

U.S. DEPARTMENT OF ENERGY  
OFFICE OF INSPECTOR GENERAL

REPORT ON INSPECTION OF AN  
INTELLIGENCE WORK-FOR-OTHERS PROJECT  
AT THE IDAHO OPERATIONS OFFICE

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I. PURPOSE AND OBJECTIVES

The Department of Energy's (DOE) Office of Inspector General (OIG) is conducting a series of inspections of intelligence and special access program work for other Federal agencies' projects. The purpose of this inspection, therefore, was to review a selected classified intelligence work-for-others (WFO) project.

The primary objectives of this inspection were to determine:

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

As part of these objectives, we attempted to determine whether DOE managers of this WFO project were:

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

II. SCOPE AND METHODOLOGY

The scope for the series of WFO inspections being conducted by the OIG includes:

1. Special access program (SAP) WFO projects which are by definition classified. SAPs can be established under Executive Order 12356, "National Security Information," to protect particularly sensitive information. For this inspection, we excluded a small number of very sensitive intelligence related SAP WFO projects from consideration;
2. Other classified intelligence WFO projects, including

those which require access to sensitive compartmented information; and

3. Unclassified intelligence WFO projects.

Our scope resulted in a universe of 401 projects initially identified to us by Headquarters offices. We had previously reviewed 20 of these projects in some detail. From the adjusted universe of 381 projects, we selected a classified intelligence WFO project at the Idaho National Engineering Laboratory (INEL) for this inspection.

Because of the sensitive nature of this WFO project, we do not refer to the specific customer agency associated with this project.

In conducting the inspection, we obtained information from the following DOE Headquarters Offices: Assistant Secretary for Human Resources and Administration; Assistant Secretary for Policy, Planning and Program Evaluation; Chief Financial Officer; and Office of Nonproliferation and National Security.

During the course of our field work, we visited DOE Headquarters, the DOE's Idaho Operations Office (IDO), and INEL. Westinghouse Idaho Nuclear Company (WINCO) is the management and operating (M&O) contractor that manages this work-for-others project. We performed a review of financial management, including tests of transactions recorded during the period September 1991 through October 1992. We reviewed all transactions over \$30,000 that were recorded during this period. Additionally, we randomly selected the month of June 1992 for detailed financial testing, reviewing each recorded transaction during that month. We also reviewed program management, procurement and contract management, and security management.

This inspection was conducted in accordance with Quality Standards for Inspections issued by the President's Council on Integrity and Efficiency.

### III. SUMMARY RESULTS OF INSPECTION

We found that additional DOE guidance and attention was needed to improve management efficiency and controls for this WFO project. Selected findings resulting from our inspection are summarized below.

o Some aspects of DOE's management of WFO projects have been the subject of criticism by requesting agencies and a topic of discussion at Congressional hearings. Based on our series of WFO inspections, we believe that, when a requesting agency is dissatisfied with some aspects of the Department's management of its WFO

project(s), a contributing factor is frequently a lack of initial specificity regarding the expectations and responsibilities of each agency. For example, requesting agencies may not correctly understand which agency's procedures are to be followed in the areas of general contract administration, financial administration, and project oversight. In our opinion, consolidated guidance should be developed to clarify the information to be provided in WFO approval packages.

o During our inspection, we noted that the customer agency paid DOE Idaho Operations Office's monthly invoices using a U.S. Treasury check, rather than on-line transfer payments, as encouraged by the U.S. Department of Treasury. We also noted in our previous review of selected intelligence and special access program work-for-others projects that customer agencies made payments by U.S. Treasury checks. An official with the U.S. Treasury Department verified that DOE, and DOE contractors that have been assigned billing responsibility, can accept On-line Payment and Collection System (OPAC) payments from other Federal agencies with on-line transfer payment capabilities.

We believe that DOE should require other Federal customer agencies with this capability to provide payments using OPAC. The use of on-line transfer payments would make the payment process faster, and in our view, save administrative time and expense.

o We found that WINCO and the predecessor M&O contractor had improperly allowed the customer agency, as early as Fiscal Year (FY) 1980, to designate a subcontracted consultant for use on the inspected WFO project. This action was contrary to guidance in DOE Order 4300.2A, "NON-DEPARTMENT OF ENERGY FUNDED WORK," which prohibits the requesting agency from designating either the subcontractor to be used or the portion of the work to be subcontracted.

Subcontracts (or modifications) with this consultant continued to be executed through FY 1991, since they did not require IDO approval. IDO subsequently lowered its approval threshold for WINCO subcontracts from \$30,000 to \$5,000. WINCO's proposed FY 1992 subcontract modification, which exceeded the new threshold, was not executed because IDO would not approve the "directed subcontract."

o We found that certain classified portions of the inspected WFO project involved the use of security procedures usually only permitted with a special access program. The security procedures in use included the use of a separate "Briefing/Debriefing

Statement" which, as part of the indoctrination acknowledgment, referred to "this special access program information." A by-name access roster was also maintained by the security officer.

We believe the use of additional security procedures, including special statements and access lists, was not consistent with normal DOE security procedures. In our opinion, an unofficial SAP had been created with the knowledge of certain IDO officials, but without proper written authority as required by Executive Order 12356, "National Security Information."

o We found that IDO and WINCO program and security management officials concerned with this intelligence project had not received required training on the provisions of Executive Order 12333, "United States Intelligence Activities," or the "Department of Energy Procedures for Intelligence Activities." We also noted that the then DOE Office of Intelligence was planning a program of centralized training for a relatively large number of personnel from several sites. In our view, this may not be the most cost-effective means of training, and may cause additional delays in providing the required training.

o We found that WINCO had incurred costs of approximately \$23,000 on the inspected WFO project in October 1988, before funding was made available in November 1988. In December 1991, WINCO continued work after funds were exhausted and incurred costs of approximately \$18,000 prior to additional funds being transmitted to WINCO in January 1992. These actions were contrary to the then DOE Order 2200.6, "FINANCIAL ACCOUNTING," Change 2, Chapter IX, "REIMBURSABLE WORK, REVENUES, AND OTHER COLLECTIONS," and its predecessor DOE Order 2100.10A, "FINANCIAL POLICY AND PROCEDURES FOR REIMBURSABLE WORK," which stated that no work should commence and no costs were to be incurred until a written reimbursable agreement had been received and such document was approved and accepted as defined in DOE Order 4300.2A (predecessor to 4300.2B).

In addition to the findings above, we also found incomplete IDO project files; a lack of documentation on competition requirements; internal control weaknesses; insufficient detail on billings submitted to customers; intelligence activity, in conjunction with foreign travel, that was technically not in compliance with Executive Order 12333; unclassified documents in both the DOE and WINCO files that, when combined, became classified because of the association of information; and release of classified restricted data information to an employee of another Government agency without having received the required certification of security clearance access.

The findings and related recommendations, together with

management comments, are discussed in more detail in Section V., of this report.

#### IV. BACKGROUND

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

The work-for-other Federal agencies program in DOE is sizeable. According to the Work for Others Summary Report, issued in June 1993 by the Acting Assistant Secretary for Human Resources and Management, the Fiscal Year 1992 funding for DOE Federal agencies work-for-others program was \$1.7 billion. DOE's FY 1992 enacted budget authority, as reported in the DOE Fiscal Year 1993 Congressional Budget Request, was \$19.0 billion.

Most WFO work within DOE is authorized under the Economy Act of 1932 (Act). The Act allows materials, supplies, facilities, and personnel of one agency to be used by another. The Act authorizes an agency to place orders for goods and services, subject to availability, with another government agency when the head of the ordering agency determines that it is in the best interests of the government to do so and that the ordered goods or services cannot be provided by contract as conveniently or cheaply by a commercial enterprise.

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

DOE Order 4300.2A, "NON-DEPARTMENT OF ENERGY FUNDED WORK," dated December 19, 1986, established DOE policy, responsibilities, and procedures for review, acceptance, and monitoring of non-DOE funded work performed by the Department's contractors. The principal application was to management and operating contracts under which most of the non-DOE funded work is performed.

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

##### Financial Accounting for Reimbursable Work

DOE Order 2100.10, dated October 17, 1983, was entitled "REIMBURSABLE (FUNDS-IN) POLICY AND PROCEDURES." A

successor DOE Order, 2100.10A, dated August 15, 1988, was entitled "FINANCIAL POLICY AND PROCEDURES FOR REIMBURSABLE WORK." The Order established financial policies and procedures for reimbursable work, one category of which is work-for-others. These policies and procedures applied to DOE and its management and operating contractors when entering into a WFO agreement and subsequently incurring, recording, and billing WFO costs.

