



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

Inspection Report

Performance of Work for a Non-
Department Entity at Lawrence
Livermore National Laboratory

INS-O-14-01

January 2014



Department of Energy
Washington, DC 20585

January 29, 2014

MEMORANDUM FOR THE MANAGER, LIVERMORE FIELD OFFICE

Sandra D. Bruce

FROM: Sandra D. Bruce
Assistant Inspector General
for Inspections
Office of Inspector General

SUBJECT: INFORMATION: Inspection Report on "Performance of Work for a Non-Department Entity at Lawrence Livermore National Laboratory"

BACKGROUND

Lawrence Livermore National Laboratory (LLNL) is a Department of Energy (Department) Federally Funded Research and Development Center (FFRDC) that performs a variety of work in support of the Department's mission, including high explosives and research and development. As an FFRDC, LLNL may perform work for organizations other than the sponsoring agency under the Economy Act, or other applicable legislation, when the work would not result in competition with the private sector. The acceptance of such Work for Others is governed by various contractual requirements and Departmental regulations. LLNL is managed and operated by Lawrence Livermore National Security, LLC, for the National Nuclear Security Administration (NNSA). The Livermore Field Office is responsible for administering the contract between the Department and Lawrence Livermore National Security, LLC.

The Office of Inspector General received a complaint alleging that LLNL: (1) engaged in illegal competition with the private sector by performing work for a non-Federal entity; and (2) used the facilities and resources of LLNL inappropriately to perform this outside work. These allegations involve explosives-related work performed at LLNL in November 2011 for a National Geographic documentary about the *Lusitania*, a British passenger ship that sank in May 1915, less than 20 minutes after being struck by a torpedo. We initiated this inspection to assess the facts and circumstances surrounding the allegations.

RESULTS OF INSPECTION

We substantiated certain aspects of the allegation regarding LLNL's performance of non-Department work. Specifically, we found that LLNL:

- Did not adequately consider the prohibitions against an FFRDC competing with the private sector when performing work for National Geographic's documentary, *The Dark Secrets of the Lusitania*; and

- Used Department facilities and resources inappropriately, to include \$81,746 in Licensing and Royalty funds, to perform work for National Geographic. In addition, the work performed for the documentary did not appear to be consistent with LLNL's mission.

These conditions occurred, in part, because LLNL did not follow the established Work for Others process. Instead, LLNL inappropriately pursued an alternate, less formal process for approving and funding the documentary as a non-reimbursable project that used Licensing and Royalty funds. By using such an approach, LLNL was able to avoid the requirement to have a written determination certified in writing by the responsible Department or NNSA contracting officer or authorized designee that performance of the work would not place the FFRDC in direct competition with the domestic private sector.

In certain instances, the Department's Laboratories are permitted to perform work for outside entities without complying with all established Work for Others requirements. However, the Department does not permit the use of Licensing and Royalty funds as a means to avoid compliance with Work for Others requirements. In addition, it appears to be unlikely that LLNL would have been able to obtain a certification of non-competition because the services provided could have been obtained from a number of private sector sources. Therefore, performing work on the National Geographic documentary without adequately considering the prohibitions against an FFRDC competing with the private sector gave the appearance that LLNL had inappropriately used its privileged information or access to installations, equipment and real property in violation of the provisions of Federal Acquisition Regulation 35.017, *Federally Funded Research and Development Centers*.

In addition, the \$81,746 in Licensing and Royalty funds expended on this project did not conform with established restrictions that limited its use to legitimate and mission-related scientific research, development, technology transfer and education at LLNL. Federal officials responsible for oversight of contractor activities in this area told us that they knew of the documentary and were concerned that it was an inappropriate use of LLNL's resources. Those officials, however, took no action to correct LLNL's conduct or to require that the costs of the effort be reimbursed to the Department.

