evaluation
SPIRITT	Spectral Infrared Remote Imaging Transition Testbed
TINA	Truth in Negotiations Act
U.S.C.	United States Code
WFO	Work for Others





INSPECTOR GENERAL  
DEPARTMENT OF DEFENSE  
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December 3, 2010

MEMORANDUM FOR UNDER SECRETARY OF DEFENSE FOR ACQUISITION,  
TECHNOLOGY, AND LOGISTICS  
UNDER SECRETARY OF DEFENSE (COMPTROLLER)/  
CHIEF FINANCIAL OFFICER  
ASSISTANT SECRETARY OF THE AIR FORCE  
(FINANCIAL MANAGEMENT AND COMPTROLLER)  
NAVAL INSPECTOR GENERAL  
AUDITOR GENERAL, DEPARTMENT OF THE ARMY  
DIRECTOR, DEFENSE THREAT REDUCTION AGENCY

SUBJECT: More DoD Oversight Needed for Purchases Made Through the Department  
of Energy (Report No. D-2011-021)

We are providing this report for review and comment. We considered comments from the Under Secretary of Defense for Acquisition, Technology, and Logistics; the Office of the Under Secretary of Defense (Comptroller)/Chief Financial Officer; the Navy; and the Defense Threat Reduction Agency when preparing the final report. The Departments of the Army and Air Force did not provide comments to the draft report. This report discusses significant contracting problems that occur when DoD activities use the Department of Energy Work for Others program, including potential violations of the Antideficiency Act.

DoD Directive 7650.3 requires that recommendations be resolved promptly. We request comments from the Departments of the Army and the Air Force by January 3, 2010. See the recommendations table on page ii of this report.

If possible, send a pdf file containing your comments to [audacm@dodig.mil](mailto:audacm@dodig.mil). Copies of your comments must have the actual signature of the authorizing official for your organization. We are unable to accept the /Signed/symbol in place of the actual signature. If you arrange to send classified comments electronically, you must send them over the SECRET Internet Protocol Router Network (SIPRNET).

We appreciate the courtesies extended to the staff. Please direct questions to me at (703) 604-9201 (DSN 664-9201).

A handwritten signature in black ink, reading "Richard B. Jolliffe", is positioned above the printed name.

Richard B. Jolliffe  
Assistant Inspector General  
Acquisition and Contract Management

cc: Inspector General, Department of Energy





# Results in Brief: More DoD Oversight Needed for Purchases Made Through the Department of Energy

## What We Did

In accordance with the National Defense Authorization Act for FY 2009, we reviewed DoD procedures for purchases through the Department of Energy (DOE), specifically projects that DOE National Nuclear Security Administration (NNSA) sites performed under the DOE Work for Others (WFO) program.

## What We Found

DoD requesting activities continue to use DOE for assisted interagency acquisitions while DOE has not certified that it will comply with Defense procurement requirements in accordance with Section 801 of the FY 2008 National Defense Authorization Act (Section 801). In addition, for all WFO projects that NNSA sites perform for DoD, NNSA contracting officers do not record detailed procurement data into the Federal Procurement Data System-Next Generation database, make price reasonableness determinations, obtain certified cost or pricing data, designate contracting officer's representatives, or designate individuals to review contractor invoices. This is because DOE does not believe that Section 801 applies to reimbursable activities performed by DOE and its contractors. Since November 23, 2009, the Director, Defense Procurement and Acquisition Policy, has issued three Section 801 waivers allowing DoD to continue to do business with DOE on an interim basis. The most recent waiver, issued on September 28, 2010, allows DoD to do business with DOE during FY 2011 for DoD purchases up to a total amount of \$2.5 billion. Our review of 14 WFO projects, valued at \$9.7 million, also determined that DoD officials did not adequately review contractor cost estimates for 11 WFO projects, prepare detailed independent Government cost estimates for the 14 WFO projects, or meet DoD funding document specificity requirements for 19 DoD funding documents (Finding A). These situations

occurred due to a lack of DoD contracting officer involvement.

We also identified 31 potential bona fide needs rule violations, valued at \$641,188 (Finding B). This is because there is a lack of defined policy on the financing of all types of contracts using Research, Development, Test, and Evaluation funds.

## What We Recommend

We recommend that the Under Secretary of Defense for Acquisition, Technology, and Logistics resolve the Section 801 noncompliance issues we identified. We recommend the Under Secretary of Defense (Comptroller)/Chief Financial Officer instruct the Services and Defense Threat Reduction Agency to initiate preliminary reviews of potential Antideficiency Act violations and update the Financial Management Regulations with general and detailed funding guidance. We recommend that Acquisition Executives for the Army, Navy, and Air Force, and the Director, Defense Threat Reduction Agency make program and contracting officers aware of their responsibilities for obtaining and reviewing detailed cost information for individual WFO projects.

## Management Comments and Our Response

The Under Secretary of Defense for Acquisition, Technology, and Logistics; the Under Secretary of Defense (Comptroller)/Chief Financial Officer; the Acquisition Executive of the Navy; and the Director, Defense Threat Reduction Agency, generally agreed with the recommendations. The Departments of the Army and the Air Force did not provide comments on our Recommendation A.3. We request additional comments by January 3, 2011. Please see the recommendations table on the back of this page.

## Recommendations Table

Management	Recommendations Requiring Comment	No Additional Comments Required
Under Secretary of Defense for Acquisition, Technology, and Logistics		A.1, A.2, B.1
Under Secretary of Defense (Comptroller)/Chief Financial Officer		B.2
Acquisition Executive of the Army	A.3	
Acquisition Executive of the Navy		A.3
Acquisition Executive of the Air Force	A.3	
Director, Defense Threat Reduction Agency		A.3

**Please provide comments by January 3, 2011.**

# Table of Contents

<b>Introduction</b>	<b>1</b>
Objectives	1
Background	1
Review of Internal Controls	3
<b>Finding A. DoD Has Significant Contracting Problems When Using DOE</b>	<b>5</b>
Contracting Officer Responsibilities Not Performed	5
Noncompliance With Defense Procurement Requirements	6
Section 801 Waivers	7
DoD Procurement Data Are Not Reported	7
No Price Reasonableness Determinations	9
No Certified Cost or Pricing Data	10
No CORs Designated to Monitor Contractor Performance	11
No Review of Contractor Invoices	11
WFO Projects We Reviewed	12
DoD Activities Made Best Interest Determinations	12
Inadequate DoD Reviews of Contractor-Proposed Costs	13
Limited Access to Detailed Contractor Cost Information	14
Unsupported Independent Government Cost Estimates	16
DoD Funding Documents Lacked Specificity	17
Other Issues	18
Work Performed Beyond Period of Performance	18
Lack of Good Documentation	19
Improving the Management and Use of Interagency Acquisitions	19
Unconventional Procedures for Adding Defense Procurement	
Requirements to WFO Projects	20
Reasons for Contracting Problems	20
Management Actions	21
Conclusion	21
Recommendations, Management Comments, and Our Response	21
<b>Finding B. Potential Bona Fide Needs Rule Violations</b>	<b>25</b>
Inappropriate Use of RDT&E and O&M Funds	27
Large Scale Social Simulation WFO Project	28
Dynamic Explosive Training Site WFO Project	28
Raft Scoring WFO Project	30
Longwave Infrared Hyperspectral Imaging Spectrometer Module	
WFO Project	31
Smart Threads Integrated Radiological Sensors	
WFO Project	34



Test and Evaluation Support WFO Project	35
Contributing Factors to Funding Problems	37
Conclusion	38
Recommendations, Management Comments, and Our Response	38

## **Appendices**

A. Scope and Methodology	40
B. Prior Coverage	42
C. Work for Others Projects We Reviewed	45
D. Inadequate DoD Review of Contractor Cost Estimates	46
E. MIPRs Lacked Specificity	47
F. Potential Funding Problems	48
G. Improving the Management and Use of Interagency Acquisitions	49
H. DOE FYs 2009 and 2010 Section 801 Certifications	51
I. Section 801 Waivers	53

## **Management Comments**

Office of the Under Secretary of Defense for Acquisition, Technology, and Logistics	56
Office of the Under Secretary of Defense (Comptroller)/Chief Financial Officer	64
Department of the Navy	67
Defense Threat Reduction Agency	69

# Introduction

## Objectives

Our overall audit objective was to review DoD procedures for purchases that the Department of Energy (DOE) made on behalf of DoD. Specifically, we examined the policies, procedures, and internal controls to determine whether there was a legitimate need for DoD to use DOE, whether DoD clearly defined requirements, whether DOE and DoD properly used and tracked funds, and whether DoD procurement requirements were complied with. See Appendix A for a discussion of the scope and methodology. See Appendix B for prior coverage related to the objectives. The DOE Office of the Inspector General (DOE-IG) prepared a separate audit report to DOE, which included audit recommendations to DOE management.

## Background

This audit was performed as required by Section 804, Public Law 110-417, “Duncan Hunter National Defense Authorization Act for Fiscal Year 2009,” October 14, 2008. Section 804 states:

- (a) INCLUSION OF ADDITIONAL NON-DEFENSE AGENCIES IN REVIEW.—The covered non-defense agencies specified in subsection (c) of this section shall be considered covered non-defense agencies as defined in subsection (i) of section 817 of the John Warner National Defense Authorization Act for Fiscal Year 2007 (Public Law 109-364; 120 Stat. 2326) for purposes of such section.
- (b) DEADLINES AND APPLICABILITY FOR ADDITIONAL NON-DEFENSE AGENCIES. —For each covered non-defense agency specified in subsection (c) of this section, section 817 of the John Warner National Defense Authorization Act for Fiscal Year 2007 (Public Law 109-364; 120 Stat. 2326) shall apply to such agency as follows:
  - (1) The review and determination required by subsection (a) (1) of such section shall be completed by not later than March 15, 2009.
  - (2) The review and determination required by subsection (a) (2) of such section, if necessary, shall be completed by not later than June 15, 2010, and such review and determination shall be a review and determination of such agency’s procurement of property and services on behalf of the Department of Defense in fiscal year 2009.
  - (3) The memorandum of understanding required by subsection (c) (1) of such section shall be entered into by not later than 60 days after the date of the enactment of this Act.
  - (4) The limitation specified in subsection (d) (1) of such section shall apply after March 15, 2009, and before June 16, 2010.
  - (5) The limitation specified in subsection (d) (2) of such section shall apply after June 15, 2010.
  - (6) The limitation required by subsection (d) (3) of such section shall commence, if necessary, on the date that is 60 days after the date of the enactment of this Act.

(c) DEFINITION OF COVERED NON-DEFENSE AGENCY.—In this section, the term “covered non-defense agency” means each of the following:

- (1) The Department of Commerce.
- (2) The Department of Energy.

(d) MODIFICATION OF CERTAIN ADDITIONAL AUTHORITIES ON INTERNAL CONTROLS FOR PROCUREMENTS ON BEHALF OF DoD.—Section 801 of the National Defense Authorization Act for Fiscal Year 2008 (Public Law 110-181; 122 Stat. 202; 10 U.S.C. 2304 note) is amended—

- (1) in subsection (a)(2)—
  - (A) in subparagraph (B), by striking “each of the Department of the Treasury, the Department of the Interior, and the National Aeronautics and Space Administration” and inserting “the Department of the Interior”; and
  - (B) by adding at the end the following new subparagraph:
    - (D) “In the case of each of the Department of Commerce and the Department of Energy, by not later than March 15, 2015;” and
- (2) in subsection (f)(2)—
  - (A) by striking subparagraphs (B) and (D);
  - (B) by redesignating subparagraphs (C), (E), and (F) as subparagraphs (B), (C), and (D), respectively; and
  - (C) by adding at the end the following new subparagraphs:
    - (E) “The Department of Commerce.”
    - (F) “The Department of Energy.”

## ***Interagency Acquisition***

Interagency acquisition is the term used to describe the procedure by which an agency needing supplies or services obtains them using another agency’s contract, the acquisition assistance of another agency, or both. Interagency acquisitions typically involve two Government agencies: the requesting agency is the agency with the requirement, and the servicing agency, which provides acquisition support, administers the contract for other agencies, or both. There are two types of interagency acquisitions, direct acquisitions and assisted acquisitions. In a direct acquisition, the requesting activity places an order against the servicing agency’s indefinite-delivery vehicle. The servicing agency manages the indefinite-delivery vehicle but does not participate in the placement of an order. In an assisted acquisition purchase, the servicing agency and requesting agency enter into an interagency agreement where the servicing agency performs acquisition activities on the requesting agency’s behalf. The servicing agency is responsible for awarding a contract, task order, or delivery order and for appointing a contracting officer’s representative (COR). The 14 Work for Others (WFO) projects we reviewed during this audit were hybrid assisted acquisitions in that DOE contracting officers did not perform many of the duties that they were responsible for performing.

## ***National Nuclear Security Administration***

Pursuant to the Atomic Energy Act of 1954, as amended, and the Economy Act of 1932, DOE and its semi-autonomous National Nuclear Security Administration (NNSA),

established by Congress in 2000, provide research and technical assistance to other Federal agencies on a reimbursable full-cost recovery basis through the WFO program. NNSA is responsible for enhancing national security through the military application of nuclear energy. NNSA maintains and enhances the safety, security, reliability, and performance of the U.S. nuclear weapons stockpile without nuclear testing; works to reduce global danger from weapons of mass destruction; provides the U.S. Navy with safe and effective nuclear propulsion; and responds to nuclear and radiological emergencies in the U.S. and abroad. NNSA manages eight sites, which are Government-owned and contractor-operated facilities. During our audit, we reviewed 14 WFO projects that 3 of the 8 NNSA sites performed for 9 DoD requesting activities. The three NNSA sites are the Sandia National Laboratory (Sandia), Albuquerque, New Mexico; the Lawrence Livermore National Laboratory (Lawrence Livermore), Livermore, California; and the Y-12 National Security Complex (Y-12), Oak Ridge, Tennessee.

### ***Work for Others Program***

WFO is a DOE program in which NNSA personnel and/or their respective contractor personnel perform work for non-DOE entities or where NNSA facilities are used for work not directly funded by NNSA appropriations, per DOE Order 481.1C., “Work For Others (Non-Department of Energy Funded Work),” January, 24, 2005. WFO has the following objectives:

- Provide assistance to Federal agencies and non-Federal entities in accomplishing goals that otherwise may be unattainable and to avoid duplication of effort at Federal facilities;
- Provide access for non-DOE/non-NNSA entities to highly specialized or unique NNSA facilities, services, or technical expertise when private sector facilities are inadequate;
- Increase research and development interaction between NNSA facilities and industry;
- Transfer technology originating at NNSA facilities to industry for further development or commercialization; and
- Maintain core competencies and enhance the science and technology base at NNSA facilities.

### **Review of Internal Controls**

We identified several internal control weaknesses as defined by DoD Instruction 5010.40, “Manager’s Internal Control (MIC) Program Procedures,” January 4, 2006. Specifically, for individual WFO projects, NNSA contracting officers do not:

- record detailed procurement data into the Federal Procurement Data System–Next Generation (FPDS-NG) database;
- make price reasonableness determinations in accordance with the Federal Acquisition Regulation (FAR);
- designate CORs in writing to monitor contractor performance, or

- designate individuals to review contractor invoices.

During our review of 14 WFO projects, we determined that DoD reviews of contractor cost estimates were inadequate and DoD officials did not support information included in independent Government cost estimates (IGCEs). DoD also did not have assurance that FAR requirements for obtaining certified cost or pricing data for WFO projects valued above \$650,000 were met or that monitoring of contractor performance was adequate. We identified funding problems related to how DoD requesting activities used Research, Development, Test, and Evaluation (RDT&E) funds. We also identified that interagency agreements did not meet the specificity requirements of DoD Instruction 4000.19, "Interservice and Intragovernmental Support." DoD funding documents also did not include a specific description of the supplies and services ordered or the delivery requirements in accordance with section 1535, title 31, United States Code (31 U.S.C. 1535) and DoD Financial Management Regulation, volume 11A, chapter 3, "Economy Act Orders." Implementation of recommendations in this report should correct the problems we identified. We will provide a copy of the report to senior officials responsible for internal controls in the offices of the Under Secretary of Defense for Acquisition, Technology, and Logistics and the Under Secretary of Defense (Comptroller)/Chief Financial Officer.



## **Finding A. DoD Has Significant Contracting Problems When Using DOE**

DoD requesting activities continue to use DOE for assisted interagency acquisitions even though DOE has not certified that it will comply with section 801 of the FY 2008 National Defense Authorization Act, Public Law 110-181 (Section 801). DOE does not believe that Section 801 applies to reimbursable activities performed by DOE and its contractors. Although DOE maintains that it complies with the FAR and DOE Acquisition Regulations, DOE does not comply with the FAR and the Defense Federal Acquisition Regulation Supplement (DFARS). Specifically, NNSA contracting officers do not:

- record procurement data into the FPDS-NG database,
- make price reasonableness determinations,
- obtain certified cost or pricing data,
- designate CORs to monitor contractor performance, or
- designate an individual to review contractor invoices.

The Director, Defense Procurement and Acquisition Policy, has issued three Section 801 waivers permitting DoD requesting activities to use DOE to fulfill vital mission requirements. The most recent waiver dated September 28, 2010, covers purchases made during FY 2011, up to a total amount of \$2.5 billion. (See Appendix I for the three waivers.)

During our review of 14 WFO projects, we determined that DoD requesting activities supported their use of DOE sites. However, we also determined that DoD requesting activities were deficient in their oversight. They:

- performed inadequate reviews of contractor cost estimates (11 of 14 WFO projects),
- did not prepare IGCEs (8 of 14 WFO projects), prepared IGCEs that were not supported (6 of 14 WFO projects), and
- developed funding documents and interagency agreements that were not specific (19 of 23 DoD funding documents).

Until DoD resolves these issues, DoD requesting activities using DOE for assisted acquisition purchases will not be in compliance with Section 801 or the FAR. Furthermore, DoD will not have total visibility over which DoD requesting activities are using the WFO program, what they are purchasing, what they are spending, whether they are obtaining fair and reasonable prices, or whether contractor performance is monitored.