On May 10, 1990, Change 2 to DOE Order 2200.6, "FINANCIAL ACCOUNTING," was issued. Change 2 cancelled DOE Order 2100.10A and incorporated the WFO financial policies and procedures into DOE Order 2200.6, "FINANCIAL ACCOUNTING," Chapter IX, "REIMBURSABLE WORK, REVENUES AND OTHER COLLECTIONS." DOE Order 2200.6 was reissued on January 7, 1993, as 2200.6A. DOE policy is to accept reimbursable agreements for its goods and services and to perform WFO on a reimbursable basis, provided legal and regulatory authority to perform the reimbursable work exists and the Department is capable of complying with the requirements of the legal authorities relied on. Furthermore, WFO must not impede the primary functions and responsibilities of the performing activity, and budgetary resources for performing reimbursable work must be available from the customer.

#### DOE's Authority to Classify Information

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

Restricted data and formerly restricted data is classified by the Secretary of Energy and delegates under authority of the Atomic Energy Act of 1954, as amended. For this category of classified information, DOE has not established procedures to create or approve SAPs.

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

Sensitive compartmented information is classified information concerning or derived from intelligence sources, methods, or analytical processes, which is required to be handled within formal access control systems

established by the DCI pursuant to the special access provisions of Executive Order 12356.

#### WFO Project Data

As mentioned in Section II., Scope and Methodology, we selected a WFO project at INEL for this inspection. This particular project at INEL is worked and administered by the Westinghouse Idaho Nuclear Company. WINCO, one of the management and operating contractors at INEL, manages the Idaho Chemical Processing Plant, where the work for this project takes place.

EG&G Idaho, one of the other M&O contractors, processes the WINCO payroll. Also, WINCO uses EG&G Idaho personnel for certain types of labor, such as equipment operators and technicians. WINCO also makes some small purchases through an automated EG&G Idaho purchasing system.

#### V. RESULTS OF INSPECTION

##### DOE NEEDS CONSOLIDATED GUIDANCE ON INFORMATION TO BE INCLUDED IN WORK-FOR-OTHERS APPROVAL PACKAGES

Based on our series of WFO inspections, we believe that, when a requesting agency is dissatisfied with some aspects of the Department's management of its WFO project(s), a contributing factor is frequently a lack of initial specificity regarding the expectations and responsibilities of each agency. For example, requesting agencies may not correctly understand which agency's procedures are to be followed in the areas of contract administration, financial administration, and project oversight. In our opinion, consolidated guidance should be developed to clarify the information to be provided in WFO approval packages.

##### Enabling Legislation and Guidance

Most DOE work-for-others is performed under provisions of the Economy Act of 1932, as amended. Under the Economy Act, an agency (the requesting agency) may place orders with any other agency for supplies or services that the other agency (the servicing agency) may be in a position or equipped to supply, render, or obtain by contract. The head of the requesting agency, or designee, must determine that it is in the Government's interest to do so.

The Federal Acquisition Regulations (FAR), codified in Title 48, Code of Federal Regulations, prescribes policies and procedures applicable to interagency acquisitions under the Economy Act. FAR Subpart 17.504(d) states:

"(2) The requesting agency shall also be responsible for furnishing other assistance that may be necessary, such as providing special contract terms or other requirements that must

comply with any condition or limitation applicable to the funds of the requesting agency.

"(3) The servicing agency is responsible for compliance with all other legal or regulatory requirements applicable to the contract including (i) having adequate statutory authority for the contractual action . . ."

The FAR also states that any format agreeable to both the requesting and servicing agency is acceptable for a reimbursable agreement provided specified information is included.

#### Current Department of Energy Guidance

Guidance on the review, acceptance, and management of interagency acquisitions when DOE is the servicing agency is principally found in two DOE orders. A "brochure" issued by the Department also provides policy-type guidance.

DOE Order 2200.6A, "FINANCIAL ACCOUNTING," Chapter IX, "REIMBURSABLE WORK, REVENUES, AND OTHER COLLECTIONS," Paragraph 2.b.(12), dated January 7, 1993, defines an interagency agreement as a written agreement for DOE to furnish specific goods or accomplish a specific task in support of another Federal agency's mission. Per the Order, the interagency agreement is to provide funding, billing, and payment data in support of the reimbursable work. Attachment IX-1 to DOE Order 2200.6A, which contains guidelines for the review and acceptance of agreements by DOE officials, also specifies information the requesting agencies are to provide.

DOE Order 4300.2B, "NON-DEPARTMENT OF ENERGY FUNDED WORK," dated July 16, 1991, states that DOE facilities and resources may be made available for the performance of work for non-DOE entities. Furthermore, this work can only be undertaken when a determination of certain criteria has been made and certified in writing by the responsible contracting officer. Attachment 3 to the Order, which provides minimum standards for review, acceptance, and monitoring of non-DOE funded work, lists information required from the requesting agencies. The Order states that the requirements are in addition to DOE Order 2200.6 requirements and guidelines.

A brochure entitled "Department of Energy Work for Other Federal Agencies," DOE/MA-0385, was issued by the Department in October 1989. The stated purpose of the brochure is to give other Federal agencies a basic understanding of the guidelines and requirements governing the acceptance and execution of work-for-others projects. We believe that the brochure contains areas of explicit policy, or policy-type, guidance. The brochure addresses

information to be included in the interagency agreement concerning: (1) project scope, financial requirements, and schedule and cost performance monitoring; (2) patent rights allocation; (3) security classification guidance and security requirements; (4) environmental, safety, and health requirements compliance; (5) subcontracts principles and criteria; and (6) ultimate disposition of acquired equipment. We believe such information is essential to ensure there is a common understanding between the requesting agency and DOE officials on the roles and responsibilities of each in completing work on the WFO project.

#### Congressional Hearing on Work-for-Others

On July 30, 1993, the Inspector General, Department of Energy, and the Deputy Inspector General, Department of Defense (DOD), testified before the Senate Committee on Governmental Affairs, Subcommittee on Oversight of Government Management, on the use of interagency purchases.

The DOE Inspector General stated:

"Deficiencies in implementing of the Work for Others Program have been reported by DOE to the President as part of the Federal Managers' Financial Integrity Act (FMFIA) process. This material internal control weakness was first reported in 1989 and addressed the need to ensure that tasks accepted as part of the Work for Others Program are appropriate for DOE to perform. DOE's 1992 FMFIA report indicated that the controls over the Work for Others Program had been strengthened, primarily by a revised DOE Order establishing minimum requirements for information to be provided by sponsoring organizations prior to acceptance of the work. In addition, DOE reported the formation of a working group to review reimbursable work DOE-wide."

The DOD Deputy Inspector General stated:

"Essentially, DoD activities that procured support services through interagency agreements with DoE, . . . relied on those organizations to perform technical and financial administration, oversight of the work, and general contract administration in accordance with applicable DoD standards. . . . DoD activities did not sufficiently protect themselves when they issued the Economy Act orders by adequately defining what was expected in the areas of contract administration, technical services, detailed progress reports, and cost data to be provided to DoD."

\* \* \* \* \*

"The DoD activities did not always receive or request any progress reports or cost data. . . . As a result, DoD program activities could not verify that detailed progress reports were received on a regular basis, that deliverables met requirements, and that vouchers were accurate, reasonable, and allowable."

\* \* \* \* \*

"We recommended guidance be placed in a DoD Instruction to require that orders issued include provisions for the submission of detailed progress reports and cost data; the performance of closeout audits, if needed; and reviews by DoD program officials to verify that amounts billed by other Federal agencies are proper for payment. The Deputy Under Secretary of Defense (Environmental Security) agreed to develop a model interagency agreement for future use."

The expectation that DOE performs general contract administration, financial administration, and oversight of DOD work-for-others projects in accordance with applicable DOD standards is not consistent with DOE policies and procedures. DOE Order 4300.2B establishes DOE policy, procedures, and responsibilities for authorizing and administering non-DOE funded work, including WFO. This Order applies to all Departmental elements and contractors performing work for the Department. The Order generally provides that work-for-others will be performed in accordance with DOE policies and procedures. For example:

- o DOE places reliance on DOE approved contractor systems and procedures for implementation of DOE policy and control of non-DOE funded work projects (including general contract administration);

- o DOE's Chief Financial Officer develops Departmental accounting and financial policy and standards for work performed for non-DOE entities (i.e., financial administration); and

- o Heads of DOE field elements are to assure that WFO under their purview is protected in accordance with DOE safeguards, security, and classification policies.

