



Department of Energy
Washington, DC 20585

September 16, 2011

MEMORANDUM FOR MANAGER, SANDIA SITE OFFICE

FROM:

Sandra M. Bruce
Sandra Bruce

Assistant Inspector General for Inspections
Office of Inspector General

SUBJECT:

INFORMATION: Inspection Report on "Allegations of Suspect
Parts in Sun Microsystems Processors at Sandia National Laboratories –
New Mexico"

BACKGROUND

Sandia National Laboratories-New Mexico (Sandia) is a science-based technology organization that purchases world class technologies and specialized services to support Sandia's national security mission. Sandia is managed and operated under contract by Sandia Corporation, a subsidiary of Lockheed Martin Corporation. Oversight of Sandia Corporation's contract is performed by the National Nuclear Security Administration's (NNSA's) Sandia Site Office (Site Office). In support of its mission, Sandia has maintained a Just-In-Time (JIT) contract with Commercial Data Systems (CDS), an authorized reseller of computer hardware components since 2001, to provide commercial-off-the-shelf Sun Microsystems products to Sandia. The JIT contract was executed as a three-year contract with multiple one-year options, beginning May 7, 2001, with an overall contract value of about \$58 million. A new JIT contract for Sun Microsystems products was advertised and awarded to CDS in July 2011.

The Office of Inspector General received a complaint which alleged, in part, that from 2004 to 2009, CDS provided Sun products to Sandia that were purchased from unauthorized distributors. It was specifically alleged that there was a very high probability that the products in question were purchased on the "Grey Market," and were therefore suspect. We initiated this inspection to determine the facts and circumstances relating to the allegation.

CONCLUSIONS AND OBSERVATIONS

We were unable to substantiate the allegation that Sandia purchased suspect computer parts that were installed in Sun Microsystems processors. However, we did find that, for a period of more than six years, CDS provided commercial-off-the-shelf Sun Microsystems products to Sandia under the JIT contract without specific quality clauses prohibiting delivery of suspect or counterfeit items.

Contrary to Department of Energy (Department) guidelines, we determined that the standard clause prohibiting delivery of suspect or counterfeit items had not been included in the JIT contract with CDS. The Department's Guide 440.1-6 *Implementation Guide for use with Suspect/Counterfeit Items Requirements of Department of Energy Order 440.1, Worker Protection Management* dated June 30, 1997, was in effect at the beginning of the CDS contract.

This guide states that purchase orders and contracts should contain quality clauses prohibiting delivery of suspect and counterfeit items. The updated version of the Department's Guide 414.1-3, *Suspect/Counterfeit Items Guide*, dated November 3, 2004, states that purchase orders and contracts should contain specific quality clauses prohibiting delivery of suspect or counterfeit items, including provisions that prohibit subcontractors from bringing these items on site and that hold subcontractors accountable for replacing these items at their expense. The Guide also contains a standard *Suspect and Counterfeit Items* clause that is recommended for inclusion in procurement documents. This clause references materials that are defective, suspect, or counterfeit; materials that have been provided under false pretenses; and materials or items that are materially altered, damaged, deteriorated, degraded or resulted in product failure.

The CDS contract was a three-year contract with seven one-year options, beginning on May 7, 2001. This contract was revised numerous times since 2001, to include revisions to contract sections on Pricing, Statement of Work, Delivery and Period of Performance and Payments. However, the contract was not revised to include the *Suspect and Counterfeit Items* clause contained in the Department's Guide 414.1-3. The *Suspect and Counterfeit Items* clause was not included in the JIT contract because Sandia relied on the manufacturer's quality assurance program to meet the requirements set forth in the contract. As a result, there was no contractual obligation on the part of CDS to comply with the prohibition on the delivery of suspect or counterfeit items, and Sandia was not afforded the protection under the clause that indemnifies Sandia, its agents, and third parties for any financial loss, injury or property damage.

Suspect and counterfeit items are a serious concern to Sandia because they present a potential threat to equipment and system reliability. Failure of a safety or mission critical system due to a suspect or counterfeit item could have security implications at Sandia facilities. The Guide was developed to assist the Department and the NNSA (and its contractors) mitigate the threat of suspect and counterfeit items in safety systems and mission critical facilities. A *Suspect and Counterfeit Items* clause was included in the new July 2011 contract with CDS, and we were told by Sandia officials that, since 2008, the *Suspect and Counterfeit Items* clause has been incorporated in other Sandia contracts.

SUGGESTED ACTION

Considering the fact that suspect and counterfeit items are a serious concern, we suggest that the Manager, Sandia Site Office, review the use of the standard clause for suspect and counterfeit items at Sandia and ensure that Sandia continues to incorporate the clause when appropriate into new and existing contracts.

Since we are not making any recommendations, a response to this report is not required.

We appreciate the cooperation we received from your staff during our inspection. If you have any questions concerning this inspection, please contact Mr. Richard W. Curran, Director, Western Inspection Region, Office of Inspections, at (505) 845-5153.

Attachment

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

SCOPE AND METHODOLOGY

We initiated this inspection to determine the facts and circumstances relating to the allegation.

This inspection was performed between September 2010 and January 2011 at the National Nuclear Security Administration's (NNSA's) Sandia National Laboratories-New Mexico (Sandia). To accomplish the objective of the inspection, we reviewed and analyzed:

- Applicable Department of Energy and site specific policies and procedures.
- The Just-In-Time contracts between Sandia and Commercial Data Systems.

We also interviewed key personnel located at the NNSA Sandia Site Office, and contractor officials and employees at Sandia regarding counterfeit and suspect items, procurement policies and procedures, and cyber security.

This inspection was conducted in accordance with the Council of the Inspectors General on Integrity and Efficiency, "Quality Standards for Inspections," issued by the President's Council on Integrity and Efficiency, January 2005. Those standards require that we plan and perform the inspection to obtain sufficient, appropriate evidence to provide a reasonable basis for our conclusions and observations based on our inspection objective. We believe the evidence obtained provides a reasonable basis for our conclusions and observations based on our inspection objective. The inspection included tests of controls and compliance with laws and regulations to the extent necessary to satisfy the inspection objective. Because our review was limited, it would not necessarily have disclosed all internal control deficiencies that may have existed at the time of our inspection.

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