### **Contracting Officer Responsibilities Not Performed**

When NNSA sites perform assisted acquisition WFO projects for DoD, NNSA contracting officers do not perform several important contracting officer functions that

other non-DoD agency contracting officers normally perform for DoD for assisted acquisitions. Table 1 identifies some of these responsibilities, which the report discusses.

**Table 1. Comparison of NNSA With Other Federal Agencies**

Assisted Interagency Acquisitions By Other Federal Agencies	Assisted Interagency Acquisitions Under DOE WFO Program
Non-DoD Servicing Agency Certifies That It Will Comply With Defense Procurement Requirements	DOE Has Not Certified That It Will Comply With Defense Procurement Requirements
Non-DoD Contracting Officers Record Procurement Data Into FPDS-NG Database	NNSA Contracting Officers Do Not Record Detailed Procurement Data Into FPDS-NG Database
Non-DoD Contracting Officers Make Price Reasonableness Determinations	NNSA Contracting Officers Do Not Make Price Reasonableness Determinations
Non-DoD Contracting Officers May Be Required to Obtain Certified Cost or Pricing Data	NNSA Contracting Officers Are Not Required To Obtain Certified Cost Or Pricing Data
Non-DoD Contracting Officers Designate CORs	NNSA Contracting Officers Do Not Designate CORs
Non-DoD Contracting Officers Are Responsible For the Formal Review of Contractor Invoices	No Formal Review of Contractor Invoices Performed

## Noncompliance With Defense Procurement Requirements

Congress enacted Section 801 of the FY 2008 National Defense Authorization Act because of abuses related to DoD purchases made through other agencies. Section 801 reads as follows:

(b) LIMITATION ON PROCUREMENTS ON BEHALF OF DEPARTMENT OF DEFENSE.—

(1) Except as provided in paragraph (2), an acquisition official of the Department of Defense may place an order, make a purchase, or otherwise procure property or services for the Department of Defense in excess of the simplified acquisition threshold through a non-defense agency only if—

(A) in the case of a procurement by any non-defense agency in any fiscal year, the head of the non-defense agency has certified that the non-defense agency will comply with defense procurement requirements for the fiscal year;

*DOE has not certified that it will comply with Defense procurement requirements in accordance with Section 801. This causes an internal control problem for DoD.*

DOE has not certified that it will comply with Defense procurement requirements in accordance with Section 801. This causes an internal control problem for DoD. On October 7, 2008, the DOE Chief Acquisition Officer signed a Section 801 certification for FY 2009; however, the certification did not state that DOE would comply

with Defense procurement requirements. Instead, the certification states that DOE will comply with the FAR and DOE regulations. The Section 801 certification also states that DOE officials do not believe Section 801 applies to reimbursable activities performed by DOE and its contractors. On October 8, 2009, the senior NNSA Procurement Executive signed a Section 801 certification for FY 2010 that contains the same language as the FY 2009 certification. In our opinion, the DOE FY 2009 and FY 2010 Section 801 certifications do not meet the statutory requirements of Section 801 and do not clearly state whether DOE will comply with Defense procurement requirements. Copies of the FY 2009 and FY 2010 DOE Section 801 certifications are located in Appendix H.

## **Section 801 Waivers**

Subsection (b)(2) of Section 801 authorizes the Under Secretary of Defense for Acquisition, Technology, and Logistics to make exceptions to the limitations imposed on a non-Defense agency if determined, in writing, that “it is necessary in the interest of the Department of Defense to continue to procure property and services through the non-defense agency during such fiscal year.” On November 23, 2009, the Director, Defense Procurement and Acquisition Policy, issued a Section 801 waiver to DOE. The waiver covered DoD requirements in FY 2010 to be placed through March 31, 2010, up to a total amount of \$900 million. On March 30, 2010, the Director issued another Section 801 waiver to cover total purchases made through September 30, 2010, up to a total amount of \$2.2 billion. On September 28, 2010, the Director issued another section 801 waiver covering FY 2011 purchases and allows DoD to place requirements through DOE up to a total amount of \$2.5 billion. We view the Section 801 waivers as a temporary solution until DoD becomes compliant. We do not believe that the Director, Defense Procurement and Acquisition Policy, should issue subsequent Section 801 waivers, but instead the Director should require DOE compliance or seek an alternative solution such as making direct acquisitions from DOE contractors. Copies of the Section 801 waivers are located in Appendix I.

## **DoD Procurement Data Are Not Reported**

NNSA contracting officers do not report DoD procurement data related to individual WFO projects into the FPDS-NG database as required by the FAR. This situation creates

*DoD management does not know which DoD requesting activities use the WFO program, which NNSA sites they use, what they are buying, or how much they are paying.*

an internal control problem for DoD in that DoD management does not know which DoD requesting activities use the WFO program, which NNSA sites they use, what they are buying, or how much they are paying. Without detailed procurement data and adequate oversight, the possibility exists that DoD requesting activities may be using the NNSA sites unnecessarily, using different NNSA sites for similar WFO projects at significantly different prices, and

using the NNSA sites for projects not considered a priority by management. A DOE acquisition official stated in a January 15, 2009, NNSA memorandum that executing specific contract modifications for individual WFO programs would be too labor intensive. Specifically, the DOE acquisition official stated that:

... FPDS-NG is not programmed to collect multiple funding sources on a single transaction. Therefore, the contracting officer must execute multiple contract modifications in order to report actions that have more than one funding source. This requirement places a significant burden on DOE's acquisition workforce.

Instead of entering detailed project information into FPDS-NG, NNSA enters global contract modification information into the system. During our review of two DoD funding documents, valued at \$150,000.00 and \$221,823.30, related to one WFO project, we identified that the contract modification that included these two funding documents also included 2,155 other funding documents, all totaling \$10,700,100.92.

### ***Applicable Criteria***

The following FAR and Office of Management and Budget guidance identifies Executive agency responsibilities for reporting and certifying procurement data into the Federal Procurement Data System-Next Generation database.

#### **FAR 4.603**

FAR 4.603, "Policy," states that, in accordance with the Federal Funding Accountability and Transparency Act of 2006 (Pub. L. No. 109-282), all Federal award data must be publicly accessible. FAR 4.603 also requires Executive agencies to use the FPDS-NG database to maintain publicly available information about all contract actions exceeding the micro-purchase threshold and any modifications to those actions that change previously reported contract action report data, regardless of dollar value. In addition, FAR 4.603 also requires agencies that award assisted or direct acquisitions to report them.

#### **FAR 4.604**

FAR 4.604, "Responsibilities," states that the senior procurement executive in coordination with the head of the contracting activity is responsible for developing and monitoring a process to ensure timely and accurate reporting of contractual actions into the FPDS-NG database. FAR 4.604 also assigns the responsibility for the submission and accuracy of the individual contract action report to the contracting officer who awarded the contract action. Since NNSA contracting officers awarded the management and operating contracts, it is their responsibility to input DoD procurement information related to individual WFO projects into the FPDS-NG database. Failure to do so not only violates the FAR but also conflicts with public law.

### **Office of Management and Budget Guidance**

The Office of Management and Budget, Office of Federal Procurement Policy, memorandum, "Improving Acquisition Data Quality — FY 2008 FPDS Data," May 9, 2008, requires all agencies to certify that their agency's procurement data are in the FPDS-NG database and that they have completed their data quality plans. On January 15, 2009, the DOE Chief Acquisition Officer provided the Office of Federal Procurement Policy with the DOE FY 2008 statement of FPDS-NG data verification and

validation as required. The DOE Chief Acquisition Officer acknowledged in the certification that DOE has problems in reporting interagency funds placed on contracts.

## No Price Reasonableness Determinations

When NNSA sites perform WFO projects for DoD requesting activities, DOE contracting officers do not make price reasonableness determinations for the prices DoD requesting activities pay. In other interagency audits we performed, we identified that non-DoD contracting officers made price reasonableness determinations for assisted acquisitions they performed for DoD. The DOE Inspector General stated in report DOE/IG-0829, “Work for Others Performed by the Department of Energy for the Department of Defense,” October 2009 that

. . . an NNSA official explained that they do not make price reasonableness determinations or obtain certified cost or pricing data for individual WFO technical projects performed for DoD, or any other Federal customer. According to this official, the evaluation of price reasonableness and cost and pricing data is performed as part of the original award of its management and operating contract.

DoD requesting activity officials we met with also stated that they do not make price reasonableness determinations for individual WFO projects because price reasonableness determinations are the responsibility of the DOE contracting officer. From our perspective, NNSA contracting officers’ price reasonableness determinations made during the original award of the overall management and operating contracts alone does not give DoD requesting activities reasonable assurance that the prices they pay for individual WFO projects are fair and reasonable. The lack of contracting officer price reasonableness determinations for individual WFO projects is not in accordance with the FAR. DoD needs to ensure that contracting officers make price reasonableness determinations for individual WFO projects. The lack of price reasonableness determinations for individual WFO projects causes an internal control problem for DoD.

*The lack of contracting officer price reasonableness determinations for individual WFO projects is not in accordance with the FAR.*

## Applicable Criteria

The following FAR criteria identify contracting officer responsibilities for obtaining supplies and services at fair and reasonable prices. It is important to note that DOE contracting officers are responsible for evaluating the prices and determining the reasonableness of prices for assisted acquisitions made under the WFO program.

### FAR 15.402

FAR 15.402, “Pricing Policy,” states that contracting officers must purchase supplies and services from responsible sources at fair and reasonable prices.



### **FAR 15.403-3**

FAR 15.403-3, “Requiring Information other than cost or pricing data,” states that the contracting officer is responsible for obtaining information that is adequate for evaluating the reasonableness of the price or determining cost realism.

### **FAR 15.404-1**

FAR 15.404-1, “Proposal Analysis Techniques,” states that the contracting officer is responsible for evaluating the reasonableness of the offered prices.

### **FAR 15.406-3**

FAR 15.406-3, “Documenting the Negotiation,” states that the contracting officer must document in the contract file the principal elements of the negotiation agreement including documentation of fair and reasonable pricing.

## **No Certified Cost or Pricing Data**

The Truth In Negotiations Act (TINA) requires offerors to submit cost or pricing data if a procurement exceeds the \$650,000 TINA threshold, or cite and support one of the exceptions to cost or pricing data. Under TINA, the contracting officer obtains accurate, complete, and current data from offerors to establish a fair and reasonable price. TINA also allows for a price adjustment remedy if it is later found that a contractor did not provide accurate, complete, and current data. FAR 15.403-4, “Requiring Cost or Pricing Data,” states that the threshold for obtaining certified cost or pricing data is \$650,000. FAR 15.403-1 (b), “Exceptions to Cost or Pricing Data Requirements,” states that contracting officers are not required to obtain certified cost or pricing data when they determine that:

- the prices paid are based on adequate price competition,
- the prices agreed upon are based on prices set by law or regulation,
- a commercial item is being acquired, or
- a waiver has been granted.

Of the 14 WFO projects we reviewed, 5 were valued above the \$650,000 threshold requiring certified cost or pricing data in accordance with the TINA, 10 U.S.C. 2306a, 41 U. S. C. 254(b), and the FAR. However, contracting officers did not obtain certified cost or pricing data. According to an NNSA official, DOE Acquisition Regulation Subpart 970.1504-3-1, “Cost or pricing data,” does not require DOE contracting officers to obtain certified cost or pricing data for cost reimbursement management and operating contracts. The NNSA official also stated that DOE Acquisition Regulation Subpart 970.1504-3-1 provides DOE with the “waiver” exception for not having to obtain certified cost or pricing data. However, the NNSA procurement official was not able to provide us with a copy of the TINA waiver document. Certified cost or pricing data for WFO projects would be appropriate since WFO projects are, in effect, sole-source purchases. From our perspective, DOE did not comply with TINA or the FAR.

## No CORs Designated to Monitor Contractor Performance

NNSA contracting officers do not designate CORs in writing and do not establish roles and responsibilities for monitoring contractor performance for individual WFO projects. The DOE Inspector General stated in his report that:

NNSA officials explained that they do not have either the resources or the special knowledge of the customer that is needed to monitor each WFO technical project performed for DoD. These officials also indicated that such services could be provided to the DoD customer, but that it would be provided at added cost since the Department's policy is to recover the full cost of WFO work.

The limited surveillance that DoD requesting activities performed varied. However, since DoD requesting activities did not base their contractor monitoring efforts on any predetermined set of roles and responsibilities, we were unable to determine the adequacy

*The lack of CORs and the absence of roles and responsibilities for monitoring contractor performance for individual WFO projects cause an internal control problem for DoD.*

of their monitoring efforts. The lack of CORs and the absence of roles and responsibilities for monitoring contractor performance for individual WFO projects cause an internal control problem for DoD. On August 22, 2008, the Deputy Secretary of Defense issued a memorandum titled "Monitoring Contract Performance in Contracts for Services," to DoD agencies requiring them to

ensure that properly trained and ready CORs are assigned prior to contract award. Individuals designated as CORs should have access to NNSA contractor sites and information needed to perform their duties.

## No Review of Contractor Invoices

DoD and DOE did not establish roles and responsibilities for the review of contractor invoices. An NNSA procurement official stated that he did not believe that there is a formal monthly review of invoices done by DoD sponsors. The procurement official also stated that NNSA contracting officers do not review each invoice for every WFO project because "there is not enough capacity for them to do that." During our visit to Lawrence Livermore, we selected 15 contractor invoices related to 6 WFO projects to review. For 5 of the 15 contractor invoices, we identified situations where the Lawrence Livermore contractor was charging overtime as a miscellaneous charge instead of a direct labor charge. We could not determine how long this situation had been occurring. Had CORs been designated for the six WFO projects, they probably would have identified this problem. When overtime is charged as an indirect expense, the overtime costs are spread across different WFO projects as opposed to the project where the overtime occurred and could affect the overhead rate being used. We brought this issue to the attention of the Lawrence Livermore site contractor. We also discussed this issue at our exit conference with NNSA and DOE Office of the Inspector General officials who were unaware of this situation. Individuals designated to review invoices should ensure that DoD makes

payments to NNSA contractors only for goods and services received. The individual reviewing invoices should ensure that:

- products have been delivered or the services have been performed,
- billed items and/or services were not included in previously paid invoices,
- other direct costs have been properly substantiated,
- labor hours were billed at appropriate rates, and
- arithmetic calculations are correct.

Our review of contractor invoices required that we work closely with NNSA contractor personnel in order to obtain information to complete our review. Likewise, individuals designated to review contractor invoices should also have access to NNSA contractor information needed to complete their reviews.

## **WFO Projects We Reviewed**

We reviewed 14 WFO projects that had new or continuing requirements in FY 2008. The 14 WFO projects involved 23 DoD funding documents, valued at \$9.7 million, and 9 DoD requesting activities. We reviewed interagency agreements, determination and findings (D&F) documents, NNSA contractor cost estimate information, DoD reviews of NNSA contractor cost information, DoD IGCEs, and DoD funding documents.

Appendix C identifies the 14 WFO projects and 23 DoD funding documents we reviewed along with the corresponding NNSA laboratories and DoD requesting activities.

## **DoD Activities Made Best Interest Determinations**

The Economy Act allows DoD requesting activities to place orders with a different Military Department, Defense agency, or another Federal agency for goods or services. DoD Financial Management Regulation, volume 11A, chapter 3, "Economy Act Orders," updated February 2008, prescribes policies and procedures applicable to transactions where goods or services are procured from other Federal agencies under the Economy Act, sections 1535 and 1536, title 31, United States Code. FAR 17.503, "Determinations and findings requirement," states that each Economy Act order shall be supported by a D&F that states the use of an interagency acquisition is in the best interest of the Government, and the supplies or services cannot be obtained as conveniently or economically by contracting directly with a private source.

Thirteen of the 14 WFO projects we reviewed were subject to the Economy Act. The 13 projects had the required D&F and each stated that the use of an interagency acquisition was in the best interest of the Government and that the supplies or services cannot be provided as conveniently or economically by contracting directly with a private source. The 13 D&Fs also described the capabilities of the NNSA sites. The other WFO project was subject to the Government Employee Training Act and did not require a D&F. The DoD requesting activity prepared a Justification for Selection document that described why the DoD activity selected the NNSA site. We determined that the Justification for Selection document was inadequate because it was not signed or dated. One of the DoD requesting activities we visited, the Defense Threat Reduction Agency (DTRA), took additional steps to support its use of NNSA sites. DTRA required its

program managers to prepare “Justification for Selection” memoranda that address six questions:

- Can the work be performed by the private sector?
- Why is it more effective to have the work performed by a Government agency?
- Were other alternatives considered to satisfy this requirement?
- What are the qualifications of the selected servicing agency?
- Will significant elements of the work be contracted out or be done in-house?
- Is there a service fee/charge?

The DTRA contracting officer used the information in the Justification for Selection document to prepare the D&F supporting the use of NNSA sites. Other DoD requesting activity officials we met with described market research efforts they performed; however, they did not document their market research efforts. Accordingly, we were unable to determine the adequacy of their market research efforts.

## **Inadequate DoD Reviews of Contractor-Proposed Costs**

For 11 of 14 WFO projects reviewed, DoD requesting activities performed inadequate reviews of contractor cost estimates. The DoD requesting activities’ pricing reviews were inadequate because they did not base their reviews on detailed cost information and because there was some confusion as to whether NNSA contractors were required to provide DoD requesting activities with detailed cost information. In some situations, there was no evidence that the DoD requesting activity even reviewed contractor prices. During our review of the 14 WFO projects, we saw only one instance where a DoD requesting activity asked a NNSA contractor for more detail. In that situation, the DoD requesting activity asked the Sandia contractor to provide additional detail. However, the contractor provided only limited data to the DoD requesting activity. The lack of detailed contractor cost data causes an internal control problem for DoD that needs to be resolved.

*The lack of detailed contractor cost data causes an internal control problem for DoD that needs to be resolved.*

From our perspective, DoD reviews of contractor costs, at a minimum, should detail the assessment of the need for the number of labor hours, the labor mix, and the quantities and kinds of materials proposed. Table 2 provides two examples of cost information that DoD requesting activities provided to us for two WFO projects performed by Lawrence Livermore that we reviewed. The cost information that the DoD requesting activities provided to us lacked detail, and

we did not see any indication that the DoD requesting activities asked for more detail. We know that detailed cost information existed for these two WFO projects because we obtained the detailed data during our visit to Livermore.