As noted in the testimony cited above, DOD activities did not always adequately define the level of progress and cost detail DOD activities wanted DOE to provide. We agree that there has been a lack of detail in financial reports provided to customer agencies and we have, in previous reports, made recommendations which address this problem.

We believe a lack of initial specificity regarding the expectations and responsibilities of each agency in a WFO project is frequently a contributing factor if the customer agency's is dissatisfied with some aspects of DOE's managements of its WFO project(s). Accordingly, we concur with the DOD Deputy Inspector General's position that it is essential for the agreement with a customer agency to define what is expected in regard to contract administration, technical services, detailed progress reports, and cost data to be provided to the customer.

#### Inspector General Reviews

Inspector General reviews have identified some customer agency concerns regarding DOE's management of WFO projects. Discussion of several of these reviews follow:

- o The DOD's Office of Inspector General issued Report No. 93-042, "Allegations of Improprieties Involving DOD Acquisition of Services Through the Department of Energy," on January 21, 1993. DOD reviewed nine interagency agreements placed with DOE and found that several DOD required provisions were not included in the agreements. These included: (1) a statement of each agency's responsibilities for Government furnished equipment, contract administration, documentation, rights to data and software, and contract audits; (2) any limitations that must be complied with in the scope or amount of services or supplies that may be procured; (3) a description of the type of funds that will be used to fund supplies or services ordered under the interagency agreement, and whether advance payments are authorized or the work will be performed on a reimbursable basis; (4) a provision that provides a method for resolving disputes between the two parties; (5) a description of the methods for pricing and issuing orders and the level of cost details to be provided by the servicing activity that performs the work (the amount of administrative charges to be assessed by the accepting department or agency should also be identified); and (6) a specified expiration date and provisions for termination.

We contacted DOD Office of Inspector General officials to determine the status of Report No. 93D042 recommendations. On February 8, 1994, the Secretary of Defense issued a policy memorandum that established guidelines for issuance of Economy Act orders by DOD activities to other Federal departments and agencies.

DOD is also revising DOD Instruction 4000.19, "Interservice, Interdepartmental, and Interagency Support." The revisions will expand guidance on interagency agreements between DOD and other agencies, including DOE. This guidance will incorporate the

policy guidance in the Secretary of Defense's February 8, 1994, memorandum. The memorandum requires the head of the DOD requesting activity, or designee, to determine that the orders are in the best interest of the Government.

o The DOE's Office of Inspector General issued Report No. DOE/IG-0303, "Inspection of a Work for Others Project at DOE Field Office Albuquerque," during November 1991. A Memorandum of Understanding (MOU) was executed by DOE and the Department of Army (Army), the requesting agency, to provide an arrangement for the conduct of a cooperative research and development program intended to improve nonnuclear military technology. A separate, though similar, MOU was executed by DOE and DOD to provide an arrangement for the conduct of a cooperative program of research and development intended to bring about major improvements in nonnuclear munitions technology. The inspected WFO project was chartered under the MOU with the Army. Since the Army MOU was silent on procedures for handling classified documents and information, the Army directed that DOD's classification policy, which was spelled out in the DOD MOU, was to be followed for this classified WFO project.

As reported, we found that DOE security regulations, in general, prescribed several procedures which differed from those used by DOD and the Army. For example, different nondisclosure agreements were to be used; the policy on portion marking differed; and the policy and specific records maintained to control and reproduce secret documents differed. A Federal, or contractor, employee could not simultaneously comply with both sets of procedures. Complying with DOD and Army procedures meant not complying with the DOE procedures, which were required by DOE orders and the M&O contract.

DOE officials, in commenting on this report, agreed to review DOE orders, the Department of Energy regulations, and M&O contracts to see if they should be revised to accommodate the security requirements of

customer agencies when DOE performs non-DOE funded work. The officials further stated that MOUs with the various DOD Services would be similarly reviewed.

o The DOE's Office of Inspector General issued Report No. INS-O-90-01, "Inspection of Department of Defense Environmental Restoration Work Managed by the Oak Ridge Operations Office," on March 31, 1990. The DOD Services had provided funds through various funding accounts, including the Defense Environmental Restoration Account (DERA), for environmental restoration projects accepted by the Oak Ridge Operations Office (ORO). The funds, a majority of

which came from DERA, were appropriated and authorized for use during a fiscal year, or in the case of long-term projects, for use during several fiscal years.

As noted in the report, DOD components did not consistently identify funding sources for the accepted projects. Nonetheless, some DOD components later contacted ORO or the management and operating contractor to determine the total funds, by type, involved in the ORO environmental restoration projects. Since neither ORO nor the M&O contractor had a requirement or need for tracking funding sources in their data bases, both ORO and the M&O contractor expended considerable resources to respond to the DOD requests.

ORO management, in commenting on that report, stated that they would continue working with DOD components to resolve current problems. Management also stated that future WFO approval packages should include requirements to address existing problems.

#### Review of IDO Documentation on the Inspected WFO Project

While work on this WFO project was originally initiated in 1972, the project was reaccepted as a new WFO project in 1988. During our inspection at IDO, we reviewed the available documents for this new WFO project. In reviewing the documentation for funds accepted in November 1988, we noted that several items required by the then DOE Order 2100.10A and/or DOE Order 4300.2A were not included in the statement of work nor in other information provided by the customer agency. Some items addressed in the DOE brochure also were not included. Examples of these items follow:

- o statement that the final execution will be completed before the expiration of the period of availability for obligation of the appropriations or funds concerned;

- o statement that the requestor commits to payment of a sum of money to pay the full cost of the work requested;

- o statement specifying what capital equipment and real property are to be procured and who will own the property;

- o provision for a DOE agreement reference number;

- o identification of the total estimated cost of work or services to be reimbursed;

- o provision for a certification that goods or services have been received;

- o statement that the requestor agency will provide for reimbursement to DOE for risks resulting from termination and environmental cleanup;

- o statement that DOE shall monitor the status of individual reimbursable agreements to determine the adequacy of funds as work progresses; and

- o statement that title for specific technical components is negotiable with the funding agency.

IDO accepted this WFO project despite the lack of required information. Without all required information, IDO could not adequately review the WFO project before acceptance nor adequately manage the WFO project after acceptance.

#### Conclusion

DOE guidance for a WFO approval package and the information to be provided by the requesting agencies is found in several different documents. Current DOE policies on the minimum content of a WFO approval package are found in DOE Order 2200.6A, Chapter IX, DOE Order 4300.2B, and the DOE brochure on work-for-others.

The provisions of the cited DOE orders apply to Departmental elements and contractors performing work for the Department. Requesting agencies are not bound by, or may not even be aware of, these provisions. As a result, important specifications, such as the requesting agency's need for data to track progress against cost and manpower schedules, each agency's responsibilities for adjusting work plans and funding data as work proceeds, and the requesting agency's responsibility for determining the adequacy of technical approach and deliverables, is often not included in the WFO approval package.

Based on our series of WFO inspections, we believe that, when a requesting agency is dissatisfied with some aspects of the Department's management of its WFO project(s), a contributing factor is frequently a lack of initial specificity regarding the expectations and responsibilities of each agency. In our opinion, consolidated guidance should be developed to clarify the information to be provided in WFO approval packages.

#### Recommendations

We recommend that the Assistant Secretary, Human Resources and Administration, in conjunction with the Chief Financial Officer:

1. Develop consolidated guidance on what should be in a WFO approval package so the roles and responsibilities of all parties to executed agreements are clearly specified. This guidance should consider the description of roles and responsibilities as described

in DOE Order 4300.2B, DOE Order 2200.6A, Chapter IX, and the DOE brochure on work-for-others.

Officials from the Office of Assistant Secretary, Human Resources and Administration (HR), concurred with the recommendation. They further stated that, in an effort to improve the quality of the WFO process, DOE Headquarters and field representatives had recently conducted a comprehensive review of DOE's WFO policy. Based upon the review results, it was determined that many WFO requirements were not based on laws or regulations but rather mandated as a result of site specific concerns identified during WFO internal and external reviews. The team determined that changes to WFO policy were needed to ensure policies and procedures are not based on deficiencies identified at individual sites. The revision effort is being coordinated and implemented.

They further stated that DOE recognized the need for providing suggested methods for satisfying requirements and providing guidance in areas not required by laws, etc. As a result, a companion piece to the policy order is being developed. This "WFO Implementation Guide" will provide minimum information standards for performing the DOE review and acceptance process. The standards provide the information necessary to ensure adequate information is required.

