



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

SPECIAL REVIEW

The National Nuclear Security
Administration's Management of Support
Service Contracts

OAS-M-15-05

July 2015



Department of Energy
Washington, DC 20585

July 10, 2015

MEMORANDUM FOR THE ADMINISTRATOR, NATIONAL NUCLEAR SECURITY
ADMINISTRATION

A handwritten signature in black ink, appearing to read "Rickey R. Hass".

FROM: Rickey R. Hass
Deputy Inspector General
for Audits and Inspections
Office of Inspector General

SUBJECT: INFORMATION: Special Review: "The National Nuclear Security
Administration's Management of Support Service Contracts"

BACKGROUND

The National Nuclear Security Administration (NNSA) is responsible for enhancing national security through the military application of nuclear energy. To help fulfill its responsibilities, NNSA makes use of Support Service Contracts (SSCs). In March 2013, NNSA's Office of Defense Programs (Defense Programs) initiated a self-assessment on the use of non-Federal personnel. The Defense Programs self-assessment identified potential issues with the management of its SSCs related to the performance of personal services and inherently governmental functions, as well as potential issues with funding sources. Management generally concurred with the self-assessment's recommendations, including nine recommendations related to SSCs. According to NNSA procurement officials, the recommendations are being addressed and implemented on an NNSA-wide basis.

On September 11, 2014, the Chairman of the House Subcommittee on Strategic Forces expressed concern to the Inspector General that NNSA may be utilizing SSCs in ways that are contrary to policy, regulation, and statute. The Chairman's letter cited the agency self-assessment and requested an investigation of the matter. Therefore, we conducted a special review to determine whether NNSA was effectively managing its SSCs.

RESULTS OF SPECIAL REVIEW

We discovered activities that could lead observers to question NNSA's management of SSCs. Specifically, we confirmed issues similar to those identified in NNSA's self-assessment. We found the following:

- SSCs that exhibited characteristics of a personal services contract. A personal services contract is one in which contractor personnel are subject to the relatively continuous

supervision and control of a Government officer or employee. The Federal Acquisition Regulation (FAR) Subpart 37.1, *Service Contracts*, states that agencies shall not award personal services contracts unless specifically authorized by statute.

- Contracted services that approached being inherently governmental functions. Such services included preparing budgets; evaluating another contractor's performance; and developing analyses, feasibility studies, and strategy options. When contracting for such services, agencies should be fully aware of the terms of the contract, contractor performance, and contract administration to ensure that appropriate agency control is preserved. Government policy (FAR Subpart 37.1 and Subpart 7.5, *Inherently Governmental Functions*) prohibits the use of contracts for functions that are inherently governmental.
- NNSA's use of program funds for some SSCs was questionable. The contract tasks appeared to be ongoing in nature and not directly related to implementing program mission activities. According to NNSA guidance, "program direction" funds, rather than "program" funds, should be used for such ongoing tasks.

Our limited review found no clear violations of the FAR or Department of Energy (Department) and NNSA guidance. Rather, the issues with NNSA's management of SSCs often hinge upon subtlety, nuance, and professional judgment. Given the complexity of SSCs, close and continuing attention is needed to ensure that Federal regulations are not violated. As previously noted, NNSA also self-identified these issues and, we were told, is taking corrective actions to address them. These actions, when fully implemented, should help correct the issues we identified as well.

Personal Services

We found SSCs that exhibited characteristics of a personal services contract. Based on our sample of 20 SSCs taken from a population of 241 NNSA active SSCs, we found that 14 exhibited one or more of the characteristics of a personal services contract. For example, the statement of work for one contract included qualifications for a senior project manager that appeared to be written for a specific individual. The qualifications included requirements for 30 years of total relevant experience, at least 20 years of project and program management experience at a Department site, and firsthand experience in managing and successfully executing NNSA capital line item projects. We received conflicting information during our interviews with Federal officials as to whether the requirements were written with someone specific in mind. The Department's acquisition guide (Chapter 37.1, *Support Service Contracting*) states that when the Department, in essence, restricts contractor employee qualifications to a particular person, this establishes a prohibited personal services relationship.

For another contract, we found that even though Federal employees did not approve contractor leave, they were informed of planned leave for coordination purposes. Yet, we found that if Federal signatures signifying acknowledgement of contractor leave were not obtained, the contractor's supervisor would not approve the employee's leave. This created the appearance of an employer-employee relationship between the Federal staff and the contractor. FAR Subpart

37.1 identifies a personal services contract as characterized by the employer-employee relationship it creates between the Government and the contractor's personnel. This relationship occurs when, as a result of (1) the contract's terms or (2) the manner of its administration during performance, contractor personnel are subject to the relatively continuous supervision and control of a Government officer.