**Table 2. Cost Information That Lacked Detail**

Example 1	
<i>Estimated Cost</i>	
The cost of each of the four tasks described above is as follows:	
Task 1	\$ 40,000
Task 2	\$160,000
Task 3	\$400,000
Task 4	\$400,000

Example 2	
Description	Costs
Manpower	
Mission support including post mission activities	\$100,000

### ***Limited Access To Detailed Contractor Cost Information***

During our review of DoD records, we obtained documentation indicating that the NNSA policy was not to provide DoD requesting activities with detailed cost information related to individual WFO projects. For example, according to an NNSA contracting officer memorandum sent to a DoD requesting activity:

Sandia's specific over head cost recovery rates and individual salary rates are proprietary information and are generally not released externally. However, because of its contractual relationship with DOE, Sandia's operations and accounting practices are fully auditable by the DOE Inspector General (DOE IG) on a regular basis, as well as by Sandia Corporation's Internal Audit Department. Sandia has established protocols for DOE IG audits of Sandia operations, consistent with the terms and conditions of the contract.

Therefore, it is DOE/NNSA policy, to not provide detailed cost information. Rather, the review and approval by DOE/NNSA of rate information proposed by Sandia, and the oversight efforts by DOE on Sandia indirect rates, should satisfy, in DOE/NNSA's opinion, your requirements for price reasonableness determinations.

According to information that a NNSA contracting officer provided to a DOE-IG auditor during their audit, the decision to withhold detailed cost information from customers is as follows:

The Y-12 Site Office does **not** provide detailed cost information on WFO projects to their customers. **We provide direct cost information at a higher level such as labor costs, material costs, travel costs, subcontracting costs, etc.** When requested by another federal agency to provide detailed cost information, we explain to them that the direct and indirect rates are the **same** for them as they are for DOE and that the rates will not change. These rates have already been approved by DOE and the costs are what they are – the federal agency is coming to



DOE because they cannot get this work from the domestic private sector. The **costs are not negotiable**. By providing this detailed cost information, we are allowing the other federal agencies to question every rate. We will be spending more time and effort explaining to them why every detailed rate is what it is and why DOE is not going to change the rate for another customer. This simply is not cost-effective and allows for scrutiny from the customer.

One DoD requesting activity we visited identified a long history of tension with Sandia relating to not being able to obtain detailed cost information and transferred a WFO project from Sandia to the NNSA Idaho National Laboratory. A DoD requesting activity official stated:

Obtaining the cost breakdown information that is required to effectively justify the costs that are being proposed by Sandia's Project Activity Statement (PAS) has been extremely difficult and time consuming.

. . . Business Development, as well as the Program Management requires detailed information in order to prepare the Justification for Selection, Technical Evaluation, and eventually the Determination and Findings.

Sandia has been extremely reluctant to provide any additional information, and if they do, they will only provide this information verbally.

However, during our visits to Y-12 and Lawrence Livermore in December 2009, NNSA and contractor officials were eager to provide us with detailed cost information they had prepared for WFO projects we reviewed. They also went to great lengths to explain how they determine costs for individual WFO projects. NNSA and contractor officials explained that NNSA contractors usually prepare two cost estimates for individual WFO projects. One of the cost estimates is not detailed. NNSA provides this cost estimate to DoD requesting activities. The other cost estimate, the cost estimate worksheet (CEW), is very detailed; however, according to NNSA and contractor officials, the CEW is an internal document and NNSA does not provide the CEW to DoD requesting activities. The CEWs we reviewed included information such as labor rates, labor hours, material costs, travel, subcontract costs, general and administrative expenses, etc., which we believe is the level of detail that DoD requesting activities should have for their reviews of contractor cost estimates. NNSA and contractor officials located at Y-12 and Lawrence Livermore stated that they did not have a problem providing detailed cost information such as the information contained in the CEWs to DoD requesting activities, if approved to do so by senior NNSA officials. NNSA and contractor officials at Lawrence Livermore and Y-12 also provided documentation showing that their contractor charges DoD requesting activities the same rates as other Federal and NNSA customers. We believe that DoD requesting activities should not proceed with WFO projects until asking for, receiving, and reviewing detailed cost information related to their individual WFO projects. The DOE IG identified in his report the importance of DoD requesting activities' access to detailed cost information. The DOE-IG stated in his report that:

Without detailed cost and pricing information, DoD customers may not be able to obtain all pricing information they believe is necessary to satisfy defense procurement regulation requirements.

According to an NNSA procurement official, cost information at the Department's facility and management contractors is Federal information and is available to other Federal agencies. This official also agreed that WFO agreements should clearly define roles and responsibilities of the Federal partners for overseeing the facility contractors' performance. Accordingly, NNSA issued guidance on August 26, 2009, to its site offices regarding the availability of cost information to Federal agencies and roles and responsibilities on WFO agreements.

The DoD requesting activities' lack of detailed cost data for individual WFO projects and their inadequate reviews of contractor costs causes an internal control weakness for DoD. However, recent actions taken by senior-level NNSA officials should correct the problem. In addition, it is important to note that DoD requesting activities are responsible for specifying to NNSA the exact information they need and to show where they have reviewed the information. Appendix D lists the 11 of 14 WFO projects reviewed where DoD requesting activities proceeded with WFO projects before obtaining and reviewing detailed NNSA contractor cost information.

## **Unsupported Independent Government Cost Estimates**

DoD requesting activities did not prepare adequate IGCEs for any of the 14 WFO projects we reviewed. For eight WFO projects, DoD requesting activities did not prepare IGCEs. For six WFO projects, DoD requesting activities prepared IGCEs; however, they were inadequate because they did not identify the basis for the estimated information or were not signed or dated. In one situation, the IGCE was the same as the NNSA contractor's cost estimate. For the eight other WFO projects, DoD requesting activities did not document why they did not prepare an IGCE. For IGCEs to be of any use in the review of prices, the information contained in them needs to be supported. Table 3 identifies the specific issues we found related to IGCEs that were prepared.

**Table 3. Independent Government Cost Estimate Issues**

NNSA Proposal Information	IGCE Amount	DoD Activity	Issues
<b>Sandia National Laboratory</b>			
1) Proposal 041031209-3 Update and revise Sandia intrusion detection report produced in 2006	\$94,000.00	Naval Surface Warfare Center, Panama City, FL	√ IGCE not supported √ IGCE not signed or dated
2) Proposal 059080812-0 Dynamic explosive training site (DETS) training course	204,894.00	Headquarters (HQ) Air Force Civil Engineering Support Agency Tyndall Air Force Base (AFB), FL	√ IGCE not supported √ IGCE not dated
<b>Y-12 National Security Complex</b>			
3) Proposal 2276-Z042-06 Eagle Eyes	3,236,763.00	DTRA Fort Belvoir, VA	√ IGCE not supported √ IGCE not signed or dated
4) Proposal 2276-Z081-07 Radiation detector testing and development	2,536,609.00	DTRA Fort Belvoir, VA	√ IGCE not supported √ IGCE not signed or dated
5) Proposal 2276-Z241-08 Smart threads integrated radiological sensor (STIRS) program	745,684.00	DTRA Fort Belvoir, VA	√ IGCE not supported √ IGCE not signed or dated
6) Proposal 2276-Z151-08 Radiological Field Training Exercise	102,000.00	DTRA Fort Belvoir, VA	√ IGCE not supported √ IGCE not signed or dated

### ***DoD Funding Documents Lacked Specificity***

For 19 of the 23 DoD funding documents reviewed, the funding documents did not meet the specificity requirements of DoD Instruction 4000.19, 31 U.S.C. 1535, or DoD Financial Management Regulation, volume 11A, chapter 3. The funding documents did not meet the specificity requirements such as a description of the services requested and the period of performance. Instead, DoD funding documents identified NNSA contractor proposal numbers, project names, or references to the statement of work and did not include the period of performance. Many of the funding documents did not identify the entire period of performance but only when the period of performance was to end. Appendix E identifies the 19 of 23 DoD funding documents that lacked specificity.

### **DoD Instruction 4000.19**

DoD Instruction 4000.19, “Interservice and Intragovernmental Support,” implements policies, procedures, and responsibilities for intragovernmental support as a result of agreements among Federal Government activities. According to DoD Instruction 4000.19, recurring interservice and intragovernmental support that require reimbursement shall be documented on DD Form 1144, “Support Agreement,” or a

similar format that contains all of the information required on DD Form 1144. The information should include a specific description of the supplies and services purchased and the delivery date or period of performance of when the purchase is to occur. None of the 14 WFO projects we reviewed included a DD Form 1144. Seven of the 9 DoD requesting activities that we visited or contacted stated that they used the Military Interdepartmental Purchase Requests (MIPRs) in lieu of the DD Form 1144 as the interagency agreement. Accordingly, we used the 23 DoD MIPRs to determine whether the MIPRs met the specificity requirements of DoD Instruction 4000.19.

## **Section 1501, Title 31, United States Code**

Section 1501, title 31, United States Code, “Documentary Evidence Requirement for Government Obligations,” states that to establish a valid obligation and satisfy requirements, an agency has to be specific in defining its requirements.

## **DoD Financial Management Regulation, Volume 11A, Chapter 3**

DoD Financial Management Regulation, volume 11A, chapter 3, states that Economy Act orders shall be specific, definite, and certain as to both the work encompassed by the order and the terms of the order itself. An Economy Act order should include a description of the supplies and services ordered, delivery requirements, a funds citation, payment provisions, and acquisition authority.

## **Other Issues**

During the audit, we also identified some other issues that merit attention. Specifically, NNSA contractors performed work beyond the period of performance and DoD requesting activities did not maintain detailed files for individual WFO projects. On June 6, 2008, the Office of Management and Budget, Office of Federal Procurement Policy, issued new guidance related to interagency acquisitions in a memorandum titled “Improving the Management and Use of Interagency Acquisitions.”

## ***Work Performed Beyond Period of Performance***

For 3 of the 14 WFO projects reviewed, NNSA contractors continued to perform work beyond the period of performance without any written authorization to do so. Lawrence Livermore performed two of the three WFO projects, and Y-12 performed the other WFO project. Table 4 identifies these three WFO projects.

**Table 4. Work Performed Beyond Period of Performance**

<b>Contractor Proposal No.</b>	<b>DoD MIPR No.</b>	<b>Statement of Work Period of Performance End Date</b>	<b>Contractor Performed Work Until</b>
L12162	F4FDAG8179G002	3-15-2009	11-2009
L11925	F4DEB18246G001	9-30-2008	5-2009
2276-Z04206	IACRO 09-46768I	9-30-2009	10-2009

## ***Lack of Good Documentation***

DoD requesting activities did not maintain detailed files for individual WFO projects. Instead, DoD requesting activity officials we met with gathered WFO documentation for us from computers, e-mails, and in some cases from the desks of DoD requesting activity personnel. DoD requesting activities should maintain files for individual WFO projects, and the files should include documents such as D&Fs, funding documents, contractor cost estimates, DoD program office reviews of contractor cost estimates, contracting officer's price reasonableness determinations, COR letters and training certificates, DOE points of contact, e-mails, and any other pertinent information. In its *Contract Pricing Guide*, dated September 16, 2002, Defense Procurement and Acquisition Policy states:

*Need for Good Documentation.* Good documentation is essential to good contracting. As time goes on, you forget times, dates, persons involved, and other elements that are important in all aspects of contracting and pricing in particular. While fresh in your mind, you should document:

- Events;
- Actions; and
- Decisions.

*Problems from Poor Documentation.* Lack of good documentation can create serious problems. Since you will not always be available to explain what you did, or why, other contracting personnel will not know what happened, or about any special circumstances that may have affected your decisions. If your files lack proper documentation:

- Other contracting personnel may take the time to accomplish an action or make a decision that you have already completed. These actions or decisions may conflict with yours.
- Legal advisors and management review teams may question your action or lack of action because they do not have all of the relevant information.
- You will find that the lack of documentation is generally treated as a lack of action. If it is not documented, it never happened.

## ***Improving the Management and Use of Interagency Acquisitions***

On June 6, 2008, the Office of Management and Budget, Office of Federal Procurement Policy issued new guidance related to interagency acquisitions in a memorandum titled, "Improving the Management and Use of Interagency Acquisitions" (June 6, 2008, OMB Guidance). The guidance focuses on clear lines of responsibilities between agencies with requirements (DoD) and the agencies that provide acquisition support (DOE). The guidance focuses on the clear identification of roles and responsibilities for requesting agencies and servicing agencies. Included in the guidance are roles and responsibilities for determining price reasonableness, designating CORs, and designating individuals to review invoices, which were also areas where we identified problems. We did not see



any evidence in the interagency guidance that exempts DOE from following it. A copy of the memorandum is located in Appendix G.

### ***Unconventional Procedures for Adding Defense Procurement Requirements to WFO Projects***

According to the June 6, 2008, OMB Guidance, DoD requesting activities are responsible for apprising the servicing agency of all terms, conditions, and requirements to be incorporated into the contract/order as necessary to comply with the statutes, regulations, and directives that are specific to the requesting agency. The servicing agencies are responsible for ensuring that requesting activity-specific laws, restrictions, data collection, and reporting requirements that have been identified by the requesting activity are followed. The servicing agency should also work with the requesting agency to mutually agree to appropriate contract clauses addressing customer-specific laws and policies. The DOE Inspector General stated in his report that:

Although NNSA does not believe that it is appropriate to modify existing contracts to incorporate defense procurement requirements, an NNSA official stated that specific defense procurement requirements can be incorporated into the interagency agreement for a WFO technical project.

DoD requesting activities need to be aware of their responsibility for apprising NNSA of all terms, conditions, and requirements that they want NNSA to incorporate into WFO interagency agreements.

### **Reasons for Contracting Problems**

The problems we identified occurred because DOE does not believe that Section 801 applies to reimbursable activities performed by DOE and its contractors and because DoD contracting officers' involvement in WFO projects was very limited. While DoD Financial Management Regulation, volume 11, chapter 18, requires DoD contracting officers to review non-Economy Act orders above \$500,000, volume 11, chapter 3 does not require DoD contracting officers to review Economy Act orders such as WFO projects. DoD contracting officer involvement in the 14 WFO projects we reviewed was quite limited. The exception was DTRA. During a site visit, DTRA contracting officers provided us with detailed documentation supporting their reviews of contractor cost information for individual WFO projects. While their analyses was detailed and had many of the aspects of a price reasonableness determination, the DTRA contracting officers stated that the NNSA contracting officer was required to make a final determination of price reasonableness. As a result of the contracting issues we identified, we believe that DoD contracting officers need to be as involved in reviewing WFO projects that fall under the Economy Act as they are required to be involved for non-Economy Act orders. Furthermore, we believe that if DoD contracting officers become more involved and, in particular, use the direct acquisition approach instead of the assisted acquisition approach, many of the problems we identified in this report could be resolved. More DoD contracting officer involvement in WFO projects will give DoD greater assurance that DoD is complying with Section 801 requirements, Defense procurement requirements, and that DoD is obtaining best value when using DOE.

## **Management Actions**

On September 16 and 17, 2010, DOE and DoD officials signed a memorandum of agreement that defines the working relationship between DoD and DOE for work undertaken in support of and directly funded by the DoD under the DOE WFO program. The memorandum is located in the Office of the Under Secretary of Defense for Acquisition, Technology, and Logistics management comments (page 58). In addition, on September 24, 2010, the Director, Defense Procurement and Acquisition Policy, issued a policy memorandum to DoD Components that addresses significant problems we identified during the audit.

## **Conclusion**

DoD requesting activities can benefit from well-executed interagency acquisitions and the expertise that DOE can provide. However, until DOE and DoD correct the contracting problems we identified, DoD requesting activities using DOE will not be in compliance with Section 801, the FAR, or the June 6, 2008, OMB Guidance. The Director, Defense Procurement and Acquisition Policy, Section 801 waiver is a temporary solution that will allow DoD requesting activities to continue to use DOE until DoD and DOE resolve these problems.

## **Recommendations, Management Comments, and Our Response**

**A.1. We recommend that the Under Secretary of Defense for Acquisition, Technology, and Logistics either obtain certification from the Department of Energy regarding Section 801 requirements or work with the Department of Energy to develop alternative plans to make direct purchases from National Nuclear Security Administration sites. Use of direct purchases would alleviate most of the problems identified in this report. If the Department of Energy certifies that it will comply with Defense procurement requirements, DoD needs to ensure that:**

**a. Detailed DoD procurement data related to individual Work for Others projects is entered into the Federal Procurement Data System-Next Generation database.**

**b. Price reasonableness determinations are made for all Work for Others projects.**

**c. Contracting officer's representatives are designated for individual Work for Others projects.**

**d. Individuals are designated to review contractor invoices.**

## ***Under Secretary of Defense for Acquisition, Technology, and Logistics Comments***

The Director, Defense Procurement and Acquisition Policy, provided comments on behalf of the Under Secretary of Defense for Acquisition, Technology, and Logistics. The Director partially agreed with our recommendation. The Director stated that DOE and DoD will conduct a study by January 2011 to determine whether the direct purchase approach is feasible. The Director also provided us with a copy of a memorandum of agreement developed in conjunction with the DOE and signed on September 16, and 17, 2010 (see page 58). Among other things, the memorandum of agreement states that DOE and DoD will jointly develop reporting requirements outside of FPDS-NG, and DOE will standardize quarterly data reporting to DoD in support of technical project manager functions.

### ***Our Response***

The Director of Defense Procurement and Acquisition Policy's comments are partially responsive. The use of the direct purchase approach would alleviate the problems identified in this report, including Recommendation A.1.a, if implemented. The FAR is clear on the requirements for entering procurement data into the FPDS-NG database, and reporting data quarterly to DoD in an abbreviated form would not provide the visibility envisioned when the FPDS-NG was created. Furthermore, it is unnecessary to develop a duplicate system instead of using the mandated one. In the event that DoD and DOE cannot agree to a direct purchase approach, DOE still needs to be required to follow the FAR. We request the Director provide us the results of the January 2011 study and details on how procurement data will be input into the FPDS-NG database.