Office of Chief Financial Officer officials stated that they would provide comments to the Office of Organization and Management (HR-6), "recommending that DOE 2200.6A 'Chapter IX, Reimbursable Work, Revenues, and Other Collections,' Attachment 1, Guidelines for Development, Review, and Acceptance of Agreements for Reimbursable Work or Services by DOE Officials, be incorporated into the WFO implementation guide. In a subsequent update to 2200.6A, we will delete Attachment 1. We feel that these initiatives are consistent with the intent of the recommendation to improve management of WFO in the Department."

#### PROJECT FILES WERE NOT COMPLETE

IDO's files for this WFO project lacked required documentation. IDO officials were also not preparing a comprehensive cross-reference to the actual location of various project documents that were being maintained. As a result, IDO was not fully complying with requirements on documentation and project file maintenance.

#### File Maintenance Requirements

ID Order 4300.2B, dated February 12, 1990, implements IDO policy, responsibilities, and procedures for authorizing and administering non-DOE funded work. Paragraph 4.c.(6)(c) states that the Contracts Management Division Director or Designee will maintain selected information on

each WFO project in sufficient detail to facilitate status reports per DOE Order 4300.2A, Attachment 2 (now DOE Order 4300.2B).

DOE/ID-10186 Rev. C, "Work for Other Guidelines," issued in December 1992, provides additional IDO guidelines for review and acceptance of WFO projects and for file content. Paragraph 3.3 states that WFO project files will be maintained throughout the life of the project by DOE-ID/SPB (Special Programs Branch) and will be stored for 3 years following close out of the project. Appendix K to the Guidelines outlines the WFO Project File Content. The content includes the areas of acceptance, funding, project management plan, progress reports, miscellaneous, and close-out.

#### Lack of Complete Project Files

When asked to provide IDO's project files for the inspected WFO project, the IDO contracting officer stated that, in the past, complete files, to include funding documents and acceptances, were not maintained due to lack of file space. The contracting officer further stated that the responsibility to maintain the WFO files had been transferred to the Special Programs Branch in late FY 1992, in anticipation of the issuance of DOE/ID-10186 Rev. C.

The IDO WFO Coordinator, who works in the Special Programs Branch, assumed his present duties in August 1992. The WFO Coordinator said that, due to a heavy workload, he was also not maintaining official files for this project. The WFO Coordinator agreed that the WFO project files needed to be centralized in the Special Programs Branch to comply with DOE/ID-10186 Rev. C.

The IDO WFO Program Manager, who was assigned to the Office of Assistant Manager for Energy Programs, had been maintaining files for this WFO project. However, our review disclosed that these files were also incomplete. We noted that:

- o two funding documents were not in the files;
  - o four funding document acceptances were not in the files;
  - o the classified statement of work had not been in the files until a copy was provided by the customer agency on March 15, 1993;
  - o the WFO decision package was not maintained in the files;
  - o all progress reports were not maintained in the files;
- and

o the information specified by DOE Order 4300.2B, Attachment 2, Part B, Items 3 through 8, was not maintained in the files.

The IDO WFO Program Manager stated that he was currently managing this particular project along with thirty-six other projects and, during the course of managing this project, has been responsible for as many as fifty-five projects. The WFO Program Manager stated that, due to time constraints in managing the various projects, he had not maintained complete project files.

#### File Locations Not Cross-Referenced

The then DOE Headquarters Office of Administration and Management issued a report titled, "Work For Others Management Review," to the then Idaho Field Office on February 3, 1993, which contained a finding on WFO project files. The finding stated that there was currently no central point where intelligence WFO projects' project files were stored and administered. Classified portions of the projects were stored in several different areas while unclassified portions were stored in other areas. During our review, we further noted that IDO officials had not prepared a comprehensive cross-reference to locations of the various documents for this project.

#### Recommendations

We recommend that the Manager, Idaho Operations Office:

2. Maintain complete files for all WFO projects to include, at a minimum, all data specified by DOE Orders 2200.6A and 4300.2B, including attachments.

3. For those WFO projects where it is not possible or desirable to maintain the complete file at one location, ensure that necessary project cross-references are maintained which reflect the actual location of any separately filed classified documents.

Idaho Operations Office management concurred with Recommendations 2 and 3.

#### DIRECTED SUBCONTRACTING

We found that WINCO and the predecessor M&O contractor had improperly allowed the customer agency, as early as Fiscal Year 1980, to designate a subcontracted consultant for use on the inspected WFO project. This action was contrary to DOE Order 4300.2A guidance which prohibits the requesting agency from designating either the subcontractor to be used or the portion of the work to be subcontracted.

Subcontracts (or modifications) with this consultant continued to be executed through FY 1991, since they did not require IDO approval. IDO subsequently lowered its approval threshold for WINCO subcontracts from \$30,000 to \$5,000. WINCO's proposed FY 1992 subcontract modification, which exceeded the new threshold, was not executed because IDO would not approve the "directed subcontract."

#### Discussion

The WINCO Manager, Procurement and Administrative Services, stated that EG&G Idaho had contracting responsibility for WINCO's predecessor during Fiscal Years 1980 - 1983. Accordingly, EG&G Idaho had procured the specified consultant services for that time frame. WINCO assumed the M&O contract in FY 1984, and had contracted directly with the consultant since that date. The yearly subcontract provided funds for travel and labor expenses for the consultant to participate as a member of a customer agency sponsored panel dealing with classified research.

WINCO's project files contained several modifications to Purchase Order Number 202492 (previously Purchase Order Number 206797). The latest, Modification No. 14, was executed on October 22, 1990, for FY 1991. The two reasons stated in the subcontract modification for selection of the named consultant were: (1) the consultant was specifically identified by the customer agency to provide the required services; and (2) the consultant had performed this service each year since 1979, and is considered the predominant expert for the required effort. Our review of earlier modifications confirmed similar justifications.

On November 18, 1991, the WINCO Manager, Procurement and Administrative Services, sent a memorandum to the IDO contracting officer requesting subcontractor approval for continuing the services of the consultant for the period December 1, 1991, through September 30, 1992. Again, the reasons cited for using this particular consultant were the same as those in Modification No. 14.

The proposed Modification No. 15 was submitted to IDO for approval since the purchase order amount of \$20,000 exceeded WINCO's current threshold of \$5,000 for obtaining IDO procurement approval for consultant agreements. Prior to January 8, 1991, WINCO's threshold for obtaining IDO procurement approval for consultant agreements had been \$30,000. Accordingly, IDO had not reviewed previous modifications since they were less than the \$30,000 threshold.

The IDO contracting officer placed a notation on the WINCO procurement request, also dated November 18, 1991, denying approval. The note stated that "This is a poor package. If you can't get adequate info from [customer], let them hire their consultant." The signature block area contained a "not approved" notation. The IDO contracting officer

recalled the November 1991 subcontract request from WINCO. The IDO contracting officer said that they denied WINCO's request to use the subcontractor because IDO does not allow the customer agency to pick the subcontractor. This action would be a directed subcontract.

The WINCO Manager, Procurement and Administrative Services stated that the WINCO Program Manager for this WFO project initiated the request for the consultant subcontract services. Based on what was provided by the WINCO Program Manager, WINCO Procurement and Administrative Services determined that this was an acceptable consultant subcontract. He did not view it as a directed subcontract.

#### Conclusion

Contrary to DOE Order 4300.2A guidance on the use of subcontractors, WINCO and the predecessor M&O contractor had allowed the customer agency to designate the subcontracted consultant to be used. Subcontracts (or modifications) were executed through FY 1991, since they did not require IDO approval. The FY 1992 subcontract modification was not executed because IDO would not approve the "directed subcontract."

#### Recommendation

We recommend that the Manager, Idaho Operations Office:

4. Direct WINCO and EG&G Idaho to comply with the provisions of DOE Order 4300.2B by not allowing customers to direct subcontracts for WFO projects.

Idaho Operations Office management concurred with Recommendation 4.

#### COMPETITION REQUIREMENTS NOT DOCUMENTED

IDO files did not contain the required written determination, by the responsible contracting officer, that this inspected WFO project would not place DOE in direct competition with the domestic private or public sectors. Likewise, neither IDO nor WINCO files contained the required statement that the customer agency had determined that use of the DOE facility was in compliance with requirements of the Economy Act of 1932, or other statutory authorizations. The propriety of DOE performing work on the customer agency's WFO project was, therefore, not adequately supported.