The Defense Programs self-assessment found similar examples of contracts being performed in a manner that exhibited characteristics of personal services contracts, or at least a lack of understanding of the prohibition of such contracts. Specifically, Defense Programs found that many contractor employees appeared to be assigned to particular organizations for multiple years, were chosen to perform routine tasks on an ongoing basis, worked in Federal space using Federal equipment, and were used interchangeably, or in lieu of, Federal employees. In response to the self-assessment, we were told that NNSA is training its personnel on the appropriate administration of SSCs to avoid creating personal services contracts.

Inherently Governmental Functions

NNSA contracted services that approached being inherently governmental functions, depending on how the contract is managed. FAR Subpart 37.1 prohibits the use of contracts for functions that are inherently governmental. In addition, FAR Subpart 7.5 identifies specific functions considered to be inherently governmental, such as the determination of agency policy and program priorities, and the direction of Federal employees. Under the FAR, certain services and actions that are not considered to be inherently governmental functions may approach being in that category because of the nature of the function, the manner in which the contractor performs the contract, or the manner in which the Government administers contractor performance. These include services such as those that involve or relate to budget preparation; evaluating another contractor's performance; and developing analyses, feasibility studies, and strategy options.

We found that 10 SSCs in our sample included services and actions that approached being inherently governmental functions. For example, one SSC for senior project management support included a task to adjust the structure and content of a major NNSA construction project as a result of changes in appropriations and a task to evaluate contractor performance. However, NNSA contract and project management officials told us that the statement of work was poorly written and that the contractor only assisted the Federal Project Director with these tasks. In another SSC, the work statement included tasks such as evaluation of program and mission performance. NNSA contracting officials noted that while the contractor may provide information or recommend a course of action, Federal officials must approve their work and recommendations. However, we noted that contractors could reasonably appear to have been the driving force behind policy creations, determinations, and performance measures.

The Defense Programs self-assessment found that some SSC personnel were performing an inherently governmental function by representing NNSA with management and operating contractors. One of Defense Programs' recommendations was to review current SSC practices for contractors performing inherently governmental functions. NNSA informed us that it was in the process of reviewing a supplementary sample of SSCs for inappropriate practices.

Funding Source

Generally, program direction funds and program funds were properly allocated. However, we questioned the use of program funds for three of the SSCs we reviewed. Specifically, the contract tasks appeared to be ongoing in nature and not for directly implementing program mission activities. According to NNSA guidance, program funds may be used for technical advice and assistance where the tasks are mission-related and characterized by specific project schedules, milestones, and deliverables. In contrast, program direction funding may be used for SSCs that provide advice and assistance that is ongoing in nature. We asked a senior NNSA budget official to review work statements for the three questioned SSCs. The budget official agreed that the use of program funds for one of the SSCs was questionable and noted that the other two SSCs could have been funded from either source based on his interpretation of the guidance and the contract tasks. Contract tasks for the first questioned SSC included administrative services, such as mail room support, visitor access, records management, and vehicle scheduling and maintenance. The budget official questioned the use of program funds for such tasks.

In its self-assessment, Defense Programs found cases where program funds appeared to be used for SSCs that should have been funded with program direction funds. The self-assessment's corrective action plan stated that management should ascertain whether the program and program direction funding practices violate NNSA and Department policies, and if so, these practices should be terminated. To address this concern, NNSA issued an April 2014 funding guidance policy memorandum and indicated that it will develop a business operating procedure based on the guidance. In addition, NNSA informed us that the General Counsels for both NNSA and the Department performed a review of program-funded SSCs and determined that while practices were not consistent with NNSA policy, there was no violation of the Anti-Deficiency Act.

Contractor Employee and Cost Information

We attempted to determine the number of SSC employees and the annual SSC cost, but NNSA officials told us they do not track full-time equivalent (FTE) contractor employee figures, nor do they track program funds spent for SSCs. Specifically, NNSA informed us that its procurement system does not capture the FTE information. While NNSA was able to provide cost data for program direction-funded SSCs, it does not have a vehicle to track program-funded SSC costs. NNSA informed us that it could provide the FTEs and program-funded cost information, but it would require a time-consuming manual process to compile data from all the SSCs. Therefore, we could not determine the number of FTEs and the annual cost related to NNSA's SSCs.

The Defense Programs self-assessment identified potential issues with the transparency of workforce planning information, including SSC personnel data. The self-assessment's corrective action plan included an action intended to improve workforce planning by developing a method for tracking SSC personnel by office and location in an accessible format. According to NNSA, there is a Federal-wide effort to require SSCs to provide this information. To allow for complete data collection, analysis, and implementation of the tracking system, the due date for corrective action completion was changed from December 31, 2014, to December 31, 2015.

As of February 2015, many of the corrective actions were in various stages of completion. For example, NNSA was in the process of training all NNSA personnel on appropriate interaction with contractors and reviewing a sample of SSCs with an eye toward identifying personal services, inherently governmental functions, and inappropriate use of funding. We found that NNSA was tracking the corrective actions and providing periodic status reports to management. However, we noted that the updates were not always consistently reported for all corrective actions. NNSA told us that due to long lead times for certain action items, monthly updates were not required.