**A.2. We recommend that the Under Secretary of Defense for Acquisition, Technology, and Logistics establish a requirement that DoD warranted contracting officers review all Economy Act Work for Others orders greater than \$500,000 prior to sending the order to the funds certifier or issuing the Military Interdepartmental Purchase Request to the Department of Energy if DOE certifies compliance with Section 801 requirements and continues to provide assisted acquisition support.**

## ***Under Secretary of Defense for Acquisition, Technology, and Logistics Comments***

The Director, Defense Procurement and Acquisition Policy, provided comments on behalf of the Under Secretary of Defense for Acquisition, Technology, and Logistics. The Director agreed with the recommendation. On September 24, 2010, the Director issued a memorandum to DoD Components requiring DoD-warranted contracting officers to review any WFO projects in excess of \$100,000 before DoD sends funds to DOE, regardless of whether DOE certifies compliance with Section 801 requirements.

### ***Our Response***

The Director of Defense Procurement and Acquisition Policy's comments are responsive, and the actions meet the intent of our recommendation.

**A.3. We recommend that the Acquisition Executives for the Army, Navy, Air Force, and the Director, Defense Threat Reduction Agency make DoD requesting activities aware of their responsibilities for obtaining and reviewing detailed cost information for individual Work for Others projects including certified cost or pricing data, when applicable.**

### ***Department of the Army Comments***

The Department of the Army did not provide comments for this recommendation.

### ***Our Response***

We are requesting that the Department of the Army provide comments to this recommendation.

### ***Department of the Navy Comments***

The Director, Program Analysis and Business Transformation, issued comments on behalf of the Deputy Assistant Secretary of the Navy (Acquisition & Logistics Management). The Director partially agreed with our recommendation. The Director stated that the responsibility to obtain and review certified cost or pricing data and determine fair and reasonable prices lies with the WFO contracting officer of the servicing agency (DOE), and not the requesting activity. The Director also stated that that the requesting agency is most often in the best position to provide technical evaluations and advice on contractor cost proposals to make price determinations, but it is the contracting officer's responsibility to decide the scope and detail of the advice needed. The Director added that rarely, if ever, will the requesting agency need access to direct labor and overhead rates, which are typically part of the certified cost or pricing data that the contracting officer obtains. The Director agreed that the basis for WFO cost estimates needs to be provided to DoD customers and that the Office of the Secretary of Defense needs to work with DOE to obtain an agreement on the scope and level of detail of that information.

### ***Our Response***

The Director, Program Analysis and Business Transformation's comments for the Navy are generally responsive. We agree that DOE contracting officers are ultimately responsible for making price reasonableness determinations for individual WFO technical projects. However, it is important to note that DOE contracting officers do not make price reasonableness determinations for individual WFO projects. We also agree that the requesting activities are most often in the best position to perform technical evaluations. However, requesting activities need access to labor rates, labor hours, material costs, travel, subcontract costs, and general and administrative expenses in order to perform adequate reviews of DOE contractor cost proposals.

On September 24, 2010, the Director, Defense Procurement and Acquisition Policy issued a memorandum to all DOD activities, including the Navy, that established policy for DoD contracting officers. The policy requires DoD contracting officers to review each requirement in excess of \$100k designated for performance by the Department of

Energy and to ensure that each interagency agreement documents cost/price reasonableness, DoD contracting officers are also required to ensure that DoD has prepared an independent Government cost estimate and that the cognizant DoD technical project manager/Contracting Officer's Representative reviews detailed cost data DOE provides to DoD to ensure that the hours and skill mix proposed are reasonable for the tasks to be accomplished. This policy coupled with the DOE and DoD memorandum of agreement which requires DOE to provide detailed cost data to DoD and the Navy's comments to our report leads us to conclude that the Navy will comply with the recommendation.

### ***Department of the Air Force Comments***

The Department of the Air Force did not provide comments for this recommendation.

### ***Our Response***

We are requesting that the Department of the Air Force provide comments to this recommendation.

### ***Defense Threat Reduction Agency Comments***

DTRA agreed with the recommendation. The Director stated that DTRA will ensure personnel involved in initiating WFO projects with DOE are aware of their responsibilities for obtaining and reviewing detailed cost information. The Director also confirmed the recommendation is consistent with DTRA's current policies and procedures. The Director also stated DTRA would develop a specific management control plan in this area to continue enforcing best practices, as well as request that DOE laboratories consistently provide detailed cost information that includes certified cost or pricing data.

### ***Our Response***

The Director of DTRA's comments are responsive, and the actions meet the intent of the recommendation.

## **Finding B. Potential Bona Fide Needs Rule Violations**

DoD requesting activities did not always follow the bona fide needs rule for WFO projects. Funds that had expired and were no longer available for new obligations were used to pay for WFO projects. This issue occurred because of the lack of defined policy in the FAR and the DoD Financial Management Regulation regarding the use of RDT&E funds. Potential bona fide needs rule violations and the use of appropriated funds after they have expired and were no longer available for new obligations occurred for 8 of the 23 DoD funding documents we reviewed. This resulted in 31 potential Antideficiency Act violations, valued at \$641,188.42.

### ***Applicable Criteria***

The following criteria were relevant to our analysis of 23 DoD funding documents used to pay for the 14 WFO projects we reviewed.

### **Antideficiency Act**

Congress passed the Antideficiency Act to curb the fiscal abuses that frequently created “coercive deficiencies” that required supplemental appropriations. The Antideficiency Act consists of several statutes that include administrative and criminal sanctions for the unlawful use of appropriated funds (31 U.S.C. 1341, 1342, 1350, 1351, and 1511–1519). These statutory provisions enforce the Constitutional budgetary powers entrusted to Congress with respect to the purpose, time, and amount of expenditures made by the Federal Government. Violations of other laws may trigger violations of Antideficiency Act provisions, such as the “bona fide needs rule,” 31 U.S.C. 1502(a). Violations of the Antideficiency Act may result in administrative and/or criminal sanctions against those responsible.

### **Bona Fide Needs Rule**

Appropriations are generally available for limited periods. An agency must incur a legal obligation to pay money within an appropriation’s period of availability. If an agency fails to obligate funds before they expire, they are no longer available for new obligations. Expired funds retain their “fiscal year identity” for 5 years after the end of the period of availability. During this time, the funds are available to adjust existing obligations or to liquidate prior valid obligations. However, expired funds are not available for new obligations nor can they be used for new requirements.

Appropriations are available for the bona fide needs of an appropriation’s period of availability (31 U.S.C. 1502[a]). The bona fide needs rule states:

The balance of an appropriation or fund limited for obligation to a definite period is available only for payment of expenses properly incurred during the period of availability or to complete contracts properly made within that period of availability and obligated consistent with section 1501 of this title. However, the appropriation or

fund is not available for expenditure for a period beyond the period otherwise authorized by law.

## **DoD Financial Management Regulation Guidance**

Annual Appropriation Acts define the use of each appropriation and set specific timelines for use of the appropriations. The DoD Financial Management Regulation, volume 2A, chapter 1, provides guidelines on the most commonly used DoD appropriations for determining the correct appropriation to use when planning acquisitions. The WFO projects we reviewed were subject to the Economy Act. DoD Financial Management Regulation, volume 11A, chapter 3, applies to the Economy Act. Chapter 3 does not state that performance of severable services must begin during the funds period of availability, as chapter 18 states. In addition, chapter 3 and chapter 18 do not provide guidance on how to fund severable and nonseverable contracts involving multiple-year appropriations.

DoD Financial Management Regulation, volume 11A, chapter 3, paragraph 030404, “Appropriation Policy,” states that,

an Economy Act order obligates the applicable appropriation of the requesting agency or unit upon acceptance of the order by the servicing agency. The entire amount of a reimbursable order should be obligated by the requesting agency when the order is accepted.

It also states that:

it is critical that activities reconcile the obligation status of Economy Act orders and deobligate unused funds, as needed, before the end of the funds availability. Funds must be deobligated by both the requesting and servicing agency to the extent that the servicing agency or unit filling the order has not, before the end of the period of availability of the appropriation of the requesting or ordering agency, (1) provided the goods or services, or (2) entered into an authorized contract with another entity to provide the requested goods or services.

## **RDT&E Appropriations**

RDT&E requirements, including designing prototypes and processes, should be budgeted using RDT&E appropriations. In general, all developmental activities included in bringing a program to its objective system are to be budgeted in RDT&E. RDT&E funds are available for obligation for 2 years.

## **O&M Appropriations**

Expenses incurred in continuing operations and current services are budgeted in Operations and Maintenance (O&M) appropriations. Modernization costs under \$250,000 are considered expenses, as are one-time projects, such as development of planning documents and studies. O&M funds are available for obligation for 1 year. According to 10 U.S.C. 2410a, the performance of severable services can begin in one fiscal year and end in the next provided the period of performance does not exceed 12 months. However, Government Accountability Office (GAO) Decision B-317636,

“Severable Services Contracts,” April 21, 2009, indicates that the use of 10 U.S.C. 2410a is limited to severable contracts funded by annual appropriations.

### **Air Force Instruction 65-601**

Air Force Instruction 65-601, “Budget Guidance and Procedures,” March 3, 2005, implements the DoD budget policy for RDT&E contracts. The instruction limits the use of RDT&E appropriations in the second year to specific circumstances, such as cost growth, that do not involve a change to the scope of requirements that were a bona fide need of the appropriation year. The appropriation year is the first year of the 2-year appropriation period, not the second year.

### **Defense Acquisition Regulations**

Neither the FAR nor the DFARS provide sufficient guidance on how to fund contracts using multiple-year appropriations. According to FAR 32.703, “Contract Funding Requirements,” if the contract is fully funded, funds are obligated to cover the price or target price of a fixed-price contract or the estimated cost and any fee of a cost-reimbursement contract. If the contract is incrementally funded, funds are obligated to cover the amount allotted and any corresponding increment of fee. However, the FAR does not provide enough guidance on when contracts should be incrementally or fully funded.

DFARS 232.702, “Policy,” states that fixed-price contracts shall be fully funded except as permitted by DFARS 232.703-1, “General.” According to DFARS 232.703-1(1), a fixed-price contract may be incrementally funded if the contract is for severable services. However, DFARS 232.7 does not provide any guidance on the procedures for funding other types of contracts. The 14 WFO projects we reviewed were performed under cost-reimbursement contracts.

### **Inappropriate Use of RDT&E and O&M Funds**

During previous interagency audits, we identified significant funding problems related to the inappropriate use of O&M funds. The use of O&M funds is limited and only available for new obligations for 1 year. During this interagency audit, we identified potential funding problems primarily involving the use of RDT&E funds. These funds are multiple-year funds and available for use for new obligations for 2 years. We were

*However, based on the number of potential funding violations we found in the relatively small number of DoD funding documents reviewed, we believe potential funding problems involving DoD funds sent to DOE are significant.*

unable to determine the magnitude of the funding issues we identified. However, based on the number of potential funding violations we found in the relatively small number of DoD funding documents reviewed, we believe potential funding problems involving DoD funds sent to DOE are significant.

Accordingly, the Under Secretary of Defense (Comptroller)/Chief Financial Officer needs to determine the magnitude of the problem and take appropriate actions to correct the problems. The following are specific funding problems we identified. Appendix F is a summary of the 31 potential funding violations we identified.



### ***Large Scale Social Simulation WFO Project***

On August 4, 2008, the Navy Engineering Logistics Office, Arlington, Virginia, issued MIPR N4175608GO18508 to provide incremental funds of \$734,972 for a Large Scale Social Simulation WFO project, with an overall value of \$1.8 million. The WFO project was performed under DOE Proposal Number 063080731. Sandia accepted MIPR N4175608GO18508 on August 29, 2008. MIPR N4175608GO18508 cited 9780400 funds, which were FY 2008 Defense-wide RDT&E funds. These funds are 2-year funds, and were available for new obligations until September 30, 2009. According to the statement of work, the contractor was to deliver the prototype software tool to include all necessary software source code, technical data, servers, databases, connections, and other elements necessary to operate, use, and maintain the system. Based on this description, we believe that the WFO project was for nonseverable services since the services were related to a specified end product. According to GAO decision B-317139 dated June 1, 2009, (the June 1, 2009, GAO Decision), “a nonseverable service is one that requires the contractor to complete and deliver a specified end product.” It also states that “whether a contract is for severable or nonseverable services affects how the agency may fund the contract; severable services contracts may be incrementally funded, while nonseverable services contracts must be fully funded at the time of the award of the contract” absent specific statutory authority. Accordingly, the Navy should have fully funded the entire \$1.8 million amount up front. We determined that a potential bona fide needs rule violation existed, because the Navy inappropriately incrementally funded a nonseverable WFO project.

### ***Dynamic Explosive Training Site WFO Project***

On August 18, 2008, Headquarters, Air Force Civil Engineer Support Agency, Tyndall Air Force Base, Florida, issued MIPR F4ATA78231G004 to provide \$210,300 of funds to Sandia. The funds were for a WFO project to provide Air Force explosive ordinance disposal technicians three courses related to Dynamic Explosive Training Site training and practical exercises. The NNSA contractor performed this WFO project under DOE Proposal Number 059080812-0. Sandia accepted MIPR F4ATA78231G004 on August 27, 2008. MIPR F4ATA78231G004 cited 5783400 funds, which are Air Force FY 2008 O&M funds. These funds are 1-year funds and were available for new obligations until September 30, 2008. According to DoD Financial Management Regulation, volume 3, chapter 8:

Training courses that begin on or after 1 October may constitute a bona fide need of the prior year if the need for training is an immediate need in the prior year and if the commencement of the course in the next fiscal year is beyond the agency’s control. The time between award of the contract for the training and performance the training should not be excessive.

The Air Force did not support that the training courses were an immediate need in FY 2008 in accordance with DoD Financial Management Regulation, volume 3, chapter 8. In fact, MIPR F4ATA78231G004 did not even identify when the classes would occur. Instead, the MIPR stated that the presentation of the classes would occur on a future date to be determined by the customer. Other documentation identified that

the training classes would occur in FY 2009. In addition, the time between when the Air Force sent MIPR F4ATA78231G004 to Sandia and when the classes occurred was excessive. For example, the classes did not occur until December 19, 2008; April 17, 2009; and June 26, 2009. We also determined that the statutory exception to the bona fide needs rule contained in 10 U.S.C. 2410a did not apply because the Air Force did not demonstrate that performance began in FY 2008. While \$13,742.97 was expended on September 19, 2008, information we obtained showed that the costs did not have to be expended then. According to a Sandia official, the \$13,742.97 cost was:

Associated to the Site 9940 training facility. Any project utilizing this facility is charged for that usage in order to cover general maintenance and upkeep.

For smaller projects we customarily take out the usage fee as soon as the money comes in. This is not mandatory but gives the project lead a better understanding of how much they really have to work with and avoids any overages late in the project.

Accordingly, we believe this FY 2009 bona fide need should have been satisfied by using FY 2009 O&M funds. Table 5 identifies MIPR and invoice information. The third column identifies that the funds expired on September 30, 2008, and were no longer available for new obligations. The twelve dates in column five that are shaded identify situations where the contractor performed work and incurred costs after September 30, 2008.

**Table 5. Potential Bona Fide Needs Rule Violation Related to DETS WFO Project**

<b>MIPR No.</b>	<b>MIPR Amount</b>	<b>Funds Expiration Date</b>	<b>Invoice No.</b>	<b>Invoice Date</b>	<b>Invoice Amount</b>
F4ATA78231G004	\$210,300.00	9/30/2008			
		”	20091262	9/2008	\$13,742.97
		”	20092209	11/2008	18,919.25
		”	20093097	12/2008	5,587.90
		”	20093934	1/2009	36,024.04
		”	20094923	2/2009	32,956.39
		”	20095807	3/2009	6,277.95
		”	20096731	4/2009	419.83
		”	20097677	5/2009	19,837.73
		”	20098619	6/2009	12,919.34
		”	20099780	7/2009	16,135.41
		”	20100792	8/2009	45,750.08
		”	20101973	9/2009	1,718.98
		”	20103198	9/2009	10.13
<b>Total</b>					<b>\$210,300.00</b>

### ***Raft Scoring WFO Project***

On September 2, 2008, the Air Force 576 FLTS/TMO, Air Force Space Command, Vandenberg Air Force Base, California, issued MIPR F4DEB18246G001 to provide \$100,000 to Lawrence Livermore. The funds were for a WFO project for Lawrence Livermore to perform raft scoring<sup>1</sup> downrange support to the Air Force and NNSA related to a test launch of an Intercontinental Ballistic Missile in support of the Joint Testing and Assessment of the Nuclear Weapons Stockpile Program. The NNSA contractor performed this WFO project under DOE Proposal Number L11925. Lawrence Livermore accepted MIPR F4DEB18246G001 on September 5, 2008. MIPR F4DEB18246G001 cited 5783400 funds, which are Air Force FY 2008 O&M funds. These funds are 1-year funds and were available for new obligations until September 30, 2008. According to the statement of work, the NNSA contractor was to complete all work under any funding no later than September 30, 2008. Section 2410a, title 10, United States Code, permits the performance of severable services to begin in one fiscal year and end in the next provided the period of performance does not exceed one year. DoD Financial Management Regulation volume 11A, chapter 18 also states that “the performance of severable services must begin during funds period of availability and may not exceed one year.” A potential bona fide needs rule violation occurred because the Air Force did not demonstrate that performance began in FY 2008. According to contractor invoice records, all work performed and all costs expended under MIPR

<sup>1</sup> Raft scoring refers to rafts with on-board tracking instruments used to score the accuracy of the re-entry vehicle when it strikes the water.

F4DEB18246G001 occurred in FY 2009. Table 6 identifies MIPR and invoice information. The third column identifies that the funds expired on September 30, 2008, and were no longer available for new obligations. The four dates in column five that are shaded identify situations where the contractor performed work and incurred costs after September 30, 2008.