During the course of our inspection, we also noted that LLNL had not established a detailed disposition plan for Licensing and Royalty funds in a manner consistent with Federal regulations and contract terms. Further, LLNL did not always adequately account for its actual use of these funds. As such, Federal officials lacked detail needed for oversight of these funds. We noted that in Fiscal Year 2011, LLNL had approximately \$6.8 million in Licensing and Royalty funds available to perform permitted activities.

Accordingly, we made a number of recommendations designed to improve transparency and management of similar projects in the future.

OTHER MATTERS

We also received an unrelated allegation that LLNL interfered with the rights and abilities of

Laboratory employees to participate in outside business activities. That allegation was not substantiated. Additional details regarding our examination of the circumstances surrounding that issue are discussed in Appendix 1.

MANAGEMENT COMMENTS

Management concurred with the report's recommendations and indicated that it was in the process of implementing corrective actions. We found management's comments and planned corrective actions to be generally responsive to our report findings and recommendations.

Management's formal comments are included in Appendix 4.

Attachment

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

REPORT ON PERFORMANCE OF WORK FOR A NON-DEPARTMENT ENTITY AT LAWRENCE LIVERMORE NATIONAL LABORATORY

TABLE OF CONTENTS

Laboratory Support for Non-Department Work

Details of Finding	1
Recommendations	6
Management and Inspector Comments	6

Appendices

1. Other Matters	7
2. Objective, Scope and Methodology	8
3. Related Reports	9
4. Management Comments	11

PERFORMANCE OF WORK FOR A NON-DEPARTMENT ENTITY AT LAWRENCE LIVERMORE NATIONAL LABORATORY

LABORATORY SUPPORT FOR NON-DEPARTMENT WORK

The Office of Inspector General received a complaint alleging that Lawrence Livermore National Laboratory (LLNL): (1) engaged in illegal competition with the private sector by performing work for a non-Federal entity; and (2) used the facilities and resources of LLNL inappropriately to perform this outside work. The allegations involved explosives-related work performed at LLNL in November 2011 for a National Geographic documentary about the *Lusitania*, a British passenger ship that sank in May 1915, less than 20 minutes after being struck by a torpedo. The documentary attempted to explain why the *Lusitania* sank so quickly and to identify the source of a second explosion that occurred on the ship moments after the torpedo hit.

LLNL is a Department of Energy (Department) Federally Funded Research and Development Center (FFRDC). According to Federal Acquisition Regulation (FAR) 35.017, *Federally Funded Research and Development Centers*, FFRDC's are used to meet certain special long-term research or development needs that cannot be met as effectively by existing in-house or contractor resources. FFRDCs are not to use privileged information or access to installations, equipment and real property to compete with the private sector. All work performed must be within the purpose, mission, and general scope of effort or special competency of the FFRDC.

LLNL also has access to non-appropriated funds generated through Licensing and Royalty activities that it is permitted to spend for certain mission-related activities. Licensing and Royalty funds are Federal funds, subject to the Department of Energy Acquisition Regulation, the Department's management and operating (M&O) contract with Lawrence Livermore National Security, LLC (LLNS), and LLNL's Policy 17.2, *Licensing and Royalty Income Distribution*. These criteria require LLNL to use income from Licensing and Royalties for scientific research, development, technology transfer and education at LLNL, consistent with the Laboratory's research and development mission and objectives.

In support of the National Geographic documentary, LLNL conducted explosive testing and synthesis at the Department's High Explosives Applications Facility to demonstrate the explosive effects of various materials that may have contributed to the sinking of the *Lusitania*. The activities were funded by LLNL using Licensing and Royalty funds. Our inspection revealed that this work may have been contrary to the prohibitions against an FFRDC competing with the private sector as well as restrictions on the use of Licensing and Royalty funds, and may not have been consistent with LLNL's purpose, mission, general scope of effort or special competency.