#### Policy Guidance

DOE Order 4300.2A, "NON-DEPARTMENT OF ENERGY FUNDED WORK," dated December 19, 1986, was current when the WFO project was last reviewed for acceptance in 1988. The Order stated that a WFO project can only be undertaken when a determination has been made and certified in writing by the

responsible contracting officer that the work would not place the facility in direct competition with the domestic private or public sectors. The responsible contracting officer in this case was an IDO contracting officer.

In addition, the DOE Order also stated that "For all Federal agencies, other than the Nuclear Regulatory Commission, a written statement is required stating that the proponent or requesting agency has determined that entering into an agreement with DOE for the use of the DOE facility is in compliance with the requirements of the Economy Act of 1932, as amended (31 U.S.C. 1535) or other statutory authorizations. Those statutory authorizations must be cited." These provisions would apply since the customer agency was other than the Nuclear Regulatory Commission.

#### Lack of Written Determination by a DOE Contracting Officer

As previously discussed, IDO, including the Contracts Management Division, did not maintain complete files on this WFO project although required to do so by ID Order 4300.2B. Further, IDO officials were not able to provide a copy of the written determination, by the responsible contracting officer, that the WFO project would not place DOE in direct competition with the domestic private or public sectors as was required by the then DOE Order 4300.2A.

An IDO official stated that a contracting officer was involved in 1988 during the review process for acceptance of the WFO project. However, this contracting officer is no longer employed at IDO. The IDO official stated that he was not aware of the particular determination, if any, made by the contracting officer and did not have a copy of any of the written determinations required by the then DOE Order 4300.2A.

Since the written determination was not available, we were unable to completely review the propriety of DOE performing the work for the customer agency.

#### Lack of Written Statement from the Customer Agency

Likewise, neither IDO nor WINCO officials were able to provide a copy of the required statement from the customer agency that the customer agency had determined that the use of the DOE facility was in compliance with the requirements of the Economy Act of 1932, as amended, or other statutory authorizations.

The customer agency's justification, which was on file, cited WINCO's experience, unique capability in performing the required analyses, and access to sensitive classified information. This justification did not satisfy the then DOE Order 4300.2A requirements as stated above.

## Recommendations

We recommend that the Manager, Idaho Operations Office:

5. Prepare and maintain the written determinations for this WFO project as required by DOE Order 4300.2B.

6. Request the customer agency to provide the required statement concerning the determination that the use of the DOE facility was in compliance with the requirements of the Economy Act of 1932, as amended, or other statutory authorizations.

Idaho Operations Office management concurred with Recommendations 5 and 6.

## PERFORMING WORK IN THE ABSENCE OF FUNDING

We found that WINCO had incurred costs of approximately \$23,000 on the inspected WFO project in October 1988, before funding was made available in November 1988. In December 1991, WINCO continued work after funds were exhausted and incurred costs of approximately \$18,000 prior to additional funds being transmitted to WINCO in January 1992. These actions were contrary to the then DOE Order 2200.6, Change 2, Chapter IX, and its predecessor DOE Order 2100.10A, which stated that no work should commence and no costs were to be incurred until a written reimbursable agreement had been received and such document was approved and accepted as defined in DOE Order 4300.2A (predecessor to 4300.2B).

### Funding Reimbursable Agreements

The then DOE Order 2200.6, Change 2, Chapter IX, Paragraph 2.d.(2), and its predecessor DOE Order 2100.10A, stated that no work should commence and no costs were to be incurred until a written reimbursable agreement had been received and such document was approved and accepted as defined in DOE Order 4300.2A (predecessor to 4300.2B). Both Orders also stated that reimbursable agreements accepted by DOE for reimbursable work should be managed and accounted for in accordance with the funding limitations of the reimbursable agreement.

Further, Paragraphs 2.i.(1)(d) and (e) stated:

"No work shall continue and no costs shall be incurred beyond either the period of performance or the amount of funding provided in the reimbursable agreement and attendant modifications. . . . In summary, it is a violation of statutory, OMB, and DOE policies and procedures to perform reimbursable work in

excess of or in absence of budgetary resources.  
. . . DOE shall not finance reimbursable work from its own appropriations or another customer's funds but only from the appropriation accounts of the ordering Federal agency or the cash advances from the non-Federal entity."

#### Costs Charged Before Funds Received

According to WINCO personnel, work on this WFO project was originally initiated in 1972. We were further told that this WFO project was most recently reaccepted as a new WFO project in 1988 for the five year period Fiscal Years 1989 through 1993. When we reviewed the available files at both IDO and WINCO, we did not find written documentation that IDO had considered the criteria contained in the then current DOE Order 4300.2A, for acceptance of the WFO project.

The first funding document sent to DOE by the customer agency was dated October 11, 1988. The Idaho Operations Office had a copy of the funding acceptance dated November 4, 1988.

IDO normally notifies WINCO of funding acceptance when the contracting officer accepts and provides WINCO with a monthly financial plan which reflects the funding document number and amount. WINCO provided us with a copy of the November 1988 Financial Plan which showed inclusion of the applicable funding.

We obtained a copy of the WINCO FY 1989 Trial Balance Listing for the month of October 1988, dated November 18, 1988, to determine if WINCO had spent money for the current contract in the month before the DOE contracting officer had signed acceptance. WINCO did spend \$22,916 in October 1988 for the current contract.

Also, the initial letter for the start of the current contract for this project outlined the delivery schedule. The letter stated "It is essential that services be initiated on 1 Oct 88 to insure the continuation of INEL's [Idaho National Engineering Laboratory's] contributions to the . . . ." As we previously pointed out, the first funding document provided by the customer agency was dated October 11, 1988.

Based on the timing of the WINCO costs and the IDO contracting officer's signature, we determined that WINCO began work in advance of receiving funds from the customer agency.

#### Costs Charged After Funds Exhausted

We also reviewed funding documents and WINCO costs to

determine if WINCO had continued work after funding was exhausted. In reviewing accounting adjustments made during the September 1991 - October 1992 test period, we noted an accounting adjustment of \$17,706 in December 1991 and a reversal of the adjustment in January 1992. Funding balances for the project were exhausted in December 1991, so WINCO charged the \$17,706 to a holding account until additional funds were accepted.

Even though WINCO continued work when funding was exhausted, the funding document, dated October 8, 1991, by the customer agency, had been received by IDO and was in the acceptance process when WINCO spent the funds. The IDO contracting officer signed the funding document acceptance on December 27, 1991. However, the additional funds were documented in the Department of Energy Idaho Operations Office Financial Plan received by WINCO in January 1992.

#### Conclusion

The then DOE Order 2200.6, Change 2, Chapter IX, Paragraph 2.d.(2), and its predecessor DOE Order 2100.10A, stated that no work should commence and no costs were to be incurred until a written reimbursable agreement had been received and such document was approved and accepted as defined in DOE Order 4300.2A (predecessor to 4300.2B). Before the current contract funding document was accepted in November 1988, WINCO had incurred costs in October 1988. In December 1991, WINCO continued work after funds were exhausted and prior to additional funds being transmitted to WINCO in January 1992.

#### Recommendation

We recommend that the Manager, Idaho Operations Office:

7. Direct WINCO to comply with DOE Order 2200.6A, Chapter IX, by not commencing work in advance of funds receipt nor continuing work after funds are exhausted.

Idaho Operations Office management concurred with Recommendation 7.

#### REQUIRED USE OF ON-LINE TRANSFER PAYMENTS FOR WORK-FOR-OTHER FEDERAL AGENCIES BILLINGS

DOE Order 2200.6A (successor to 2200.6), "FINANCIAL ACCOUNTING," Chapter IX, "REIMBURSABLE WORK, REVENUES AND OTHER COLLECTIONS," Paragraph 2.i.(3)(a), states that "Approved Treasury forms or the Treasury's On-Line Payment and Collection System must be used for expenditure transfers between DOE and other Federal agencies."

During our inspection at the DOE Idaho Operations Office, we noted that the customer agency paid monthly invoices

using a U.S. Treasury check, rather than on-line transfer payments. We also noted in our previous review of selected intelligence and special access program work-for-others projects that customer agencies made payment by U.S. Treasury check.

A DOE official in the Office of Headquarters Accounting Operations stated that DOE and other specified Federal agencies have the capability to make or receive payments without writing a U.S. Treasury check through the On-Line Payment and Collection System. The DOE official stated that OPAC can be utilized if the disbursing center used by a particular customer agency has that capability.