**Table 6. Potential Bona Fide Needs Rule Problems Related to Raft Scoring WFO Project**

MIPR No.	MIPR Amount	Funds Expiration Date	Invoice No.	Invoice Date	Invoice Amount
F4DEB18246G001	\$100,000.00	9/30/2008			
		”	2009503611	2/2009	\$43,244.97
		”	2009504333	3/2009	1,877.15
		”	2009504947	4/2009	51,973.55
		”	2009506063	5/2009	947.84
<b>Total</b>					<b>\$98,043.51</b>

We determined that a potential Antideficiency Act violation involving the augmentation of funds also exists because NNSA supplemented its appropriations by using DoD funds without specific statutory authority. According to 31 U.S.C., Section 1341a (1)(A):

An officer or employee of the United States Government or of the District of Columbia government may not make or authorize an expenditure or obligation exceeding an amount available in an appropriation or fund for the expenditure or obligation . . .

In this situation, the Air Force paid for work that, according to an Air Force official, the Air Force had not paid for in the past. After reviewing a February 16, 2001, memorandum of understanding regarding the joint testing and assessment of the nuclear weapons stockpile between NNSA and the Air Force, we were unable to identify who was responsible for paying for the work. While it was not clear who was responsible for paying for the work, it appears that the Air Force augmented NNSA funds.

### ***Longwave Infrared Hyperspectral Imaging Spectrometer Module WFO Project***

On September 15, 2008, Wright-Patterson Air Force Base 659 Aeronautical Systems Squadron, Ohio, issued MIPR F4FDAG8179G002 to Lawrence Livermore to provide \$150,000 of incremental funds to Lawrence Livermore. The funds were for a WFO project for the contractor at Lawrence Livermore to complete development of a longwave infrared hyperspectral imaging spectrometer channel for the Spectral Infrared Remote

Imaging Transition Testbed (SPIRITT) program<sup>2</sup> that had been started earlier. The NNSA contractor performed this WFO project under DOE Proposal Number L-12162. Lawrence Livermore accepted MIPR F4FDAG8179G002 on September 16, 2008. According to the statement of work, all work was to be completed and all deliverables received 6 months from receipt of the funding, which occurred on September 16, 2008. Accordingly, the period of performance should have ended on March 15, 2009. The MIPR cited 5783600 funds, which were Air Force FY 2008 RDT&E funds. These funds are 2-year funds and were available for new obligations until September 30, 2009. According to the June 1, 2009 GAO Decision:

A severable service is a recurring service or one that is measured in terms of hours or level of effort rather than work objectives. B-277165, Jan. 10, 2000, at 5; 60 Comp. Gen. 219, 221-22 (1981). Whether a contract is for severable or nonseverable services affects how the agency may fund the contract; severable services contracts may be incrementally funded, while nonseverable services contracts must be fully funded at the time of the award of the contract. 73 Comp. Gen. 77; 71 Comp. Gen. 428 (1992)

After reviewing how the Air Force used the funds, we determined that a potential bona fide needs rule violation would exist regardless of whether the Air Force determined that the services were severable or nonseverable. For example, if Air Force officials determined that the services were severable, they should not have used the funds after September 30, 2009, when the funds expired and were no longer available for new obligations. However, they did use some of the funds after September 30, 2009. On the other hand, if Air Force officials determined that the services were nonseverable, they should have funded the entire WFO project up front, which they did not. Air Force Instruction 65-601, "Budget Guidance and Procedures," March 3, 2005, states:

Limit reapplying of funds in the second year to cost growth within scope or to requirements which are a bona fide need of the appropriation year as defined by DFAS-DE *Interim Guidance on Accounting for Obligations*. Commands should identify funds above programmed requirements to be obligated in the first year to SAF/FMBIZ [Financial Management and Comptroller, Air Force Investments and Integration Division] and SAF/AQXR [Acquisition Program Integration Division], so the Air Force can reapply funds to other priority programs.

We also determined that Wright Patterson Air Force Base officials did not follow Air Force Instruction 65-601 since none of the costs related to MIPR F4FDAG8179G002 occurred during the first year. Table 7 identifies MIPR and invoice information. The third column identifies that the funds expired on September 30, 2009, and were no longer available for new obligations.

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<sup>2</sup> The purpose of the SPIRITT program is to develop a day/night, long-range reconnaissance imaging testbed composed of a hyperspectral sensor system with integrated high-resolution imaging, demonstrate it on-board a representative aircraft, and transition it to an operational prototype.

The two dates that are shaded in column five identify situations where the contractor performed work and incurred costs after September 30, 2009.

**Table 7. Potential Use of Expired Funds Related to Longwave Infrared Hyperspectral Imaging Spectrometer Module WFO Project**

MIPR No.	MIPR Amount	Funds Expiration Date	Invoice No.	Invoice Date	Invoice Amount
F4FDAG8179G002	\$150,000.00	9/30/2009			
		”	2009503627	2/2009	\$14,890.22
		”	2009504348	3/2009	104,030.71
		”	2009506619	5/2009	14,887.78
		”	2010500813	10/2009	852.09
		”	2010501541	11/2009	2,418.58
<b>Total</b>		”			<b>\$137,079.38</b>

On September 16, 2008, Wright-Patterson Air Force Base 659 AESS/SP issued another MIPR, F4FDAG8179G001, to Lawrence Livermore that was also for work related to the longwave infrared hyperspectral imaging spectrometer channel for SPIRITT WFO project. The MIPR value was \$221,823.30. Lawrence Livermore accepted MIPR F4FDAG8179G001 on September 16, 2008. While these funds were also Air Force RDT&E funds, they were FY 2007 RDT&E funds and due to expire in 14 days on September 30, 2008.

After reviewing how the Air Force used the funds and the June 1, 2009, GAO Decision, we determined that a potential bona fide needs rule violation occurred. If Air Force officials determined that the services were severable, they should not have used the funds for new obligations after the funds expired on September 30, 2008. However, they used all of the funds after September 30, 2008. On the other hand, if Air Force officials determined that the services were nonseverable, they should have funded the entire WFO project up front, which they did not. Again, we also determined that the Air Force did not follow Air Force Instruction 65-601 since none of the funds were expended either in the first year or second year but rather in the third year. Table 8 identifies MIPR and invoice information. The third column identifies that the funds expired on September 30, 2008, and were no longer available for new obligations. The five dates that are shaded in column five identify situations where the contractor performed work and incurred costs after September 30, 2008.

**Table 8. Potential Bona Fide Needs Rule Problems Related to Longwave Infrared Hyperspectral Imaging Spectrometer Module WFO Project**

<b>MIPR No.</b>	<b>MIPR Amount</b>	<b>Funds Expiration Date</b>	<b>Invoice No.</b>	<b>Invoice Date</b>	<b>Invoice Amount</b>
F4FDAG8179G001	\$221,823.30	9/30/2008			
		”	2009501002	10/2008	\$73,224.70
		”	2009501637	11/2008	26,459.83
		”	2009502241	12/2008	47,865.36
		”	2009502871	1/2009	24,679.59
		”	2009503626	2/2009	49,593.82
<b>Total</b>					<b>\$221,823.30</b>

***Smart Threads Integrated Radiological Sensors WFO Project***

On September 12, 2008, DTRA, Fort Belvoir, Virginia, issued Interagency Cost Reimbursement Order (IACRO) 08-4518I, valued at \$745,684 to Y-12. The purpose was to provide incremental funding for a \$20 million WFO project to provide the Smart Threads Integrated Radiological Sensors joint capability technology demonstration with all technical support necessary for completion of the man-portable detection systems-land operational demonstration exercise. The DOE Proposal Number was 2276-Z241-08. Y-12 accepted IACRO 08-4518I on September 18, 2008. The scope of work included five specific tasks, to be completed from September 15, 2008, until November 30, 2009. IACRO 08-4518I cited 9780400 funds, which were FY 2008 Defense-wide RDT&E funds. These funds are 2-year funds and were available for new obligations until September 30, 2009.

We determined that a potential bona fide needs rule violation would occur regardless of whether DTRA officials determined that the services were severable or nonseverable. If DTRA officials determined that the services were severable, they should not have used the funds for new obligations after the funds expired on September 30, 2009. However, DTRA officials used \$114,879.26 of the funds after September 30, 2009. On the other hand, if DTRA officials determined that the services were nonseverable, they should have funded the entire WFO project up front, which it did not. Table 9 identifies MIPR and invoice information. The third column identifies that the funds expired on September 30, 2009, and were no longer available for new obligations. The date that is shaded in column five identifies a situation where the contractor performed work and incurred costs after September 30, 2009.

**Table 9. Potential Use of Expired Funds Related to Smart Threads Integrated Radiological Sensors WFO Project**

<b>MIPR No.</b>	<b>MIPR Amount</b>	<b>Funds Expiration Date</b>	<b>Invoice No.</b>	<b>Invoice Date</b>	<b>Invoice Amount</b>
IACRO 08-4518I	\$745,684.00	9/30/2009			
		”	90074134	9/2008	\$24,735.95
		”	90074276	10/2008	72,408.86
		”	90074523	11/2008	54,984.61
		”	90074726	12/2008	54,130.20
		”	90074899	1/2009	112,775.99
		”	90075152	2/2009	104,416.66
		”	90075562	3/2009	7,089.27
		”	90075742	4/2009	40,894.97
		”	90075881	5/2009	839.39
		”	90076164	6/2009	9,725.31
		”	90076348	7/2009	6,224.65
		”	90076552	8/2009	4,867.08
		”	90076981	10/2009	114,879.26
<b>Total</b>					<b>\$607,972.20</b>

### ***Test and Evaluation Support WFO Project***

On May 21, 2007, DTRA issued IACRO 07-4248I, valued at \$25,000 to Y-12. Y-12 accepted IACRO 07-4248I on June 18, 2007. IACRO 07-4248I provided incremental funding for a test and evaluation support WFO project with an overall budget of \$2,552,590 performed under DOE Proposal Number 2276-Z081-07. IACRO 07-4248I cited 9770400 funds, which were FY 2007 Defense-wide RDT&E funds. These funds were 2-year funds and available for new obligations until September 30, 2008.

After reviewing how DTRA used the funds and the June 1, 2009, GAO Decision, we determined that a potential bona fide needs rule violation would exist regardless of whether DTRA determined that the services were severable or nonseverable. For example, if DTRA officials determined that the services were severable, they should not have used the funds for new obligations after the funds expired on September 30, 2008. However, DTRA used some of the funds after September 30, 2008. On the other hand, if DTRA officials determined that the services were nonseverable, they should have funded the entire WFO project up front, which they did not. The undefined period of performance contributed to the potential bona fide needs rule violation. The statement of work identified the period of performance as “five years” with no specific beginning or ending. The DoD funding document, IACRO 07-4248I, identified a specific period of performance that began on February 1, 2006, which was before the FY 2007 RDT&E funds were available for use. Table 10 identifies MIPR and invoice information. The third column identifies that the funds expired on September 30, 2008, and were no longer



available for new obligations. The four dates that are shaded in column five identify situations where the contractor performed work and incurred costs after September 30, 2008.

**Table 10. Potential Use of Expired Funds Related to Test and Evaluation Support WFO Project**

MIPR No.	MIPR Amount	Funds Expiration Date	Invoice No.	Invoice Date	Invoice Amount
IACRO 07-4248I	\$25,000.00	9/30/2008			
		"	90071570	7/2007	\$658.05
		"	90071773	8/2007	164.50
		"	90072061	10/2007	345.97
		"	90072299	11/2007	1,902.77
		"	90072325	12/2007	172.98
		"	90072548	1/2008	1,383.82
		"	90073678	7/2008	843.42
		"	90073885	8/2008	15,227.62
		"	90073916	8/2008	(497.45)
		"	90074131	9/2008	172.98
		"	90074273	10/2008	183.66
		"	90074519	11/2008	91.83
		"	90074723	12/2008	367.32
		"	90074897	1/2009	3,718.56
		"	90076161	6/2009	(7.24)
<b>Total</b>					<b>\$24,728.79</b>

On October 17, 2007, DTRA issued another funding document, IACRO 07-4312I, valued at \$69,116.00, to Y-12 for the Test and Evaluation Support WFO project performed under DOE Proposal Number 2276-Z081-07. Y-12 accepted IACRO 07-4312I on October 30, 2007. IACRO 07-4312I also cited 9770400 funds, which were FY 2007 Defense-wide RDT&E funds. These funds are 2-year funds, and were available for incurring new obligations until September 30, 2008.

We determined that a potential bona fide needs rule violation existed because DTRA officials used some of the funds for new obligations after September 30, 2008. Table 11 identifies MIPR and invoice information. The third column identifies that the funds expired on September 30, 2008, and were no longer available for new obligations. The two dates that are shaded in column five identify situations where the contractor performed work and incurred costs after September 30, 2008.

**Table 11. Potential Use of Expired Funds Related to Test and Evaluation Support WFO Project**

MIPR No.	MIPR Amount	Funds Expiration Date	Invoice No.	Invoice Date	Invoice Amount
IACRO 07-4312I	\$69,116.00	9/30/2008			
		”	90072172	11/2007	\$346.01
		”	90072326	12/2007	7,709.79
		”	90072549	1/2008	3,177.63
		”	90072676	2/2008	8,173.25
		”	90072921	3/2008	4,497.48
		”	90072943	3/2008	346.01
		”	90072983	3/2008	(346.01)
		”	90073132	4/2008	8,043.57
		”	90073325	5/2008	8,086.77
		”	90073431	6/2008	22,467.35
		”	90073680	7/2008	954.56
		”	90073886	8/2008	2,971.04
		”	90074274	10/2008	2,098.34
		”	90074520	11/2008	154.94
		”	90076162	6/2009	(3.86)
		”	90076690	9/2009	(79.37)
<b>Total</b>					<b>\$68,597.50</b>

## Contributing Factors to Funding Problems

The DoD Financial Management Regulation does not clearly address how DoD requesting activities should use multiple-year appropriations to fund severable and nonseverable contracts, either fully or incrementally. The Financial Management Regulation also does not address whether the statutory requirements of 10 U.S.C 2410a apply to contracts funded by multiple-year appropriations or whether it is only applicable to annual appropriations. The FAR and DFARS also do not address the issues.

According to GAO Decision B317139, June 1, 2009:

Whether a contract is severable or nonseverable services affects how the agency may fund the contract; severable services contracts may be incrementally funded, while nonseverable services contracts must be fully funded at the time of the award of the contract. 73 Comp.Gen. 77; 71 Comp. Gen. 428 (1992).

According to GAO Decision B-317636, April 21, 2009, an agency using multiple-year or no-year appropriations does not need to refer to section 2410a because these types of appropriations already extend 1-year beyond the first year.

In the absence of detailed DoD guidance, DoD requesting activities provided incremental funding to WFO projects and then used the funds after they expired and were no longer available for new obligations.

## **Conclusion**

Funding problems such as those that we identified in this report will continue to occur until the FAR, DFARS, and the DoD Financial Management Regulation include clear guidance on how to fund contracts using RDT&E funds. Specifically, the guidance needs to address procedures for incrementally funding and fully funding severable and nonseverable contracts.

## **Recommendations, Management Comments, and Our Response**

**B.1. We recommend that the Under Secretary of Defense for Acquisition, Technology, and Logistics initiate changes to the Federal Acquisition Regulation and Defense Federal Acquisition Regulation Supplement or both as appropriate to include guidance on the financing of all types of contracts with multiple-year appropriations. This should be coordinated with the DoD Comptroller's changes to the Defense Financial Management Regulation.**

### ***Under Secretary of Defense for Acquisition, Technology, and Logistics Comments***

The Director, Defense Procurement and Acquisition Policy, provided comments on behalf of the Under Secretary of Defense for Acquisition, Technology, and Logistics. The Director agreed with the recommendation. The Director stated he will review the FAR and DFARS in coordination with the DoD Comptroller to determine whether changes are necessary.

### ***Our Response***

The Director of Defense Procurement and Acquisition Policy's comments are responsive and meet the intent of our recommendation.

**B.2. We recommend that the Under Secretary of Defense (Comptroller)/Chief Financial Officer:**

**a. Instruct the Services and the Defense Threat Reduction Agency to initiate preliminary reviews of the potential Antideficiency Act violations we identified and to adjudicate each potential Antideficiency Act violation.**

**b. Perform additional reviews of DoD funding documents related to Work for Others projects to determine the magnitude of the potential funding problems we identified and take appropriate actions to prevent these issues from occurring in the future.**

**c. Update guidance in the DoD Financial Management Regulation on how to fund severable and nonseverable contracts when using multiple-year appropriations, in particular, those using research, development, test, and evaluation funds.**

**d. Require financial personnel to receive training that focuses on the use of research, development, test, and evaluation funds. The training should emphasize the bona fide needs rule and potential Antideficiency Act violations.**

### ***Under Secretary of Defense (Comptroller)/Chief Financial Officer Comments***

The Deputy Chief Financial Officer provided comments on behalf of the Under Secretary of Defense (Comptroller)/Chief Financial Officer. Overall, the Deputy agreed with Recommendation B.2. However, the Deputy partially agreed with Recommendation B.2.d, stating that rather than proposing training solely on the use of RDT&E funds, the Under Secretary of Defense (Comptroller)/Chief Financial Officer will work on updating the widely available training that already exists to highlight the planned changes of the DoD Financial Management Regulation as described in Recommendation B.2.c.

### ***Our Response***

The Deputy Chief Financial Officer's comments are responsive and concur with the intent of our recommendation.

### ***Defense Threat Reduction Agency Comments***

Although not required to comment, the Director of DTRA agreed with Recommendations B.2.a and B.2.b. Regarding Recommendation B.2.a., the Director stated that DTRA has already appointed a reviewing official for the effort and will provide the Under Secretary of Defense (Comptroller)/Chief Financial Officer with a preliminary review of potential funding violations. Regarding B.2.b., the Director stated that DTRA will conduct a review of funding documents related to WFO projects, to ensure compliance with the DoD Financial Management Regulation.

### ***Our Response***

The Director of DTRA's comments generally support the intent of our recommendation.

## Appendix A. Scope and Methodology

We conducted this performance audit from November 2008 through December 2010 in accordance with generally accepted government auditing standards. Those standards require that we plan and perform the audit to obtain sufficient, appropriate evidence to provide a reasonable basis for our findings and conclusions based on our audit objectives. We believe that the evidence obtained provides a reasonable basis for our findings and conclusions based on our audit objectives.