FFRDC and the Private Sector

We substantiated certain aspects of the allegation. Notably, LLNL did not adequately consider the prohibitions against an FFRDC competing with the private sector before performing work for National Geographic's documentary, *The Dark Secrets of the Lusitania*. Per FAR 35.017-1, in order to establish the FFRDC's mission and facilitate a long-term relationship between the Government and the FFRDC, a written agreement of sponsorship between the Government and the FFRDC is prepared when the FFRDC is established. This agreement must include, among

other things, the requirements of FAR 35.017-1(c) (5) for the delineation of: (1) whether or not the FFRDC may accept work from other than the sponsoring agency; and (2) the procedures to be followed if such work may be accepted.

In the case of LLNL, the Department is the sponsor and the sponsoring agreement is the M&O contract between the Department and LLNS. The M&O contract permits LLNL to accept work from a non-Department entity in accordance with the requirements and limitations of Department Order 481.1C, *Work for Others, Non-Department of Energy Funded Work*. This Order states that Work for Others is the performance of work for non-Department entities by Department/National Nuclear Security Administration (NNSA) personnel and/or the respective contractor personnel or the use of Department/NNSA facilities for work that is not directly funded by Department/NNSA appropriations.

This Order stipulates that, prior to the performance of any proposed work for a non-Department entity, several written determinations must be made and certified by the responsible Department or NNSA contracting officer or authorized designee. These required certifications include a determination that the proposed work will not place the facility in direct competition with the domestic private sector.

However, LLNL did not follow the established Work for Others process. Rather, LLNL inappropriately pursued an alternate, less formal process for approving and funding the documentary as a non-reimbursable project that used Licensing and Royalty funds. This alternate, less formal process did not include a requirement for a written determination by the responsible Department or NNSA contracting officer or authorized designee that performance of the work would not place the FFRDC in direct competition with the domestic private sector. A LLNL official told us that consideration was given to using the Work for Others process, but instead LLNL pursued the less formal process.

We noted that Department Order 481.C lists 11 exclusions in which the provisions of the Order would not apply to certain activities or work performed. The source of funds was the basis for the exclusion in 3 of the 11 instances. Specifically, the following were excluded from the Work for Others process because of the source of funds:

- Activities funded under the Contributed Funds Act of 1921;
- Department/NNSA-funded work or services performed by one Department/NNSA site/facility management contractor for another; and
- Work directly funded by the Department of Homeland Security.

However, none of these included using Licensing and Royalty funds as the basis for an exclusion to the Work for Others process.

LLNL officials told us that the Laboratory possessed unique capabilities that could not be obtained anywhere else. The majority of the work related to the *Lusitania* documentary performed by LLNL was conducted at the Department's High Explosives Applications Facility,

where LLNL personnel created and detonated explosives in a chamber while recording the results. Also, LLNL scientists viewed the video recordings of the test explosions, analyzed the outcomes, and provided National Geographic with an opinion as to why the *Lusitania* sank so quickly. We were told by personnel involved with the project that the expert opinion LLNL provided, coupled with the knowledge and experience of the scientists regarding the subject matter, represented a unique capability not available in the private sector. We were also told that the High Explosives Applications Facility is unique because the facility combines all the capabilities needed for explosive research and development — fabrication, synthesis, characterization and dynamic testing — under one roof.

In contrast, several LLNL officials and personnel who participated in the documentary told us that no characterization was performed (i.e., no scientific data was captured) during the work performed for the documentary. Therefore, the unique and total capabilities of the High Explosives Applications Facility were not utilized. Further, LLNL officials knowledgeable of the documentary told us that this work was atypical for LLNL due to the fact that scientific data was not collected and a written report was not produced. At one point, one official who had worked on the documentary proposed that the temperature and pressure readings of the test explosions be scientifically measured, and then displayed as a graph along the bottom of the video footage. However, we were told that the suggestion to capture and display the test data was rejected because National Geographic did not want a graph and scientific data to detract from the visual imagery of the explosions viewed by the audience.