Impact

The FAR requirements emphasize that an employer-employee relationship should not be created between the Government and contractor personnel and that contractors should not perform inherently governmental functions. In addition, NNSA guidance stipulates that program funds are to be used to further mission goals, rather than for administrative support. Without fully addressing the issues with SSC management noted in our review and in the prior internal examination, NNSA is at increased risk of violating these requirements.

RECOMMENDATION

We appreciate NNSA's progress in developing and initiating corrective actions to address the issues identified through the Defense Programs self-assessment. We believe that the ongoing corrective actions, if properly implemented, should address the issues identified in our review. However, to ensure that the issues we identified are effectively corrected, we recommend that the Associate Administrator for Acquisition and Project Management track the corrective actions to final resolution.

MANAGEMENT RESPONSE

Management concurred with the report's findings and recommendation and indicated that they will continue to track their existing corrective actions to completion and report their progress in the Departmental Audit Report Tracking System. Management's comments are included in Attachment 2.

AUDITOR COMMENTS

Management's comments and planned corrective actions are responsive to our findings and recommendation. We appreciate management's general and technical comments, and those comments were taken into consideration to further enhance the clarity of our report by adding additional information where applicable.

Attachments

cc: Secretary
Deputy Secretary

Associate Administrator for Acquisition & Project Management, NNSA
Associate Administrator for Management & Budget, NNSA
Chief of Staff

OBJECTIVE, SCOPE, AND METHODOLOGY

OBJECTIVE

To determine whether the National Nuclear Security Administration (NNSA) is effectively managing Support Service Contracts (SSCs).

SCOPE

We performed this review from November 2014 through July 2015 at the NNSA Albuquerque Complex in Albuquerque, New Mexico; the Los Alamos Field Office in Los Alamos, New Mexico; and NNSA Headquarters in Washington, DC. The scope of the review included active SSCs with an ultimate completion date after November 30, 2014. The review was conducted under Office of Inspector General project number A15AL009.

METHODOLOGY

To accomplish the objective, we

- Reviewed laws, regulations, policies, procedures, and guidance applicable to SSCs.
- Reviewed prior assessments and reports related to SSCs.
- Interviewed key NNSA procurement personnel.
- Obtained a listing of NNSA's SSCs active during fiscal years 2010 through 2014 as of November 4, 2014. From this listing, we identified a universe of 666 SSCs with ultimate completion dates after October 1, 2009. To facilitate the interview process, we limited the sample to currently active contracts, or those with an ultimate completion date after November 30, 2014. This reduced the universe to 241 SSCs.
- Judgmentally selected 10 SSCs issued from the Albuquerque procurement group and 10 SSCs issued from the Headquarters procurement group, for a total of 20 SSCs in our sample (8.3 percent of the sample universe). While we considered selecting a statistical sample, we determined it was not practical due to time constraints and the need to focus on SSCs that were at increased risk of improper funding source, personal services, and inherently governmental functions, in accordance with the Congressional request. Therefore, our sample selection process included a review of the SSCs' descriptions of requirements in order to determine risk in these areas. We believe the judgmental sample we selected is representative of NNSA's active SSCs.
- Conducted in-person and telephone interviews with Contracting Officer Representatives, Task Monitors, and contractor employees for each of the 20 SSCs in our sample.

- Reviewed work statements for each of the 20 SSCs in our sample to determine whether they contained (1) characteristics of personal services contracts, (2) indications of inherently governmental functions, or (3) contract tasks that are inconsistent with funding source guidelines.

We believe that the evidence obtained provided a reasonable basis for our findings and conclusions based on our objective. Because our review was limited, it would not have necessarily disclosed all internal control deficiencies that may have existed at the time of our review. Management waived an exit conference.

MANAGEMENT COMMENTS



Department of Energy
Under Secretary for Nuclear Security
Administrator, National Nuclear Security Administration
Washington, DC 20585



June 29, 2015

MEMORANDUM FOR GREGORY H. FRIEDMAN
INSPECTOR GENERAL

FROM: FRANK G. KLOTZ *F. Klotz 6/29/2015*

SUBJECT: Comments on the Office of Inspector General Draft Special Review Report Titled "Audit of NNSA Management of Support Service Contracts," (A15AL009)

Thank you for the opportunity to review and comment on the subject draft report. As noted, the auditors' findings are consistent with our self-assessment results. We concur with the recommendation to continue to track our existing corrective action plan to completion, and we will report our progress through quarterly updates in the Departmental Audit Report Tracking System.

We appreciate the auditors' independent review and confirmation of our earlier findings. If you have any questions regarding this response, please contact Dean Childs, Director, Audit Coordination and Internal Affairs, at (301) 903-1341.



FEEDBACK

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Office of Inspector General (IG-12)
Department of Energy
Washington, DC 20585

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