We performed this audit as required by Section 804 of Public Law 110–417, “Duncan Hunter National Defense Authorization Act for Fiscal Year 2009” (the Act). The Act requires the Inspector Generals of DoD and DOE to conduct a joint review of interagency transactions between DoD and DOE. Our review focused on projects that NNSA sites performed for DoD under the DOE WFO program. The DOE Inspector General stated in his report that “with annual expenditures exceeding \$1 billion, the Department of Defense (DoD) is one of the Department’s largest WFO customers.”

The DOE OIG provided us with a list of 218 WFO projects that had new or continuing requirements in the fourth quarter of 2008 as our universe. The WFO projects were valued at \$394.4 million and related to six of the eight NNSA sites. We non-statistically selected 14 WFO projects that three of the six NNSA sites performed for DoD to review. The three NNSA sites were the Sandia National Laboratory, Albuquerque, New Mexico; the Lawrence Livermore National Laboratory, Livermore, California; and the Y-12 National Security Complex, Oak Ridge, Tennessee. We also selected 23 DoD funding documents related to the 14 WFO projects for review. The 23 DoD funding documents were valued at \$9.7 million. The documents that the DOE OIG provided to us lacked detail, which made our sample selection process difficult. As part of our audit, we reviewed:

- DoD compliance with Section 801,
- procedures for recording procurement data into the FPDS-NG database,
- D&Fs that DoD prepared to support its use of DOE laboratories,
- NNSA contractor cost information,
- DoD reviews of NNSA contractor cost information,
- DoD IGCEs,
- DoD funding documents,
- procedures for monitoring DOE contractor performance, and
- procedures for reviewing contractor invoices.

In March 2009, we requested access to data from DOE in order to perform our review. We did not obtain the data until November and December 2009. The additional time it took us to obtain the data increased the time it took to perform the audit. We also requested additional data from a Navy requesting activity in December 2008. However, we did not obtain the information until April 14, 2009.

## **Use of Computer-Related Data**

Using the FPDS-NG database, we were unable to identify a universe of assisted acquisition purchases that DOE made on behalf of DoD in FY 2008. As an alternative, the DOE OIG provided us with a list of 218 WFO projects that 6 DOE laboratories performed for DoD requesting activities that had new or continuing requirements in the fourth quarter of 2008 as our universe. We did not perform detailed testing of the information because we used the information only to select our sample.

## Appendix B. Prior Coverage

During the last 5 years, GAO, the DoD Inspector General (IG), the U.S. Department of the Army, the DOE IG and the VA IG issued 26 reports discussing interagency acquisitions. Unrestricted GAO reports can be accessed at <http://www.gao.gov>. Unrestricted DoD IG reports can be accessed at <http://www.dodig.mil/audit/reports>. Unrestricted Army reports can be accessed at <https://www.aaa.army.mil>. Unrestricted DOE IG reports can be accessed at <http://www.ig.energy.gov/reports.htm>. Unrestricted VA OIG reports can be accessed at <http://www.va.gov>

### GAO

GAO Report No. GAO-08-1063, “DoD Financial Management Improvements Are Needed In Antideficiency Act Controls and Investigations,” September 2008

GAO Report No. GAO-07-310, “High-Risk Series: An Update,” January 2007

GAO Report No. GAO-06-996, “Interagency Contracting Improved Guidance, Planning, and Oversight Would Enable The Department of Homeland Security To Address Risks,” September 2006

GAO Report No. GAO-05-456, “Interagency Contracting Franchise Funds Provide Convenience, but Value to DoD is Not Demonstrated,” July 2005

GAO Report No. GAO-05-201, “Interagency Contracting Problems With DoD’s and Interior’s Orders to Support Military Operations,” April 2005

GAO Report No. GAO-05-274, “Contract Management Opportunities to Improve Surveillance on Department of Defense Service Contracts,” March 2005

### DoD IG

DoD IG Report No. D-2009-064, “FY 2007 DoD Purchases Made Through the National Institutes of Health,” March 24, 2009

DoD IG Report No. D-2009-043, “FY 2007 DoD Purchases Made Through the U.S. Department of Veterans Affairs,” January 21, 2009

DoD IG Report No. D-2008-122, “Follow-up on DoD Purchases Made Through the Department of the Interior,” August 18, 2008

DoD IG Report No. D-2008-082, “Summary Report on Potential Antideficiency Act Violations Resulting From DoD Purchases Made Through Non-DoD Agencies (FY 2004 Through FY 2007),” April 25, 2008

DoD IG Report No. D-2008-066, “FY 2006 and FY 2007 DoD Purchases Made Through the Department of the Interior,” March 19, 2008

DoD IG Report No. D-2008-050, “Report on FY 2006 DoD Purchases Made Through the Department of the Treasury,” February 11, 2008

DoD IG Report No. D-2008-036, “FY 2006 DoD Purchases Made Through the U.S. Department of Veterans Affairs,” December 20, 2007

DoD IG Report No. D-2008-022, “FY 2006 DoD Purchases Made Through the National Institutes of Health,” November 15, 2007

DoD IG Report No. D-2007-044, “FY 2005 DoD Purchases Made Through the Department of the Interior,” January 16, 2007

DoD IG Report No. D-2007-042, “Potential Antideficiency Act Violations on DoD Purchases Made Through Non-DoD Agencies,” January 2, 2007

DoD IG Report No. D-2007-032, “Report on FY 2005 DoD Purchases Made Through the Department of the Treasury,” December 8, 2006

DoD IG Report No. D-2007-023, “FY 2005 DoD Purchases Made Through the National Aeronautics and Space Administration,” November 13, 2006

DoD IG Report No. D-2007-007, “FY 2005 DoD Purchases Made Through the General Services Administration,” October 30, 2006

DoD IG Report No. D-2006-029, “Report of Potential Antideficiency Act Violations Identified During the Audit of the Acquisition of the Pacific Mobile Emergency Radio System,” November 23, 2005

DoD IG Report No. D-2005-096, “DoD Purchases Through the General Services Administration,” July 29, 2005

## **Army**

Army Report No. A-2007-0096-FFH, “Proper Use of Non-DoD Contracts, U.S. Army Medical Command,” March 22, 2007

Army Report No. A-2004-0244-FFB, “Information Technology Agency Contract Management,” May 25, 2004

## **DOE IG**

DOE IG Report No. DOE/IG-0829, “Work for Others Performed by the Department of Energy for the Department of Defense,” October 2009



## **VA IG**

VA Report No. 06-03540-24, "Audit of VA Purchases Made on Behalf of the Department of Defense," November 19, 2007

VA Report No. 04-03178-139, "Audit of VA Acquisitions for Other Government Agencies," May 5, 2006

## Appendix C. Work for Others Projects We Reviewed

DOE Proposal No. DoD Funding Doc.	Funding Document Amount	DoD Requesting Activity	Purpose
<b>Sandia National Laboratory</b>			
1) DOE Proposal 041031209-3 1) N6133108IP00002	\$90,000.00	Naval Surface Warfare Center, Panama City Division, Panama City, Florida	Technical services required to update and revise Sandia National Laboratory-Intrusion Detection Report produced in 2006
2) DOE Proposal 059080812-0 2) F4ATA78231G004	210,300.00	HQ Air Force Civil Engineering Support Agency, Tyndall AFB, Florida	Dynamic Explosive Training Site (DETS) training course
3) DOE Proposal 063080731-0 3) N4175608GO18508-0	734,972.00	Navy Engineering Logistics Office, Arlington, Virginia	Services related to the development of human, social, and cultural behavior modeling toolkit
4) DOE Proposal 021060510 4) N0003008MP80033	2,144,000.00	Department of the Navy Strategic Systems Programs, Arlington, Virginia	Hardware and engineering services in support of the Navy Re-entry Program
<b>Y-12 National Security Complex</b>			
5) DOE Proposal 2276-Z151-08 5) IACRO 08-4409I	\$102,000.00	Defense Threat Reduction Agency, Fort Belvoir, Virginia	Radiological Field Training Exercise
6) DOE Proposal 2276-Z042-06 6) IACRO 08-4428I 7) IACRO 06-4099I 8) IACRO 07-4243I	630,000.00 239,000.00 1,161,000.00	Defense Threat Reduction Agency, Fort Belvoir, Virginia	Development and test of "Eagle Eyes," a nuclear technology to characterize exterior areas for traces of nuclear material
7) DOE Proposal 2276-Z081-07 9) IACRO 07-4313I 10) IACRO 07-4312I 11) IACRO 08-4408I 12) IACRO 07-4248I	93,258.00 69,116.00 800,000.00 25,000.00	Defense Threat Reduction Agency, Fort Belvoir, Virginia	Test and development of radiation detection equipment
8) DOE Proposal 2276-Z241-08 13) IACRO 08-4518I	745,684.00	Defense Threat Reduction Agency, Fort Belvoir, Virginia	Smart Threads Integrated Radiological Sensor program that detects, intercepts, and defeats threats
<b>Lawrence Livermore National Laboratory</b>			
9) DOE Proposal L-11925 14) F4DEB18246G001	\$100,000.00	576 Flight Test Squadron Air Force Space Command, Vandenberg AFB, California	Services related to "Raft Scoring" in support of the Air Force 576th Flight Test Squadron Force Development Evaluation mission
10) DOE Proposal L-11374 15) N0001408IP20005 16) N0001407IP20080	925,000.00 475,000.00	Office of Naval Research, Attn: Code 822, Arlington, Virginia	Services related to Office of Naval Research Railgun Program
11) DOE Proposal L-11889 17) N0001408IP20100	111,900.00	Office of Naval Research, Attn: Code 822, Arlington, Virginia	Services to support the ONR program: "The Impact of Alternative Fuels On Combustion Kinetics"
12) DOE Proposal L-11588 18) N0001408IP20044 19) N0001407IP20103	173,782.00 75,000.00	Office of Naval Research, Attn: Code 822, Arlington, Virginia	Major upgrade of Lagrange structural solver module in the Dynamic System Mechanics Advanced Simulation family of codes
13) DOE Proposal L-12162 20) F4FDAG8179G001 21) F4FDAG8179G002	221,823.30 150,000.00	659 Aeronautical Systems Squadron, Wright Patterson AFB, Ohio	Development and delivery of longwave hyperspectral channel for "SPIRITT"
14) DOE Proposal L-12098 22) MIPR7LO89TGAV1-00 23) MIPR8JO89CPS25-00	400,000.00 40,000.00	U.S. Army Space and Missile Defense Command/Army Forces Strategic Command, Huntsville, Alabama	Demonstration of Tactical Integrated Power System (TIPS) to integrate it with a high power directed energy device

# Appendix D. Inadequate DoD Review of Contractor Cost Estimates

NNSA Proposal No. and Description of WFO Project	Proposal Amount	DoD Requesting Activity	Issues
<b>Sandia National Laboratory</b>			
1) DOE Proposal 041031209-3 Technical services required to update and revise Sandia National Laboratories Intrusion Detection Report produced in 2006	\$90,000.00	Naval Surface Warfare Center, Panama City Division, Panama City, Florida	Navy proceeded with WFO project without first obtaining detailed contractor cost information.
2) DOE Proposal 063080731-0 Services related to the development of human, social, and cultural behavior modeling toolkit	1,814,098.00	Navy Engineering Logistics Office, Arlington, Virginia	Navy did not have detailed contractor cost information. Navy asked for additional detail but received only limited information.
3) DOE Proposal 021060510 Hardware and engineering services in support of the Navy Re-entry Program	2,144,000.00	Department of the Navy Strategic Systems Programs, Arlington, Virginia	Navy proceeded with WFO project without first obtaining detailed contractor cost information.
<b>Y-12 National Security Complex</b>			
4) DOE Proposal 2276-Z151-08 Radiological Field Training Exercise	\$102,000.00	Defense Threat Reduction Agency, Fort Belvoir, Virginia	DTRA proceeded with this WFO project without first obtaining detailed cost information.
5) DOE Proposal 2276-Z081-07 Radiation Detection, Testing, and Evaluation	2,552,590.00	Defense Threat Reduction Agency, Fort Belvoir, Virginia	Contractor cost information was not detailed; however, DTRA performed a detailed review of the cost information it received.
<b>Lawrence Livermore Laboratory</b>			
6) DOE Proposal L-11925 Services related to "Raft Scoring" in support of the Air Force 576th Flight Test Squadron FDE mission	\$100,000.00	576 Flight Test Squadron Air Force Space Command Vandenberg AFB, California	Air Force proceeded with WFO project without first obtaining detailed contractor cost information.
7) DOE Proposal L-11374 Services related to Office of Naval Research Railgun Program	2,465,976.00	Office of Naval Research, Attn: Code 822, Arlington, Virginia	Office of Naval Research proceeded with WFO project without first obtaining detailed contractor cost information.
8) DOE Proposal L-11889 Services to support the ONR program: "The Impact of Alternative Fuels On Combustion Kinetics"	311,900.00	Office of Naval Research, Attn: Code 822, Arlington, Virginia	Office of Naval Research proceeded with WFO project without first obtaining detailed contractor cost information.
9) DOE Proposal L-11588 Major upgrade of Lagrange structural solver module in the Dynamic System Mechanics Advanced Simulation family of codes	250,000.00	Office of Naval Research, Attn: Code 822, Arlington, Virginia	Office of Naval Research proceeded with WFO project without first obtaining detailed contractor cost information.
10) DOE Proposal L-12162 Development and delivery of longwave hyperspectral channel for "SPIRITT"	399,905.00	659 Aeronautical Systems Squadron, Wright Patterson AFB, Ohio	Air Force did not have detailed contractor cost information. Air Force stated that proposal, technical evaluation, price reasonableness documentation would be the responsibility of the DOE contracting activity.
11) DOE Proposal L-12098 Demonstration of Tactical Integrated Power System (TIPS) to integrate it with a high power directed energy device	1,000,000.00	U.S. Army Space and Missile Defense Command/Army Forces Strategic Command, Huntsville, Alabama	Army proceeded with WFO project without first obtaining detailed contractor cost information.

## Appendix E. MIPRs Lacked Specificity

DOE Servicing Activity	DoD Requesting Activity	Issues
<b>Sandia National Laboratory</b>		
DOE Proposal 059080812-0 1) F4ATA78231G004	Headquarters, Air Force Civil Engineering Support Agency, Tyndall Air Force Base, Florida	1) Funding document lacks specificity 1) No period of performance
DOE Proposal 063080731-0 2) N4175608GO18508-0	Navy Engineering Logistics Office, Arlington, Virginia	2) Funding document lacks specificity 2) No period of performance
DOE Proposal 021060510 3) N0003008MP80033	Department of the Navy Strategic Systems Programs, Arlington, Virginia	3) Funding document lacks specificity 3) No period of performance
DOE Proposal 041031209-3 4) N6133108IP00002	Naval Surface Warfare Center Panama City Division, Panama City, Florida	4) No period of performance
<b>Y-12 National Security Complex</b>		
DOE Proposal 2276-Z042-06 5) IACRO 08-4428I 6) IACRO 06-4099I 7) IACRO 07-4243I	Defense Threat Reduction Agency, Fort Belvoir, Virginia	5) Funding document lacks specificity 6) Funding document lacks specificity 6) No period of performance 7) Funding document lacks specificity
DOE Proposal 2276-Z081-07 8) IACRO 07-4313I 9) IACRO 07-4312I	Defense Threat Reduction Agency, Fort Belvoir, Virginia	8) No period of performance 9) No period of performance
<b>Lawrence Livermore Laboratory</b>		
DOE Proposal L-11374 10) N0001408IP20005 11) N0001407IP20080	Office of Naval Research, Attn: Code 822, Arlington, Virginia	10) Funding document lacks specificity 10) No period of performance 11) Funding document lacks specificity 11) No period of performance
DOE Proposal L-11889 12) N0001408IP20100	Office of Naval Research, Attn: Code 822, Arlington, Virginia	12) Funding document lacks specificity 12) No period of performance
DOE Proposal L-11588 13) N0001408IP20044 14) N0001407IP20103	Office of Naval Research, Attn: Code 822, Arlington, Virginia	13) Funding document lacks specificity 13) No period of performance 14) Funding document lacks specificity 14) No period of performance
DOE Proposal L-12098 15) MIPR7LO89TGAV1-00 16) MIPR8JO89CPS25-00	U.S. Army Space and Missile Defense Command/Army Forces Strategic Command, Huntsville, Alabama	15) No period of performance 16) No period of performance
DOE Proposal L-12162 17) F4FDAG8179G002 18) F4FDAG8179G001	659 Aeronautical Systems Squadron, Wright Patterson Air Force Base, Ohio	17) No period of performance 18) No period of performance
DOE Proposal L-11925 19) F4DEB18246G001	576 Flight Test Squadron Air Force Space Command, Vandenberg Air Force Base, California	19) No period of performance

## Appendix F. Potential Funding Problems

DoD Funding Document No.	Funding Document Amount	Funds Expiration Date	Invoice No.	Invoice Date	Invoice Amount
<b>Sandia National Laboratory</b>					
1) F4ATA78231G004	\$210,300.00	9/30/2008	20092209	11/2008	\$18,919.25
2)		"	20093097	12/2008	5,587.90
3)		"	20093934	1/2009	36,024.04
4)		"	20094923	2/2009	32,956.39
5)		"	20095807	3/2009	6,277.95
6)		"	20096731	4/2009	419.83
7)		"	20097677	5/2009	19,837.73
8)		"	20098619	6/2009	12,919.34
9)		"	20099780	7/2009	16,135.41
10)		"	20100792	8/2009	45,750.08
11)		"	20101973	9/2009	1,718.98
12)		"	20103198	9/2009	10.13
13) N4175608GO18508-0	734,972	9/30/2009	N/A*	N/A	N/A
<b>Y-12 National Security Complex</b>					
14) IACRO 08-4518I	\$745,684.00	9/30/2009	90076981	10/2009	\$114,879.26
15) IACRO 07-4248I	25,000.00	9/30/2008	90074273	10/2008	183.66
16)		"	90074519	11/2008	91.83
17)		"	90074723	12/2008	367.32
18)		"	90074897	1/2009	3,718.56
19) IACRO 07-4312I	69,116.00	9/30/2008	90074274	10/2008	2,098.34
20)		"	90074520	11/2008	154.94
<b>Lawrence Livermore National Laboratory</b>					
21) F4DEB18246G001	\$100,000.00	9/30/2008	2009503611	2/2009	\$43,244.97
22)		"	2009504333	3/2009	1,877.15
23)		"	2009504947	4/2009	51,973.55
24)		"	2009506063	5/2009	947.84
25) F4FDAG8179G002	150,000.00	9/30/2009	2010500813	10/2009	852.09
26)		"	2010501541	11/2009	2,418.58
27) F4FDAG8179G001	221,823.30	9/30/2008	2009501002	10/2008	73,224.70
28)		"	2009501637	11/2008	26,459.83
29)		"	2009502241	12/2008	47,865.36
30)		"	2009502871	1/2009	24,679.59
31)		"	2009503626	2/2009	49,593.82
<b>Total</b>					<b>\$641,188.42</b>

\* We did not review invoices. Instead, we determined the services were nonseverable and should have been fully funded up front.