During the course of our inspection, a LLNL official acknowledged that a private sector company with a firing chamber and high speed imaging capability would have been able to perform the work for the documentary. Other LLNL personnel involved with the documentary told us that any special effects department in the film industry could have performed this work.

Department Facilities and Resources

We substantiated the allegation that LLNL used Department facilities and resources inappropriately, to include \$81,746 in Licensing and Royalty funds, to perform the work for the National Geographic documentary. Licensing and Royalty funds are Federal funds, subject to the Department of Energy Acquisition Regulation, the Department's M&O contract with LLNS and LLNL's Policy 17.2, *Licensing and Royalty Income Distribution*. These criteria require LLNL to use income from licensing and royalties for scientific research, development, technology transfer, and education at LLNL, consistent with the research and development mission and objectives of LLNL.

However, our inspection revealed that none of these criteria had been met and we determined that LLNL's use of Licensing and Royalty funds for the documentary did not comply with established requirements. While the documentary work was classified as "Education" on the Fiscal Year (FY) 2012 end-of-year report to the Livermore Field Office, no written justification or conclusive evidence was available to confirm that the work: (1) constituted scientific research, development, technology transfer, or education at the Laboratory; (2) was consistent with LLNL's mission and objectives; and (3) was an appropriate use of Licensing and Royalty funds as required.

During our inspection, LLNL officials and personnel involved with the documentary provided us with various explanations as to why they believed the documentary was an appropriate use of Licensing and Royalty funds. Specifically, one LLNL official told us that LLNL takes a broad view of training and education, and that the documentary fell into the category of training. Other officials told us that:

- The documentary served to educate the general public about the sinking of the *Lusitania*;
- The documentary would broadcast NNSA's and the Department's abilities;
- LLNS simply wanted to get its name out there to show that LLNL can do various things;
- LLNL gained credibility from the visibility of appearing in the documentary; and
- LLNL intends to be the best in the world at simulations.

As previously stated, the Department of Energy Acquisition Regulation and LLNS's M&O contract stipulate that education at LLNL is one of several allowable uses of Licensing and Royalty funds, provided the use of funds is also consistent with LLNL's mission. However, we concluded that any use of Licensing and Royalty funds to educate the general public was inconsistent with FAR 31.205-44, *Training and Education Costs*, which stipulates that education costs for other than bona fide employees are unallowable. We further noted that FAR 31.205-1, *Public Relations and Advertising Costs*, stipulates that public relations and advertising costs, including the costs of promotional material, motion pictures, videotapes, and other media designed to call favorable attention to the contractor and its activities, are unallowable.

In addition, we learned that Livermore Field Office officials had previously expressed concerns with LLNL's use of Licensing and Royalty funds for the documentary, and officials expressed those same concerns during our review. A Livermore Field Office official told us that the work done for the documentary did not constitute scientific research, development, technology transfer or education at LLNL, as required by LLNS's M&O contract when using Licensing and Royalty funds. The official also told us that the documentary should have been funded with LLNS's corporate funds rather than with Licensing and Royalty funds because the work performed was not consistent with LLNL's mission. Despite acknowledging these concerns, we found no evidence that the Livermore Field Office took any action to resolve its concerns regarding LLNL's use of Licensing and Royalty funds to perform the documentary. A Livermore Field Office official, however, told us that the controls provided by the M&O contract over LLNL's use of Licensing and Royalty funds needed improvement.