In accordance with the then DOE Order 2200.6, Chapter IX, Paragraph 2.i.(2)(c), IDO had assigned receivable and collection activities to WINCO for reimbursable work performed by WINCO. An official with the U.S. Treasury Department verified that DOE, and DOE contractors that have been assigned billing responsibility, can accept other Federal agency payments via OPAC. The Treasury official reconfirmed that on-line transfer payments can only be received from those other Federal agencies that have OPAC capability. The Treasury official stated that a decision on whether a Federal agency pays another Federal agency via OPAC is a decision between the Federal agencies involved.

However, the Treasury Department encourages the use of OPAC.

Since we did not verify whether the reviewed customer agencies' disbursing centers had OPAC capability, payment by U.S. Treasury checks may have been the only means available. We believe, however, that DOE should require other Federal customer agencies with this capability to provide payments using OPAC. The use of on-line transfer payments would make the payment process faster, and in our view, save administrative time and expense. Manually recording the receipt of the U.S. Treasury check and depositing the checks in a local financial institution would no longer be necessary if OPAC was used. On-line transfer payments would also reduce the likelihood of fraudulent attempts to cash lost or misplaced checks.

#### Recommendation

We recommend that the Chief Financial Officer:

8. Revise DOE Order 2200.6A, Chapter IX, to require work-for-other Federal agencies with On-Line Payment and Collection System capability to pay DOE invoices via the System, in lieu of sending U.S. Treasury checks.

The Director, Office of Compliance and Audit Liaison, concurred with this recommendation. The Director stated that the Chief Financial Officer will amend the Order during the Department's 50 percent Directives Reduction Project, to state that the Treasury's On-Line Payment and

Collection System should be used when available for expenditure transfers between DOE and other Federal agencies.

#### NOTED INTERNAL CONTROL WEAKNESSES

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

Systems of internal control include the plan of organization and methods and procedures adopted by management to ensure that resource use is consistent with laws and regulations; that resources are safeguarded against waste, loss, and misuse; and that reliable data are obtained, maintained, and fairly disclosed in reports. Adequate internal controls are essential to achieving management and program goals and to providing for full accountability over the available resources. Internal controls help to achieve the positive aims of management and assist in preventing negative consequences from occurring.

During the time period we reviewed during this inspection, WINCO operated specified INEL facilities under Contract DE-AC07-84ID12435. Clause 95 (Management Controls) of this contract required WINCO to ". . . be responsible for maintaining, as an integral part of its organization, effective systems of management controls for both administrative and programmatic functions . . . . The systems of control employed by the contractor shall be documented and satisfactory to DOE."

#### Funding Transmittal Did Not Identify Other Equipment Funds

The then DOE Order 2200.6, Change 2, Chapter IX, provided guidance on accounting for reimbursable agreements. The Order stated in Paragraph 2.i. that "Title 31, section 1301, of the United States Code expressly prohibits the expenditure of funds in an appropriation or appropriation account for purposes other than those that Congress intended." The Order also provided that this limitation applied equally to the execution of DOE mission programs and to the performance of reimbursable work for other Federal agencies. Further, the Order continued that it was imperative that DOE employ prudent management and control techniques to ensure that reimbursable work was authorized, performed, and accounted for in accordance with

congressional, Office of Management and Budget, General Accounting Office, and DOE budgeting and accounting policies and procedures.

IDO procedure is to differentiate between operations and

maintenance funds (money used to perform the work) and procurement funds (capital investment money for equipment) on the funding transmittal forwarded to the M&O contractor. However, in November 1990, procurement funds to be used for equipment totaling \$450,000 were accepted by IDO without being separately identified as funds for equipment on the funding transmittal. As a result, there was the risk of this procurement funding being used as operations and maintenance funding.

While IDO did not identify the procurement funds in this one instance, WINCO properly spent the funds on equipment.

#### Timesheet Changes

INEL Guidelines, "Time and Attendance Reporting," states that "Corrections to Time Reports must be made by crossing out the incorrect charge number, leave code or hours and inserting the correct charge number, leave code or hours. No erasures or 'white outs' are allowed. All corrections must be initialed by both the employee and supervisor."

EG&G Idaho was providing labor services to this WFO project. Included in our review of EG&G Idaho labor charges were three timesheets which contained either white out changes or other pen changes without the employees' initials as required.

#### Updating ID Order 4300.2B

ID Order 4300.2B, "Non-DOE Funded Work," dated February 12, 1990, needs to be updated. The Order still states that (1) Federal agencies do not pay the Departmental added factor and (2) the Contracts Management Division is responsible for WFO processing and files maintenance.

In memoranda dated January 22 and March 22, 1990, the DOE Controller, subsequently designated the Acting Chief Financial Officer, provided guidance on the implementation of a Departmental "Added Factor Rate" for other Federal agencies of 3.2 percent which was to be implemented for FY 1992. The Departmental added factor rate was in fact implemented and was applicable to all WFO Federal agencies unless a waiver was granted. ID Order 4300.2B still states, "No DOE added factor or facility depreciation are charged to other Federal Agencies; however, some support costs may be charges (sic) as directed by ID."

The Department of Energy Idaho Field Office "Work for Other Guidelines," DOE/ID-10186 Rev. C, issued in December 1992, states that "WFO project files will be maintained throughout the life of the project by DOE-ID/SPB [Special Programs Branch] and will be stored for 3 years following close out of the project." ID Order 4300.2B still requires the Contract Management Division Director or Designee to maintain information on each work-for-others project in sufficient detail to facilitate status reports per DOE

Order 4300.2A, Attachment 2.

#### Recommendations

We recommend that the Manager, Idaho Operations Office:

9. Direct WINCO and EG&G Idaho to review internal controls for the areas cited and take necessary actions to strengthen internal controls.

10. Update ID Order 4300.2B to reflect implementation of a Departmental added factor rate and the responsibility of the Special Programs Branch to maintain WFO project files.

Idaho Operations Office management concurred with Recommendations 9 and 10.

#### INSUFFICIENT INVOICE DETAIL

During our review of Standard Form 1080 (SF 1080) billings for this WFO project, we identified a lack of billing detail similar to that noted in our previous inspection of six WFO projects. In the previous inspection, we discussed billings with two customer agencies. Agency officials were concerned about the lack of detailed information on SF 1080 billings received from DOE or DOE M&O contractors. The customers stated that the bills often contained little or no information under the Item or Description of Services section and only a one-line entry for the amount billed.

#### Project Billings

Per DOE Order 2200.6 (predecessor to 2200.6A), Paragraph 2.i.(2)(c), the cognizant DOE field element could assign all collection and accounting activities for the work to the performing M&O contractor. Otherwise, the M&O contractor transfers the amount to be billed to DOE accounts, and the DOE field element performs the receivable and collection activities. In accordance with DOE Order 2200.6, IDO had, in November 1991, assigned receivable and collection activities to WINCO for reimbursable work performed by WINCO.

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

Under the Description of Services section of completed SF 1080s, WINCO listed only the title of the WFO project in the Item or Description of Service section of the completed Standard Form 1080. There was also a one-line entry for the WINCO's current cost as well as a one-line entry for

the applicable DOE added factor. The cost amount and the DOE added factor was added to arrive at the total amount billed.

#### Policy on Information to be Contained in DOE Billings

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

Department of Energy Acquisition Regulation (DEAR) Subpart 917.5 prescribes DOE procedures when DOE obtains interagency acquisitions under the Economy Act of 1932. DEAR Subpart 917.505-71 discusses cost reimbursement standards. Cost reimbursement standards include direct and indirect costs. The DEAR also provides examples (or major elements) of direct costs that can be directly identified and so presumably should be included on bills received for payment by DOE. These examples include salaries and wages, technical services, materials, travel, transportation, and communications.

We believe that each DOE billing activity should provide billing detail on SF 1080 when DOE performs services for a customer agency. A reasonable base for use would appear to be the level of detail expected, as discussed in the DEAR, when other Federal agencies render a billing to DOE.

#### Recommendation

We recommend that the Manager, Idaho Operations Office:

11. Direct WINCO to provide cost detail at the major elements level to reimbursable work customers when rendering Standard Form 1080 billings.

Idaho Operations Office management concurred with Recommendation 11.

#### INTELLIGENCE ACTIVITY IN CONJUNCTION WITH FOREIGN TRAVEL

A WINCO employee of the DOE Field Intelligence Element attended a foreign conference during September 1992. The conference agenda, which included biographical information on U.S. persons, was enclosed with the employee's trip report. This information was retained and later disseminated by personnel at IDO and the then Office of Intelligence. We believe these actions were technically not in compliance with Executive Order 12333, "United States Intelligence Activities."