# Appendix G. Improving the Management and Use of Interagency Acquisitions



EXECUTIVE OFFICE OF THE PRESIDENT  
OFFICE OF MANAGEMENT AND BUDGET  
WASHINGTON, D.C. 20503

June 6, 2008

MEMORANDUM FOR CHIEF ACQUISITION OFFICERS  
SENIOR PROCUREMENT EXECUTIVES

FROM: Paul A. Denett *Paul A. Denett*  
Administrator

SUBJECT: Improving the Management and Use of Interagency Acquisitions

Interagency acquisitions offer important benefits to federal agencies, including economies and efficiencies and the ability to leverage resources. The attached guidance is intended to help agencies achieve the greatest value possible from interagency acquisitions.

Effective management and use of interagency acquisitions is a shared responsibility, especially for assisted acquisitions. Lack of clear lines of responsibility between agencies with requirements (requesting agencies) and the agencies which provide acquisition support and award contracts on their behalf (servicing agencies) has contributed to inadequate planning, inconsistent use of competition, weak contract management, and concerns regarding financial controls.

This document provides guidance to help agencies (1) make sound business decisions to support the use of interagency acquisitions and (2) strengthen the management of assisted acquisitions. Particular emphasis is placed on helping requesting agencies and servicing agencies manage their shared fiduciary responsibilities in assisted acquisitions. The guidance includes a checklist of roles for each responsibility in the acquisition lifecycle and a model interagency agreement to reinforce sound contracting and fiscal practices. The guidance reflects comments provided by Chief Acquisition Officers, Senior Procurement Executives, and Chief Financial Officers. The document was also shared with other interested stakeholders, including the Chief Information Officers and the Government Accountability Office (GAO), and reflects comments received from those parties as well.

Beginning on October 1, 2008, and thereafter, agencies shall ensure that decisions to use interagency acquisitions are supported by best interest determinations, as described in the attached guidance. Agencies shall further ensure that new interagency agreements for assisted acquisitions entered on or after November 3, 2008, contain the elements enumerated in Appendix 2 or follow the model agreement in Appendix 3. Agencies shall use the checklist at Appendix 1 to facilitate the clear identification of roles and responsibilities. Agencies shall also consider modifying existing long-term interagency agreements for assisted acquisitions in accordance with this guidance, as appropriate and practicable.

Providing for the sound management and use of interagency acquisitions is a key step for realizing the intended efficiencies of interagency contracts. Improving the governance structure for creating and renewing these vehicles is equally important, especially for multi-agency contracts. We have made important strides to leverage the government's vast buying power under the Federal Strategic Sourcing Initiative (FSSI) and to identify suitable executive agents that can manage government-wide acquisition contracts (GWACs) on behalf of customers across government. We must build on these efforts in order to maximize the contribution of interagency contracts to mission success. I intend to work with members of the Chief Acquisition Officers Council, including its Strategic Sourcing Working Group, to design a business case review process similar to that currently used for the designation of executive agents for GWACs and to define the structure required to support such a process.

Please have your acquisition officials work with program managers, contracting officers technical representatives, finance officers, information technology officers, legal staff and others involved in your agency's interagency acquisitions to ensure the effective implementation of this guidance and compliance with its requirements. Questions may be referred to [REDACTED]  
[REDACTED]

Thank you for your attention to this important subject.

Attachment

cc: Chief Financial Officers  
Chief Information Officers  
Performance Improvement Officers  
Danny Werfel, Acting Controller, Office of Federal Financial Management

# Appendix H. DOE FYs 2009 and 2010 Section 801 Certifications



Department of Energy  
Washington, DC 20586  
October 7, 2008

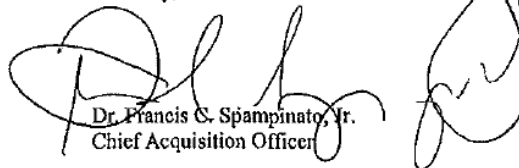
Shay D. Assad  
Director, Defense Procurement  
Acquisition Policy, and  
Strategic Sourcing  
Acquisition, Technology and Logistics  
Office of the Under Secretary of Defense  
U. S. Department of Defense  
3000 Defense Pentagon  
Washington, DC 20301-3000

Dear Mr. Assad:

I, Dr. Francis C. Spampinato, Jr., as the Chief Acquisition Officer of the Department of Energy, certify that, to the best of my knowledge all reimbursable work conducted on behalf of the Department of Defense (DOD) by this agency in Fiscal Year 2009 will comply with the Federal Acquisition Regulation and the Department of Energy Acquisition Regulation. DOE acknowledges that DOD may determine that additional requirements in the performance of such work are necessary to meet the requirements of Section 801 of the National Defense Authorization Act for Fiscal Year 2008. While DOE does not believe Section 801 applies to reimbursable activities performed by DOE and its contractors, we are committed to reaching agreement on additional work requirements prior to the performance of any work. DOD shall reimburse costs associated with meeting requirements beyond those required in the contract.

If you require any additional information, please contact [REDACTED]

Sincerely,

  
Dr. Francis C. Spampinato, Jr.  
Chief Acquisition Officer





**Department of Energy**

Washington, DC 20585

October 8, 2009

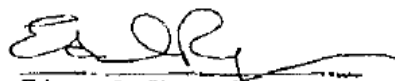
Shay D. Assad  
Director, Defense Procurement  
Acquisition Policy, and  
Strategic Sourcing  
Acquisition, Technology and Logistics  
Office of the Under Secretary of Defense  
U.S. Department of Defense  
3000 Defense Pentagon  
Washington, DC 20301-3000

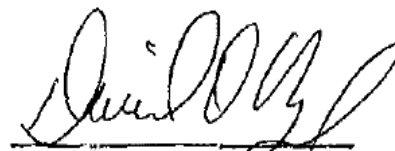
Dear Mr. Assad:

As the Senior Procurement Executives for the Department of Energy (DOE) and National Nuclear Security Administration, we are providing certification that, to the best of our knowledge, all reimbursable work conducted on behalf of the Department of Defense (DOD) by this Department's contractors in Fiscal Year 2010 will comply with the Federal Acquisition Regulation and the Department of Energy Acquisition Regulation. DOE acknowledges that DOD may determine that additional requirements in the performance of such work are necessary to meet the requirements of Section 801 of the National Defense Authorization Act for Fiscal Year 2008. While DOE does not believe Section 801 applies to reimbursable activities performed by DOE and its contractors, we are committed to reaching agreement on additional work requirements prior to the performance of any work. DOD shall reimburse costs associated with meeting any DOD requirements beyond those required in the contract.

If you require any additional information, please contact [REDACTED]

Sincerely,

  
Edward R. Simpson  
Senior Procurement Executive  
Office of Procurement and  
Assistance Management

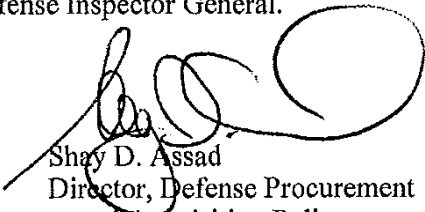
  
David O. Boyd  
Senior Procurement Executive  
National Nuclear Security  
Administration

# Appendix I. Section 801 Waivers

NOV 23 2009

**Determination in Accordance with Section 801 of the National Defense Authorization Act for Fiscal Year 2008 (NDAA 2008) by the Under Secretary of Defense for Acquisition, Technology, and Logistics [USD(AT&L)] as Delegated to the Director, Defense Procurement and Acquisition Policy, to Continue to Procure Property and Services Through the Department of Energy (DoE) in support of Department of Defense (DoD) components.**

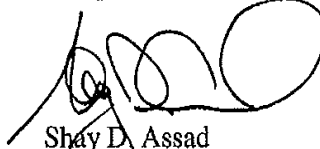
- Public Law 110-181, section 801, "Internal Controls for Procurements on Behalf of the Department of Defense by Certain Non-Defense Agencies," at subsection (b)(1) allows an acquisition official of the Department of Defense to place an order, make a purchase, or otherwise procure property or services for the Department of Defense in excess of the simplified acquisition threshold (typically \$100,000) through a non-defense agency only if the head of the non-defense agency has certified that the agency will comply with defense procurement requirements for the fiscal year.
- The Department of Defense Inspector General (DoDIG) recently expressed concerns regarding the Department of Energy (DoE) procedures when contracting on behalf of the DoD. DoE provided information in response to DoDIG concerns and is cooperating with the on-going audit. Although DoE has provided DoD a certification for FY 2010, in accordance with the requirements of section 801 (b)(1) of the NDAA 2008, it is my determination that the certification is not fully compliant with statutory requirements. Notwithstanding, the Department needs to continue to procure supplies and services through DoE. Therefore, pending a final written audit recommendation from the DoD Inspector General, it is my determination that it is necessary and in the interest of the DoD to continue to procure property and services through the DoE. I authorize all DoD components to utilize the assisted acquisition services of the DoE for the procurement of essential mission related requirements.
- This determination covers DoD requirements in fiscal year 2010 to be placed through March 31, 2010 up to a total amount of \$900 million. Each component utilizing the assisted acquisition services of DoE is directed to maintain sufficient tracking records toward the authorized ceiling and to provide monthly obligation reports to the Deputy Director, Defense Procurement and Acquisition Policy, Contract Policy and International Contracting. In addition, each component is required to ensure that all affected Department of Defense contract files are documented and available for review or audit by the Department of Defense Inspector General.



Shay D. Assad  
Director, Defense Procurement  
and Acquisition Policy

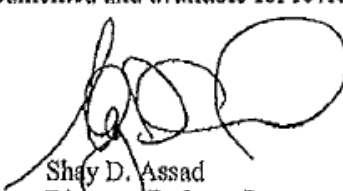
**Amendment to Determination dated November 23, 2009, in Accordance with Section 801 of the National Defense Authorization Act for Fiscal Year 2008 (NDAA 2008) by the Under Secretary of Defense for Acquisition, Technology, and Logistics [USD(AT&L)] as Delegated to the Director, Defense Procurement and Acquisition Policy, to Continue to Procure Property and Services Through the Department of Energy (DoE) in support of Department of Defense (DoD) components.**

- Public Law 110-181, section 801, "Internal Controls for Procurements on Behalf of the Department of Defense by Certain Non-Defense Agencies," at subsection (b)(1) allows an acquisition official of the Department of Defense to place an order, make a purchase, or otherwise procure property or services for the Department of Defense in excess of the simplified acquisition threshold (typically \$100,000) through a non-defense agency only if the head of the non-defense agency has certified that the agency will comply with defense procurement requirements for the fiscal year.
- The Department of Defense Inspector General (DoDIG) recently provided me an interim verbal briefing on their findings of their audit conducted at multiple DoE sites. Preliminary findings provided by the DoDIG do not warrant limiting DoD's use of DoE support. Based on the requests of the components the Department needs to continue to procure supplies and services through DoE. Therefore, pending the final written audit recommendation from the DoD Inspector General, it is my determination that it is necessary and in the interest of the DoD to continue to procure property and services through the DoE. I authorize all DoD Components to utilize the assisted acquisition services and or direct support of the DoE for the procurement of essential mission related requirements only.
- This determination covers DoD requirements in fiscal year 2010 to be placed through September 30, 2010, up to a total amount of \$2.2B. Each component utilizing the assisted acquisition services or direct support of DoE is directed to maintain sufficient tracking records of amounts provided to DoE and provide them on a monthly basis to the Deputy Director, Defense Procurement and Acquisition Policy, Contract Policy and International Contracting. In addition, each component is required to ensure that all affected Department of Defense contract files are documented and available for review or audit by the Department of Defense Inspector General.

 3/30/2010  
Shay D. Assad  
Director, Defense Procurement  
and Acquisition Policy

**Determination in Accordance with Section 801 of the National Defense Authorization Act for Fiscal Year 2008 (NDAA 2008), as amended, by the Under Secretary of Defense for Acquisition, Technology, and Logistics [USD(AT&L)] as Delegated to the Director, Defense Procurement and Acquisition Policy, to Continue to Procure Property and Services Through the Department of Energy (DoE) in support of Department of Defense (DoD) Components for Fiscal Year 2011.**

- Public Law 110-181, section 801, "Internal Controls for Procurements on Behalf of the Department of Defense by Certain Non-Defense Agencies," at subsection (b)(1) allows an acquisition official of the Department of Defense to place an order, make a purchase, or otherwise procure property or services for the Department of Defense in excess of the simplified acquisition threshold (typically \$100,000) through a non-defense agency only if the head of the non-defense agency has certified that the agency will comply with defense procurement requirements for the fiscal year.
- The Department of Defense Inspector General (DoDIG) recently provided the Department a draft audit of their audit conducted at multiple Department of Energy (DoE) laboratories and other locations. Preliminary findings do not warrant limiting DoD's use of DoE support. The Department of Energy has not certified in accordance with section 801 requirements. However, based on the requests of the components the Department needs to continue to procure supplies and services through DoE. Therefore, it is my determination that it is necessary and in the interest of the Department to continue to procure property and services through DoE. I authorize all DoD components to utilize the services of DoE for the procurement of essential mission related requirements only.
- This determination is valid for DoD requirements for fiscal year 2011, executed on behalf of DoD by DoE, up to a total amount of \$2.5B. Each component utilizing the services of DoE is directed to comply with all applicable statutory, regulatory and policy requirements, including the policy of September 24, 2010 (attached), to maintain sufficient tracking records toward the authorized ceiling, and to provide monthly obligation reports to the Deputy Director, Defense Procurement and Acquisition Policy, Contract Policy and International Contracting. In addition, each component is required to ensure that all affected Department of Defense contract files are documented and available for review or audit by the Department of Defense Inspector General.



Shay D. Assad  
Director, Defense Procurement  
and Acquisition Policy

Attachment:  
As stated

# Office of the Under Secretary of Defense for Acquisition, Technology, and Logistics Comments



ACQUISITION,  
TECHNOLOGY  
AND LOGISTICS

OFFICE OF THE UNDER SECRETARY OF DEFENSE  
3000 DEFENSE PENTAGON  
WASHINGTON, DC 20301-3000

OCT 12 2010

MEMORANDUM FOR PROGRAM DIRECTOR, ACQUISITION AND CONTRACT  
MANAGEMENT, DoDIG

THROUGH: DIRECTOR, ACQUISITION RESOURCES AND ANALYSIS

78  
10/12/10

SUBJECT: Response to DoDIG Draft Report on More DoD Oversight Needed for Purchases Made  
through the Department of Energy

As requested, I am providing responses to the general content and recommendations  
contained in the subject report.

#### Recommendation A.1.:

We recommend that the Under Secretary of Defense for Acquisition, Technology, and Logistics either obtain certification from the Department of Energy regarding Section 801 requirements or work with the Department of Energy to develop alternative plans to make direct purchases from National Nuclear Security Administration sites. Use of direct purchases would alleviate most of the problems identified in this report. If the Department of Energy certifies that it will comply with the Defense Procurement requirements, DOD needs to ensure that:

- a. Detailed DOD procurement data related to individual Work for Others projects is entered into the Federal Procurement Data System-Next Generation database.
- b. Price reasonableness determinations are made for all Work for Others projects.
- c. Contracting officer's representatives are designated for individual Work for Others projects.
- d. Individuals are designated to review contractor invoices.

#### Response:

Partially concur. Attached is a "Memorandum of Agreement" that the Department of Energy and the Office of the Under Secretary of Defense for Acquisition, Technology and Logistics/Defense Procurement and Acquisition Policy executed on September 15, 2010, that addresses "direct purchases" and recommendations (a-d) above. Specifically the MoA details that DoE and DoD will conduct a study to determine if the use of direct purchases is "desirable, feasible, and implementable". The study will be completed by January 2011.

The MoA addresses each of the recommendations (a-d) above. In addition, the Director, Defense Procurement and Acquisition Policy issued the attached policy memorandum that implements recommendations (b-d).

**Recommendation A.2:**

We recommend that the Under Secretary of Defense for Acquisition, Technology, and Logistics establish a requirement that DOD warranted contracting officers review all Economy Act Work for Others orders greater than \$500,000 prior to sending the order to the funds certifier or issuing the Military Interdepartmental Purchase Request to the Department of Energy if DOE certifies compliance with section 801 requirements and continues to provide assisted acquisition support.

**Response:**

Concur. The Director, Defense Procurement and Acquisition Policy, issued a policy memorandum on September 24, 2010, which requires a DoD warranted contracting officer review any Work for Others projects in excess of \$100,000 prior to DoD sending the funds to DoE, regardless of whether or not DoE certifies in accordance with section 801 requirements.

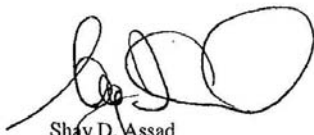
**Recommendation B.1:**

We recommend that the Under Secretary of Defense for Acquisition, Technology, and Logistics initiate changes to the Federal Acquisition Regulation and Defense Federal Acquisition Regulation Supplement or both as appropriate to include guidance on the financing of all types of contracts with multiple-year appropriations. This should be coordinated with the DOD Comptroller's changes to the Defense Financial Management Regulation.