Contributing Factors

These conditions occurred, in part, because LLNL did not follow the established Work for Others process. Instead, LLNL inappropriately pursued an alternate, less formal process for approving and funding the documentary as a non-reimbursable project that used Licensing and Royalty funds. Consequently, the Work for Others requirement to have a written certification from the responsible Department or NNSA contracting officer or authorized designee that

performance of the work would not place the FFRDC in direct competition with the domestic private sector was never implemented. Therefore, LLNL could not provide conclusive evidence to demonstrate that the work performed for the documentary was not available from the private sector. It should be noted that the use of Licensing and Royalty funds was not identified as 1 of the 11 exclusions to the Work for Others process. In addition, it is unlikely that LLNL would have been able to obtain a certification of non-competition because the services provided could have been obtained from a number of private sector sources. Therefore, we concluded that performing work on the National Geographic documentary without adequately considering the prohibitions against an FFRDC competing with the private sector gave the appearance that LLNL may have inappropriately used its privileged information or access to installations, equipment and real property in violation of the provisions of FAR 35.017.

In addition, the stated understanding of the appropriate use of Licensing and Royalty funds by LLNL officials was not consistent with the requirements for the use of these funds. Moreover, LLNL had not established a detailed disposition plan to spend these funds in a manner consistent with Federal regulations and the terms of the contract, and LLNL did not adequately account for its actual use of the Licensing and Royalty funds.

Specifically, the FAR, the Department of Energy Acquisition Regulation and the Department's M&O contract with LLNS all required that LLNL submit an annual plan to the Livermore Field Office detailing how it would spend Licensing and Royalty funds. LLNL was also required to provide the Livermore Field Office an annual end-of-year accounting of how these funds were actually used. LLNL submitted a FY 2012 disposition plan and a subsequent end-of-year accounting to the Livermore Field Office. However, our review of LLNL's FY 2012 end-of-year report found that it did not provide sufficient information to permit detailed review and oversight. Specifically, the report contained only a project title, a brief description, and a total amount spent for the documentary. We determined that neither the annual plan nor the end-of-year accounting provided the level of detail necessary for the Livermore Field Office to assess whether LLNL had used Licensing and Royalty funds appropriately. As such, Federal officials lacked detail needed for oversight of these funds. We noted that in FY 2011, LLNL had approximately \$6.8 million in Licensing and Royalty funds available to perform permitted activities.

Impact and Path Forward

Given the issues identified in this report with the use of Licensing and Royalty revenue, we concluded that \$81,746 in Licensing and Royalty revenue was used inappropriately to pay for the National Geographic documentary and therefore, was not available for legitimate scientific research, development, technology transfer and education at LLNL. As such, we question that entire amount. We noted that the funds for the documentary were expended out of FY 2010 earnings, which were available for LLNL's use in April 2011. Because of the absence of details in the disposition plan and end-of-year accounting, there was no assurance that approximately \$6.8 million in Licensing and Royalty funds available to LLNL in FY 2011 were expended for intended purposes in a manner consistent with Federal regulations and the terms of the contract.

RECOMMENDATIONS

We recommend that the Manager, Livermore Field Office:

1. Ensure that, prior to the performance of any proposed work for a non-Department entity, a determination is made and certified in writing by the contracting officer that the proposed work will not place the FFRDC in direct competition with the domestic private sector, and is consistent with LLNL's mission;
2. Ensure that LLNL formulates and submits on an annual basis a detailed disposition plan and actual accounting for the Contractor's use of Licensing and Royalty funds for authorized mission-related purposes; and
3. Direct the Contracting Officer to make a determination regarding the allowability of the \$81,746 in Licensing and Royalty funds spent on the National Geographic documentary, and to recover any costs determined to be unallowable.

MANAGEMENT COMMENTS

Management concurred with the report's recommendations and indicated that it was in the process of implementing corrective actions.

It should be noted that management did not respond to the suggestion in Appendix 1. However, the M&O contractor concurred with this suggestion in its unofficial comments dated May 29, 2013. Specifically, LLNS stated:

Regarding the OIG concern to address matters more promptly, we're revising the LLNS Employee Conflicts of Interest Compliance Plan and will add language to promptly resolve employee conflicts of interest issues.

Management comments are included in Appendix 4.