Before departing on foreign travel, the WINCO employee received security and counterintelligence briefings. Both briefings emphasized defensive matters and neither addressed Executive Order 12333 requirements or DOE/IN procedures relating to restrictions on intelligence collection activities.

#### Retention and Dissemination of Information on United States Persons

A WINCO employee of the DOE Field Intelligence Element attended a foreign conference during September 1992. Cost of the employee's travel was funded by the inspected WFO project. The conference agenda, which contained information concerning certain U.S. persons, was retained and subsequently included in the employee's trip report, dated December 14, 1992. The information included the designation of the American society which co-sponsored the meeting; the names and addresses of two United States attendees contacted at the conference; and the identity of two business entities established within the United States.

The trip report was later disseminated by personnel at IDO and the then Office of Intelligence. We believe retention and dissemination of the information concerning United States persons was contrary to Executive Order 12333 since the employee and the trip were governed by the Executive Order and, at the time the compiled information was retained, the Department lacked the required procedures.

In a report issued in May 1992, the Office of Inspector General reported that DOE did not have procedures for the collection, retention, and dissemination of information regarding United States persons as required by Executive Order 12333. We recommended that the Director of the then Office of Intelligence prepare intelligence procedures which, after approval by the Secretary, were to be submitted to the Attorney General for approval in accordance with Executive Order 12333. The required DOE Procedures for Intelligence Activities were approved by the Attorney General in October 1992. (Per an official of the then Office of Intelligence, these DOE/IN procedures, although unapproved, were in near final form and were issued as interim guidance on May 23, 1992.)

Since the foreign travel occurred during September 1992, before the required procedures were effective, we believe there was technical noncompliance with the requirements of Executive Order 12333. Assuming the DOE Procedures for Intelligence Activities are complied with, future retention and dissemination of information of this type will not be contrary to the Executive Order.

#### Information Provided to the Employee on Executive Order 12333 and DOE Requirements

We reviewed information provided to the WINCO employee

concerning Executive Order 12333 and DOE security requirements. Before departing on foreign travel, the employee received a security briefing from the WINCO Safeguards and Security Office and a counterintelligence briefing from appropriate IDO officials. We were told that both briefings emphasized defensive matters and neither addressed the requirements of Executive Order 12333 nor DOE/IN procedures relating to restrictions on intelligence collection activities.

We believe that failure to provide information on requirements of Executive Order 12333 or DOE/IN procedures prior to travel was inconsistent with policy established by the Director of the then Office of Intelligence. In order to comply with the provisions of the Executive Order and the DOE/IN procedures, a traveler must be aware of the content of these documents.

An official from the then Office of Intelligence stated that a training program had been initiated to train individuals, covered by Executive Order 12333 and the then draft DOE Procedures for Intelligence Activities, on the provisions of these documents. However, it was not possible to immediately train all individuals.

Until all covered individuals are trained, we believe that individuals who have not been trained, but who will undertake foreign travel governed by Executive Order 12333 and the DOE/IN procedures, should be identified and provided with some form of interim briefing.

#### Recommendation

We recommend the Director, Office of Energy Intelligence:

12. Until all individuals, who require training on provisions of Executive Order 12333 and the DOE Procedures for Intelligence Activities, have received training under the established program, provide an adequate form of interim briefing for personnel who will be undertaking foreign travel but who have not otherwise received the appropriate training.

Office of Energy Intelligence officials concurred with the recommendation. They stated that "Field management, Special Security Officers, and Counterintelligence Officers have been trained in Executive Order 12333 to act as agents in providing special briefings to personnel who will be undertaking foreign travel but who have not received the appropriate training."

USE OF ADDITIONAL SECURITY PROCEDURES FOR THE PROTECTION OF CLASSIFIED INFORMATION

We found that certain classified portions of the inspected WFO project involved the use of security procedures usually only permitted with a special access program. The security

procedures in use included the use of a separate "Briefing/Debriefing Statement" which, as part of the indoctrination acknowledgment, referred to "this special access program information." A by-name access roster was also maintained by the security officer.

We believe the use of additional security procedures, including special statements and access lists, was not consistent with normal DOE security procedures. In our opinion, an unofficial SAP had been created with the knowledge of certain IDO officials, but without proper written authority as required by Executive Order 12356.

#### Classification Authorities

The authority for DOE to classify National Security Information is provided by Executive Order 12356, "National Security Information." The Executive Order also permits the agency head, in this case the Secretary, to create SAPs. Section 4.2, Special Access Programs, of Executive Order 12356 states that:

"Agency heads . . . may create special access programs to control access, distribution, and protection of particularly sensitive information classified pursuant to this Order or predecessor orders. Such programs may be created or continued only at the written direction of these agency heads. For special access programs pertaining to intelligence activities (including special activities but not including military operational, strategic and tactical programs), or intelligence sources or methods, this function will be exercised by the Director of Central Intelligence. . . .

"Each agency head shall establish and maintain a system of accounting for special access programs." (emphasis added)

32 Code of Federal Regulations (CFR) 2001.70(f), Special Access Program, published by the Information Security Oversight Office, describes the characteristics of SAPs. The CFR states that:

"Such a program may include, but is not limited to, special clearance, adjudication, or investigative requirements, special designations of officials authorized to determine 'need-to-know,' or special lists of persons determined to have a 'need-to-know.'"

Similarly, DOE Order 5635.1A, "CONTROL OF CLASSIFIED DOCUMENTS AND INFORMATION," dated February 12, 1988,

defines a SAP as:

"Any program imposing need-to-know or access controls beyond those normally provided . . . . Such a program may include, but is not limited to, special clearance, adjudication, or investigative requirements, special delegations of officials authorized to determine need-to-know, or special lists of persons determined to have a need-to-know."

Within DOE, a basic criteria for access to classified information is a "need-to-know." For example, the stated purpose of DOE Order 5635.1A is:

"To provide uniform standards and operating procedures for safeguarding and controlling classified documents and information, to ensure that classified documents are furnished only to authorized personnel on a 'need-to-know' basis, and to prevent loss or compromise of classified information."

Certain portions of the unofficial SAP concerned the protection of information in the Restricted Data (RD) classification category. DOE classifies such information under the authority of the Atomic Energy Act of 1954, as amended. In certain cases, DOE procedures prescribe the use of methods to control access authorization beyond those normally used for National Security Information (NSI). In other cases, DOE uses a formal record of briefing on the purpose and significance of the program, as in the Personnel Assurance Program. However, special security briefing statements and access lists are not normally used by DOE for the purpose of controlling access to NSI classified under the authority of Executive Order 12356.

#### Security Procedures In Use

At WINCO, we found that security procedures, beyond those normally used within DOE for the protection of classified information, were being used to protect the WFO project's classified information. The security procedures in use included the use of a separate "Briefing/Debriefing Statement" which, as part of the indoctrination acknowledgment, referred to "this special access program information." Only designated officials could approve indoctrination into the unofficial SAP.

A by-name access roster for this unofficial SAP was maintained by the security officer. When a person is provided with program information, he or she is given a security briefing regarding security requirements and, after signing a security agreement, is considered to be "read-on" to the special access program. An access roster, or a list of those "read-on" to a

specific special access program, is often maintained by personnel managing the SAP.

IDO and WINCO officials we interviewed were unable to provide written approval of the SAP or the security procedures, which were characteristic of a SAP, being used. Since they were "read-on," a limited number of IDO officials were aware of the use of these security procedures, that WINCO referred to the WFO project as a SAP, and that a code name was in use for the unofficial "special access program."

Several IDO and WINCO officials told us that additional security procedures had been in effect as long as they had been associated with the WFO project. The officials stated that they believed the customer agency had requested the use of these procedures; however, they had no written record and the request may have been made orally.

#### DOE Lacks Procedures to Approve Special Access Programs

Neither DOE 5635.1A, nor any other DOE policy document that we have been provided, contains procedures on how to create a SAP, regardless of whether the SAP would be created under the classification authority of Executive Order 12356 or the Atomic Energy Act of 1954, as amended.

Authority to create a SAP under the provisions of Executive Order 12356 are contained in draft DOE Order 5639.1, Information Security Program. However, the draft order does not contain procedures on how to establish a SAP under Executive Order 12356. Additionally, the draft DOE Order 5639.1 does not contain any authority or procedures to establish a SAP under the classification authority of the Atomic Energy Act of 1954, as amended. (At the conclusion of our field work in May 1993, DOE Order 5639.1, Information Security Program, had not been published.)