**Response:**

Concur. The Director, Defense Procurement and Acquisition Policy, in collaboration with the DoD Comptroller, will review the current FAR and DFARS to determine whether or not changes are necessary to address contract financing associated with multiple-year appropriations and to ensure consistency with the Department's Financial Management Regulations.

Please contact [REDACTED] if additional information is required.

  
Shay D. Assad  
Director, Defense Procurement  
and Acquisition Policy

Attachments:  
As stated

MEMORANDUM OF AGREEMENT (MOA)  
BETWEEN THE  
DEPARTMENT OF DEFENSE AND THE DEPARTMENT OF ENERGY  
GOVERNING DEPARTMENT OF DEFENSE FUNDED WORK PERFORMED AT THE  
DEPARTMENT OF ENERGY LABORATORIES AND FACILITIES

I. PURPOSE

The purpose of this Memorandum of Agreement (MOA) is to define the working relationship between the Department of Defense (DOD) and the Department of Energy (DOE) for the conduct of work undertaken in support of and directly funded by the DOD under the DOE Work for Others (WFO) program.

II. BACKGROUND

A large percentage of the U.S. research support relating to the defense sciences comes from funding originating within the DOD and the effectiveness of DOD's system for supporting this research and development is to a great degree the basis for their preeminence in related scientific areas. For many years DOE laboratories and facilities, through the DOE Work for Others (WFO) program, have undertaken research and development projects performed for and funded by the DOD. These facilities are managed and operated for DOE by universities, industrial concerns, and non-profit organizations under terms of individual contracts, as defined in Federal Acquisition Regulation (FAR) Subpart 17.6. All DOD funded work at the DOE laboratories and facilities will be subject to the terms and conditions of these contracts.

The mechanism used by DOD to place work at a DOE laboratory or facility is through an Interagency Agreement (IAA) and is managed under a program called Work for Others (WFO). The DOE WFO program requirements and practices are established to ensure compliance with Federal laws and regulations, and are promulgated in the Department of Energy Acquisition Regulations (DEAR) and further defined in DOE Order 481.1C, WORK FOR OTHERS (NON-DEPARTMENT OF ENERGY FUNDED WORK).

III. POLICY

The ability of DOD to have access to the unique facilities and special expertise of the DOE laboratories and facilities greatly assists DOD in meeting essential mission requirements and specific program goals and objectives. In addition, DOD WFO funding is vital to and clearly complements and enhances the Department's own defense related and supporting science research programs at DOE laboratories and facilities.

This MOA is being established to promote and protect this longstanding, productive, and mutually beneficial relationship between DOD and DOE which has allowed each agency to more effectively meet their agency specific and national research mission and objectives.



#### IV. ADMINISTRATION

Each agency shall administer all WFO projects performed at the DOE laboratories and facilities directly funded by the DOD in accordance with the applicable statutes and regulations, and their standard policies and procedures, except as such policies and procedures may be amended by the provisions set forth below:

A. DOD will provide to DOE a copy of their signed Economy Act Determinations and Findings (D&F) or a Best Interest Determination for the specific WFO project. This will become a permanent part of the DOE project file.

B. For each WFO project, DOD will define any special or unique information requirements e.g., reporting. DOE will include associated costs in the DOE cost estimate for the requirements.

C. DOE will ensure that adequate pricing visibility is provided to support DOD's assessment of cost/price reasonableness and apply standard laboratory/facility rates used in pricing both DOE and non-DOE work. DOE will provide a breakout of direct costs while indirect costs will be provided at the summary dollar level only. The following is general list of standard cost elements to be utilized when providing DOD a WFO project proposal/cost estimate. While the cost estimate formats may vary, this level of cost detail is expected in order to provide DOD with sufficient information to ensure DOD has a thorough understanding of the proposed costs and that adequate funding has been secured for the project.

##### Cost Data Elements for each Project

Labor (including labor hours and skill mix)

Materials (including any equipment)

Travel

Other Direct Costs

Laboratory Directed Research and Development (if applicable)

Overhead

Federal Administrative Charge (if applicable)

Using this information, DOD will assess each project's cost proposal, and will ensure each DOD project file contains documentation indicating completion of the DOD assessment of cost/price reasonableness. DOD funding of a project will represent acceptance of cost/price reasonableness of a WFO project.

D. DOD recognizes that DOE operates on a fully reimbursable basis, that standard laboratory/facility rates are not negotiable, and that estimates are subject to change. Changes to cost estimates will be reported and managed through project reporting requirements established for each project by the DOD technical project manager.



E. DOD and DOE agree that oversight roles and requirements will be defined for each WFO project. At a minimum, DOD is responsible for technical project management and will identify in the interagency agreement a technical project manager/COR for each project. This DOD official shall monitor technical, cost, and schedule performance of the project, and notify the DOE contracting officer of any questioned costs or performance issues. DOD will provide written notification of any changes to project specific designated technical project managers. DOE is responsible for monitoring the performance of the contractor as a whole, and for issue resolution, as needed. This will be accomplished by the DOE Contracting Officer responsible for the DOE laboratory/facility.

F. DOD officials will have access to DOE laboratories and facilities as necessary to review and monitor project scope, scheduling, and funding. DOD will request approval for laboratory/facility access from the WFO project Principal Investigator (PI). The WFO PI shall notify the DOE contracting officer of pending on-site visits.

G. DOE and DOD will jointly develop standardized reporting requirements outside of FPDS-NG and DOE will commence standardized quarterly data reporting to DOD in support of Technical Project Manager functions.

H. DOD and DOE will conduct regularly scheduled meetings at the action officer and senior level to ensure emerging IA issues are addressed.

#### V. FUNDING

A. The details of the levels and support to be furnished by DOD will be specified in each WFO agreement. This MOA shall not be used or construed to obligate or commit funds or serve as the basis for the transfer of funds. All DOE provided cost data shall be considered business sensitive. DOE will be responsible for marking any other data as such when appropriate.

B. Project-specific information will normally be provided by the individual project Principal Investigators (PI). For more global information, involving multiple DOE facilities, DOD should make such a request through the DOE or NNSA Senior Procurement Executive, as appropriate.

C. In accordance with DOE policy, DOE will exercise funds control at the WFO project level. Upon notification by a DOD technical project manager, DOE will ensure funds provided by DOD are de-obligated and returned to DOD in a timely manner.

#### VI. AUDIT

In accordance with standard DOE practice, the DOE IG will be responsible for DOE contract audits related to DOD work at the DOE laboratories/facilities, and any DOE IG audit findings will be resolved by DOE with the necessary coordination with DOD. Upon request by DOD, in coordination with the DOE-IG, the DOD-IG will be permitted to access DOE laboratories/facilities to evaluate DOD projects.

## VII. RESPONSIBILITIES

As partners, DOD and DOE recognize the need to collaborate on Interagency Acquisition requirements. As individual organizations, each has specific responsibilities in all parts of this plan to ensure that all acquisitions are compliant with statute, regulation and applicable policy. Collectively, the two organizations have the ability and expertise to ensure that all contracting actions are done properly, in compliance with all applicable law, regulation and policy and are conducted in the best interests of the taxpayers. DOE values greatly the support that it provides to DOD and the tremendous additional leverage that DOD requirements add to DOE capabilities. DOD is committed to sound acquisition planning and to providing DOE with clear, specific, definite and certain directions regarding its requirements.

Attached is a Corrective Action Plan that more specifically addresses DOD's and DOE's respective roles and responsibilities in the process. DOD and DOE will collaborate on all action plan items. It is expected that this chart will be modified and updated over time but its changes do not impact the general agreement herein.

Both DOD and DOE will designate an office/division to function as the agency's point of contact to resolve particular problems or policy matters pertaining to DOD WFO at the DOE laboratories and facilities. These points of contact will consult with and obtain concurrence of affected elements within their organizations in accordance with internal requirements and responsibilities. DOD and DOE have designated the following office/division to serve this purpose:

### DOD:

Office of the Under Secretary of Defense  
Acquisition, Technology and Logistics  
Defense Procurement and  
Acquisition Policy/Contract Policy and  
International Contracting

### DOE:

Office of Management  
Office of Procurement and Assistance  
Management

### NNSA:

National Nuclear Security Administration  
Office of Acquisition and Supply  
Management

VII. AUTHORITY


This MOA is carried out within the statutory guidelines in the Atomic Energy Act of 1954, as amended, the Economy Act, as amended, and related statutes.

VIII. EFFECTIVE DATE

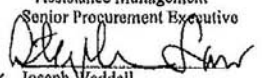
This MOA shall become effective upon the latter date of the signature of the Director, Defense Procurement and Acquisition Policy, the DOE Senior Procurement Executive of the Office of Procurement Assistance and Management, and the NNSA Senior Procurement Executive of the Office of Acquisition and Supply Management. It shall remain in effect until amended or terminated by either party.

IX. AMENDMENTS

This MOA may be modified or amended only by mutual written agreement between DOD and DOE.

  
Shay D. Assad  
Director, Defense Procurement  
and Acquisition Policy  
9/17/2003  
Date

  
Patrick M. Ferraro  
Acting Director  
Office of Procurement and  
Assistance Management  
Senior Procurement Executive  
9-16-10  
Date

  
for Joseph Vaddell  
Director  
Office of Acquisition and Supply Management  
National Nuclear Security Administration  
Senior Procurement Executive  
9-16-10  
Date

# Office of the Under Secretary of Defense (Comptroller)/ Chief Financial Officer Comments



COMPTROLLER

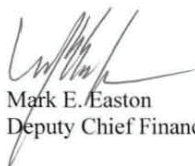
OFFICE OF THE UNDER SECRETARY OF DEFENSE  
1100 DEFENSE PENTAGON  
WASHINGTON, DC 20301-1100

MEMORANDUM FOR PROGRAM DIRECTOR, DEFENSE FINANCIAL AUDITING  
SERVICE, OFFICE OF INSPECTOR GENERAL, DEPARTMENT  
OF DEFENSE

SUBJECT: DoD Inspector General (DoDIG) Draft Audit Report, "More DoD Oversight Needed  
for Purchases Made Through the Department of Energy" (Project No. D2009-  
D000CF-0069.000)

This memo is in response to the subject August 9, 2010 draft report provided to this  
office for review and comment. Our response to the audit report recommendations directed to  
the Under Secretary of Defense (Comptroller)/Chief Financial Officer is at Attachment 1.

We appreciate the opportunity to respond to your draft audit report and look forward to  
resolving the cited issues. My point of contact is [REDACTED]



Mark E. Easton  
Deputy Chief Financial Officer

Attachment:  
As stated

cc:  
GC, DoD (Fiscal)



Response to Draft Audit Report Recommendations

Office of the Inspector General (OIG), Department of Defense (DoD)  
“More DoD Oversight Needed of Purchases Made Through the Department of  
Energy” (Project No. D2009-D000CF-0069.000)

OIG Recommendation B2. We recommend the Under Secretary of Defense  
(Comptroller)/Chief Financial Officer:

- a. Instruct the Services and the Defense Threat Reduction Agency to initiate preliminary reviews of the potential Antideficiency Act violations we identified and to adjudicate each potential Antideficiency Act violation.

OUSD(C)/CFO Response. Concur. In accordance with DoD Financial Management Regulation (DoDFMR), Volume 14, Chapter 3, the OUSD(C)/CFO requested preliminary reviews from the Air Force, Navy and Defense Threat Reduction Agency on August 12, 2010. The expected completion date of the required reviews is September 13, 2010. This office will continue tracking the progress of the cases until fully adjudicated.

- b. Perform additional reviews of DoD funding documents related to Work for Others projects to determine the magnitude of the potential funding problems we identified and take appropriate actions to prevent these issues from occurring in the future.

OUSD(C)/CFO Response. Concur. The OUSD(C)/CFO will request information on DoD funding documents related to Work for Others projects from the Department of Energy. Sufficient details will be requested to determine the extent of funding problems. If funding problems are discovered, this office will take appropriate action to prevent future occurrences.

- c. Update guidance in the DoD Financial Management Regulation on how to fund severable and nonseverable contracts when using multiple-year appropriations, in particular, those using research, development, test, and evaluation funds.

OUSD(C)/CFO Response. Concur. The OUSD(C)/CFO will update the DoDFMR to clarify when severable and non severable services may be acquired under the Economy Act authority and funding Economy Act and Non-Economy Act orders for severable and non severable services with multiple-year appropriations, to include research, development, test and evaluation (RDT&E) funds.

Attachment 1



- d. Require financial personnel to receive training that focuses on the use of research, development, test and evaluation funds. The training should emphasize the bona fide needs rule and potential Antideficiency Act violations.

---

OUSDC(C)/CFO Response. Partially Concur. Rather than propose training solely on the use of RDT&E funds, the OUSDC(C)/CFO will work to update existing training to highlight the planned changes to the DoDFMR as described in Recommendation B2c.

(There are a number of training venues for DoD financial personnel in which funds control and fiscal law training are offered. Examples include traditional classroom training and internet-based tutorials that assist financial managers in establishing, reviewing, and maintaining effective administrative controls over appropriations and funds. The Defense Acquisition University includes fiscal law training as part of their acquisition and program manager certification requirements.)

# Department of the Navy Comments



DEPARTMENT OF THE NAVY  
OFFICE OF THE ASSISTANT SECRETARY  
(RESEARCH, DEVELOPMENT AND ACQUISITION)  
1000 NAVY PENTAGON  
WASHINGTON DC 20350-1000

SEP 28 2010

## MEMORANDUM FOR NAVAL INSPECTOR GENERAL

SUBJECT: DODIG Draft Report "More DOD Oversight Needed for Purchases Made Through the Department of Energy" Tasker: 2010UGENERAL-015327c

We have reviewed the subject draft report and recommendations. The DoN response to Recommendation A.3 is attached.

The point of contact for this matter is [REDACTED]

A handwritten signature in cursive script, reading "Bruce A. Sharp", is positioned above the printed name.

Bruce A. Sharp  
Director, Program Analysis and  
Business Transformation  
Deputy Assistant Secretary of the Navy  
(Acquisition & Logistics Management)

Attachment: As stated

Copy to:  
DoDIG  
AGCRDA



Department of the Navy Comments on DODIG Draft Report  
“More DOD Oversight Needed for Purchases Made Through the Department of Energy”  
Project Number D2009-D000CF-0069.000

Recommendation A.3. We recommend that the Acquisition Executives for the Army, Navy, Air Force and the Director, Defense Threat Reduction Agency make DoD requesting agencies aware of their responsibilities for obtaining and reviewing detailed cost information for individual Work for Others projects including certified cost or pricing data when applicable.

DoN Response: Partially concur. The responsibility to obtain and review certified cost or pricing data belongs to the Contracting Officer (CO), who, in the *Work for Others* (WFO) Program, is in Department of Energy (DOE), and not the requesting activity. The CO also is responsible for determining prices to be fair and reasonable. To the extent that technical evaluation and advice are needed to make these determinations, it is most often the requesting agency that is in the best position to provide such evaluation and advice, but it is a CO's responsibility to decide the scope and detail of advice needed, and rarely, if ever, will the requesting agency need access to direct labor and overhead rates that typically are part of the certified cost or pricing data that the CO obtains.

Under the WFO Program, DOE, as the servicing agency, is providing contract support to the requesting agency. The DoE contracting officer, therefore, is responsible for “...obtaining and reviewing detailed cost information for individual Work for Others projects including certified cost or pricing data, when applicable.” We agree, however, that the basis for WFO cost estimates needs to be provided to DoD customers. OSD needs to work with DOE to obtain agreement on the scope and level of detail of data that will be provided.

# Defense Threat Reduction Agency Comments



Defense Threat Reduction Agency  
8725 John J. Kingman Road, MSC 6201  
Fort Belvoir, VA 22060-6201

SEP 7 2010

MEMORANDUM FOR INSPECTOR GENERAL, DEPARTMENT OF DEFENSE  
(ATTN: ACQUISITION AND CONTRACT MANAGEMENT)

SUBJECT: More DoD Oversight Needed for Purchases Made Through the Department of Energy (Project No. D2009-D000CF-0069.000).

Reference: Inspector General, Department of Defense draft report, same subject, August 9, 2010.

Pursuant to the above reference, this memorandum provides the Defense Threat Reduction Agency (DTRA) response to findings and recommendations as related to DTRA. Specifically, DTRA has commented on the recommendation at paragraph A.3.

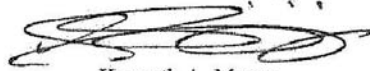
DTRA concurs with the DTRA-related items in Finding A and, specifically, the recommendation at paragraph A.3. DTRA will ensure that all personnel involved in initiating Work for Others (WFO) projects with the Department of Energy (DOE) are aware of their responsibilities for obtaining and reviewing detailed cost information; the recommendation is consistent with our current policies and procedures. DTRA will also develop a specific management control plan in this area and continue to enforce proven best practices.

DTRA will request that DOE laboratories consistently provide sufficiently detailed cost information, including access to certified cost or pricing data when applicable. As acknowledged in the reference, DTRA does assign Program Managers who operate similarly to Contracting Officer's Representatives in that they specifically identify requirements, manage work efforts, and require associated deliverables. To further strengthen internal controls, instructions in our Interagency Cost Reimbursable Orders will be modified to stipulate that DOE record detailed procurement data into the Federal Procurement Data System--Next Generation and assign responsibility for invoice review prior to payment and subsequent reimbursement through the Interagency Payment and Collection system.

The Draft Report also addressed Potential Bona Fide Needs Violations (Finding B) and recommended that the Office of the Under Secretary of Defense (Comptroller) (OUSD(C)) direct DTRA to initiate preliminary reviews of potential bona fide needs violations (Recommendation B.2.a). On August 12, 2010, the OUSD(C) directed DTRA to conduct preliminary reviews of potential violations. DTRA has appointed a reviewing official and this effort is underway. DTRA's report on the preliminary review is due to

OUSDC) by September 13, 2010. In accordance with Recommendation B.2.b., DTRA will conduct a review of DTRA funding documents related to WFO projects to ensure that funding decisions are in compliance with the DoD Financial Management Regulations.

Thank you for the opportunity to comment on the draft report. If you require further assistance, please feel free to contact me at [REDACTED]



Kenneth A. Myers  
Director



# Inspector General Department of Defense