INSPECTOR COMMENTS

We found management's comments and planned corrective actions to be generally responsive to our report findings and recommendations. In some instances, we modified the report where appropriate to clarify references to Work for Others requirements.

OTHER MATTERS — CONFLICT OF INTEREST

We were unable to substantiate the allegation that Lawrence Livermore National Laboratory's (LLNL) management interfered with the rights and abilities of its employees to participate in outside business activities. However, we noted that LLNL's process for resolving employee conflicts of interest was not always effective. Federal regulations, the Department of Energy's management and operating contract with Lawrence Livermore National Security, LLC, and LLNL's policies required the Laboratory to promptly resolve employee conflicts of interest.

Specifically, we noted that LLNL neither approved nor denied an employee's requests to participate in an outside business for two consecutive years, 2011 and 2012. LLNL officials told us that this delay was due to a potential conflict of interest related to the employee's outside business, and that the employee and management had been engaged in a prolonged effort to devise a conflict mitigation strategy acceptable to all parties. Despite this mitigation process, this potential conflict of interest still had not been resolved at the conclusion of our inspection. This issue occurred, in part, because LLNL's *Employee Conflicts of Interest Plan* did not contain language consistent with Federal regulations and Department of Energy policies requiring that corrective measures be promptly instituted and carried out, and that potential conflicts of interest be aggressively resolved.

LLNL's failure to promptly resolve such potential employee conflicts of interest could result in the performance of unsanctioned or inappropriate outside work by employees' outside businesses. Unresolved employee conflicts of interest may become organizational conflicts of interest, which expose the Department of Energy to potential embarrassment and legal liability.

SUGGESTED ACTION

We suggest that the Manager, Livermore Field Office, determine whether the prompt resolution of employee conflicts of interest is a systemic issue at LLNL and initiate corrective actions as necessary.

OBJECTIVE, SCOPE AND METHODOLOGY

OBJECTIVE

The objective of this inspection was to assess the facts and circumstances surrounding the allegation that Lawrence Livermore National Laboratory (LLNL): (1) engaged in illegal competition with private industry; (2) inappropriately used its facilities and resources to perform outside work; and (3) interfered with the rights and abilities of Laboratory employees to participate in outside business activities.

SCOPE

We conducted this inspection from June 2012 to December 2013, at the LLNL in Livermore, California. The inspection was conducted under Office of Inspector General Project Number S12IS016.

METHODOLOGY

To accomplish the inspection objective, we:

- Interviewed the complainant, officials from the Livermore Field Office and other LLNL officials and personnel;
- Reviewed approval and funding documentation for the National Geographic documentary;
- Reviewed applicable sections of the Federal Acquisition Regulation and the Department of Energy Acquisition Regulation;
- Reviewed relevant Department of Energy orders, manuals, and policy flashes; and
- Reviewed applicable site policies, procedures, guidance, plans, and manuals.

We conducted this inspection in accordance with the Council of the Inspectors General on Integrity and Efficiency, *Quality Standards for Inspection and Evaluation*, January 2012. Those standards require that we plan and perform the review to obtain sufficient, appropriate evidence to provide a reasonable basis for our findings and conclusions based on our objective. We believe the evidence obtained provides a reasonable basis for our findings and conclusions based on our inspection objective. Accordingly, the inspection included tests of controls and compliance with laws and regulations to the extent necessary to satisfy the objective. Because our review was limited, it would not necessarily have disclosed all internal control deficiencies that may have existed at the time of our inspection.

Finally, we relied on computer-processed data to some extent, to satisfy our objective. We confirmed the validity of such data, as appropriate, by reviewing source documents and performing physical observations.

An exit conference was waived by management on August 26, 2013.

RELATED REPORTS

Office of Inspector General Reports

- Audit Report on [*Management Controls over the Technology Transfer and Commercialization Program at the Idaho National Laboratory*](#) (OAS-M-05-07, June 2005). Certain financial management activities associated with the Idaho National Laboratory's technology transfer and commercialization program were not managed by Bechtel BWXT Idaho, LLC (Bechtel) consistent with its contract terms. Specifically, Bechtel did not properly recognize royalties due from licensing activities and did not monitor and ensure expenditures were within established administrative limits. This occurred because Bechtel did not take action to correct previously reported weaknesses and the Idaho Operations Office did not provide adequate oversight to make certain contract provisions were complied with and reported weaknesses corrected. Without adequate controls in place, the Department of Energy (Department) cannot ensure that certain financial aspects of its technology transfer and commercialization program are adequately managed. The report made recommendations to the Manager of the Idaho Operations Office to improve oversight of Bechtel's financial controls over its technology transfer and commercialization program.
- Audit Report on [*Management Controls over Patent and Royalty Income at Ames Laboratory*](#) (OAS-M-05-05, May 2005). The audit disclosed that Ames Laboratory had not adequately controlled and accounted for patent and royalty revenues, nor expended such funds to further research, technology transfer and education. These issues occurred in part because the Ames Site Office did not provide adequate oversight to ensure that Ames established a plan for the use of patent revenues in a manner consistent with contract terms. As a result, approximately \$3.5 million generated by technology transfer is at greater risk of loss and of not being productively used.
- Audit Report on [*Management of Patent and Licensing Activities at Department-Owned Contractor-Operated Laboratories*](#) (DOE/IG-0479, August 2000). The audit reviewed patent and licensing activities at the Department's laboratories and found that patent infringement claims against the Department's laboratories had increased in recent years. The audit contained recommendations designed to resolve issues of competition with the private sector and patent infringement.

Professional Services Council Report

Report on [*Federally Funded Research and Development Centers: A Strategic Reassessment for Budget-Constrained Times*](#) (Professional Services Council, June 2012). Federally Funded Research and Development Centers (FFRDCs) have an important role to play in defense and intelligence. They maintain laboratories and specialized test and evaluation facilities beyond those available to the government and its for-profit contractors. However, many of the functions for which FFRDCs were envisioned, and which they alone could provide at the outset, can now appropriately be provided by numerous for-profit contractors as effectively and at a far lower cost. Although recent

Appendix 3 (continued)

legislative and regulatory changes have opened a clear path to competition, performance-based contracting and cost savings in the acquisition of such services, FFRDCs have instead become increasingly aggressive in work scope expansion. This FFRDC mission creep is at the expense of the government, taxpayers and industry.

MANAGEMENT COMMENTS



Department of Energy
National Nuclear Security Administration
Washington, DC 20585

November 21, 2013

MEMORANDUM FOR SANDRA D. BRUCE
ASSISTANT INSPECTOR GENERAL
FOR INSPECTIONS
OFFICE OF INSPECTOR GENERAL

FROM: CYNTHIA A. LERSTEN
ASSOCIATE ADMINISTRATOR
FOR MANAGEMENT AND BUDGET

SUBJECT: Comments on the Office of Inspector General Draft Report Titled
"*Non-Sponsored Work at Lawrence Livermore National Laboratory*"
(S12IS016/2013-01339)

Thank you for the opportunity to review and comment on the subject draft Inspector General (IG) report. The report identifies three recommendations to enhance controls related to non-sponsored work and the related use of license and royalty funds. The National Nuclear Security Administration (NNSA) agrees that Lawrence Livermore National Laboratory (LLNL) and the Livermore Field Office (LFO) can enhance processes to more formally coordinate and document activities for ensuring non-competition for non-sponsored work and for ensuring appropriate use of license and royalty funds. The attachment to this memorandum provides our detailed response to the IG recommendations, including the actions and timelines for addressing the concerns raised in the report.

We take seriously our responsibility to protect against competition with the private sector and to ensure appropriate use of funds, and we appreciate the inspectors' efforts in highlighting areas for continued improvement. If you have any questions regarding this response, please contact Dean Childs, Director, Audit Coordination and Internal Affairs, at (301) 903-1341.

Attachment



Printed with soy ink on recycled paper

Response to the Inspector General Draft Inspection Report Titled “Non-Sponsored Work at Lawrence Livermore National Laboratory”

Response to Report Recommendations

The Inspector General (IG) recommended the National Nuclear Security Administration:

Recommendation 1: *Ensure that, prior to the performance of any proposed work for a non-Department entity, a determination be made and certified in writing by the contracting officer that the proposed work will not place the facility in direct competition with the domestic private sector, and is consistent with Livermore's mission.*

Management Response: Concur

NNSA agrees that Lawrence Livermore National Security LLC (LLNS) and the Livermore Field Office (LFO) can enhance processes to more formally coordinate and document its consideration of and justifications for ensuring non-competition for non-sponsored work performed using royalties or other income earned or retained by LLNS resulting from performance of authorized technology transfer activities. LLNS and LFO will consider current processes in place for work-for-others. Additionally, LFO will conduct a thorough review of the findings in this report and existing procedures for conducting this type of non-sponsored work and will put in place enhanced review and documentation requirements as necessary, consistent with the IG recommendation. The estimated completion date for this action is June 30, 2014.

Recommendation 2: *Ensure that Livermore formulates and submits on an annual basis a detailed disposition plan and actual accounting for the Contractor's use of Licensing and Royalty funds for authorized mission-related purposes.*

Management Response: Concur

LLNS currently submits its annual Licensing and Royalty fund plan and accounting of funds used based on the requirements of DEAR 970.5227-3, *Technology Transfer Mission*. The Contracting Officer will work with LLNS to obtain more detail of the planned activities for fiscal year (FY) 2014 and how the funds were spent for FY 2013. The estimated completion date for this action is June 30, 2014.

Recommendation 3: *Direct the Contracting Officer to make a determination regarding the allowability of the \$81,746 in Licensing and Royalty funds spent on the National Geographic documentary, and to recover any costs determined to be unallowable.*

Management Response: Concur

As with all costs questioned by the IG, the Contracting Officer will make a determination regarding the allowability of the \$81,746 in Licensing and Royalty funds spent on the National Geographic documentary. The estimated completion date for this action is June 30, 2014.

CUSTOMER RESPONSE FORM

The Office of Inspector General has a continuing interest in improving the usefulness of its products. We wish to make our reports as responsive as possible to our customers' requirements, and, therefore, ask that you consider sharing your thoughts with us. On the back of this form, you may suggest improvements to enhance the effectiveness of future reports. Please include answers to the following questions if applicable to you:

1. What additional background information about the selection, scheduling, scope, or procedures of the inspection would have been helpful to the reader in understanding this report?
2. What additional information related to findings and recommendations could have been included in the report to assist management in implementing corrective actions?
3. What format, stylistic, or organizational changes might have made this report's overall message more clear to the reader?
4. What additional actions could the Office of Inspector General have taken on the issues discussed in this report that would have been helpful?
5. Please include your name and telephone number so that we may contact you should we have any questions about your comments.

Name _____ Date _____

Telephone _____ Organization _____

When you have completed this form, you may telefax it to the Office of Inspector General at (202) 586-0948, or you may mail it to:

Office of Inspector General (IG-1)
Department of Energy
Washington, DC 20585

ATTN: Customer Relations

If you wish to discuss this report or your comments with a staff member of the Office of Inspector General, please contact our office at (202) 253-2162.

This page intentionally left blank.

The Office of Inspector General wants to make the distribution of its reports as customer friendly and cost effective as possible. Therefore, this report will be available electronically through the Internet at the following address:

U.S. Department of Energy Office of Inspector General Home Page
<http://energy.gov/ig>

Your comments would be appreciated and can be provided on the Customer Response Form.