#### Conclusions

We believe the use of additional security procedures, including access lists and special "read-on" statements, was not consistent with normal DOE security procedures. The use of such security procedures was more appropriate to a SAP, and gives the appearance that, contrary to Executive Order 12356, an unofficial SAP had been created. A SAP to protect NSI should be approved in writing as required by Executive Order 12356.

#### Recommendations

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

13. Include procedures on establishing special access programs for information classified under Executive Order 12356 in draft DOE Order 5639.1, which deals

with the information security program and SAPs.

14. Include the authority for and procedures on establishing special access programs for information classified under the Atomic Energy Act of 1954, as amended (e.g., Restricted Data, Formerly Restricted Data) in draft DOE Order 5639.1.

15. If necessary, issue interim procedures on establishing special access programs for information classified under Executive Order 12356 or the Atomic Energy Act of 1954, as amended.

Office of Security Affairs officials concurred with Recommendations 13 through 15. Management officials stated that the draft Departmental Order 5639.1, "Information Security Program," will address the procedures for creating, approving, or accepting other Federal agency special access programs. The draft revision will also address procedures for creating and approving Atomic Energy Act-related special access programs. Procedures are being developed by the Special Access Program Oversight Committee, convened by the Under Secretary. Management officials further stated that draft Departmental Order 5639.1 should be published by the end of the First Quarter, Fiscal Year 1995.

We recommend that the Manager, Idaho Operations Office:

16. Review the security requirements of the WFO project and other related classified information to determine if the security procedures associated with a SAP are required. If the security procedures associated with a SAP are appropriate, submit a written request for approval to create a SAP to the Director, Office of Nonproliferation and National Security. If the security procedures associated with a SAP are not appropriate, direct that their use be discontinued.

Idaho Operations Office management officials concurred with Recommendation 16. These officials further commented that the use of the phrase "this special access program" on the briefing/debriefing form was an unfortunate use of terminology and was not intended to imply the controls and characteristics described in 32 CFR 2001.70(f). Management officials continued that use of the briefing/debriefing forms will be discontinued to avoid confusion between a program that has a very limited need-to-know access requirement and a formal SAP. Other appropriate written documentation of the need-to-know requirement will be developed to fulfill the program's administrative needs.

We believe, however, that the use of the term "special access program information" on the briefing/debriefing form was not simply an "unfortunate use of terminology." As stated in the report, many of the controls and

characteristics described in 32 CFR 2001.70(f) were in fact

in place (e.g., designated officials to approve indoctrination, a very limited access roster).

In our view, there may be some cause for concern in those portions of management's response which states "very limited need-to-know" and "Other appropriate written documentation of the need-to-know requirement will be developed to fulfill the program's administrative needs." By indicating that the project has "a very limited need-to-know" and that other "written documentation of the need-to-know requirement will be developed," we believe that management is suggesting that the program does require need-to-know or access controls beyond those normally provided by DOE security procedures. If this is the case, then establishing a Special Access Program in accordance with the authorities cited in the report would be appropriate.

#### AVAILABILITY OF TRAINING ON EXECUTIVE ORDER 12333 AND THE DOE PROCEDURES FOR INTELLIGENCE ACTIVITIES

We found that IDO and WINCO program and security management officials concerned with this intelligence project had not received required training on the provisions of Executive Order 12333 or the "Department of Energy Procedures for Intelligence Activities." We also noted that the then DOE Office of Intelligence was planning a program of centralized training for a relatively large number of personnel from several sites. In our view, this may not be the most cost-effective means of training, and may cause additional delays in providing the required training.

#### Requirements for Training Programs

DOE Order 5670.1A, "MANAGEMENT AND CONTROL OF FOREIGN INTELLIGENCE," was effective January 15, 1992. The Director of the then Office of Intelligence was assigned responsibility to develop professional and specialized training programs for persons involved in intelligence or intelligence related activities.

Activities were established by the then Secretary of Energy and were approved by the Attorney General in October 1992. These procedures state that each DOE Intelligence Component shall familiarize its personnel with the provisions of Executive Order 12333, the DOE procedures, and any

implementing instructions. The Director of the then Office of Intelligence should ensure that training is conducted to achieve the required familiarity.

#### Training on Intelligence Procedures

We interviewed IDO and WINCO officials concerned with this intelligence WFO project. Some of the officials were responsible for detailed management of the WFO project

operations, as well as other intelligence activities. Other officials were responsible for oversight of the WFO project and other intelligence activities.

At the time of completion of our on-site field work in May 1993, only one official stated that he had received DOE training on the provisions of Executive Order 12333, "United States Intelligence Activities." The same individual also stated that training on the then draft DOE Procedures for Intelligence Activities had been received as part of a course he had attended.

We found that the DOE Field Intelligence Element at the management and operating contractor did not have a copy of the October 1992 "Department of Energy Procedures for Intelligence Activities" to which they could make reference. The IDO Intelligence WFO Coordinator stated that he had informally distributed the procedures when they had been received. WINCO program and security management officials stated that, although they had seen the procedures, they had not retained a copy for reference. As a result of our inquiry, the DOE Field Intelligence Element obtained a copy of the procedures.

The interviewed officials also told us that the then Office of Intelligence had recently established a schedule of training on Executive Order 12333 and the DOE Procedures for Intelligence Activities. The officials stated that the three hour course was to be centrally presented. The officials stated that they were in the process of identifying attendees and reporting to the then Office of Intelligence.

We noted that the DOE Procedures for Intelligence Activities state that:

"A. Unless specified otherwise, these Procedures apply to all activities, in the United States or abroad, relating to the collection, retention, or dissemination of foreign intelligence and counterintelligence information, and any other activities authorized by E.O. 12333. These Procedures also apply to all DOE Management & Operating (M&O) contractors, their subcontractors and employees engaged in intelligence-related, non-DOE funded work, including:

- Work sponsored by an organization identified in E.O. 12333 as an intelligence component; or

- Work funded by either the National Foreign Intelligence Program (NFIP) or the Tactical Intelligence and Related Activities (TIARA) Program; or

- Work for which the cognizant technical DOE Headquarters official is the [then] Director of Intelligence."

The then Office of Intelligence reported to the Office of Inspector General that there are at least 386 Intelligence WFO projects within the purview of DOE. We believe that the appropriate training must be provided to a sizeable number of personnel across the DOE complex. In our view, a program of centralized training for the apparently large number of personnel from several sites may not be the most cost-effective means of training, and may cause significant additional delay in providing the required training.

#### Recommendations

We recommend that the Director, Office of Energy Intelligence:

17. Review current plans for the training program related to Executive Order 12333, the "Department of Energy Procedures for Intelligence Activities," and other implementing instructions. Provide the required training to identified attendees on an expedited and cost-effective basis.

18. Confirm that DOE Field Intelligence Elements and others covered by the "Department of Energy Procedures for Intelligence Activities" have received the procedures and have them available for reference.

The Director, Office of Energy Intelligence, concurred with Recommendations 17 and 18. The Director agreed that training should be provided on an expedited and cost-effective basis, and stated that the Office would continue to review and modify the training program to ensure this result. The Director cited several training sessions already provided and stated that current plans call for training at field intelligence elements engaged in intelligence-related WFO.

The Director stated that copies of "Department of Energy Procedures for Intelligence Activities" have been placed in all Departmental Field Intelligence Elements and personnel copies have also been distributed during training sessions.

#### CLASSIFICATION OF INFORMATION REGARDING THE ASSOCIATION OF THE CUSTOMER AGENCY WITH INTELLIGENCE ACTIVITIES

In a memorandum dated November 19, 1992, the then Office of Intelligence provided additional classification guidance for this WFO project regarding information on the association of the customer agency and intelligence activities. In addition to the general classification guidance, the memorandum noted that, if certain document(s)

prepared at DOE Headquarters were filed with the funding document received from the customer agency, combination of the two documents should be marked with the appropriate security classification and category.

During our review of unclassified files at both IDO and WINCO, the specified combination of documents was found. The documents had not, in either case, been appropriately marked for security classification. At both locations, we were told that the files had been stored in an approved security container inside a secure area and, indeed, we reviewed the files in a secure area.

At IDO, we also found a one page document which contained both information elements identified in the November 19, 1992, memorandum as requiring security classification and category when combined. We believe this was significant since it confirmed that the two information elements for making the classified association could be contained in a single document. While the document was reviewed in a secure area, it had not been marked with the appropriate classification and category.

At both IDO and WINCO, management and security personnel were aware of the November 19, 1992, memorandum, and the classification guidance instructions. The IDO document custodian stated that they had planned to review, and remark as appropriate, the WFO project documents as they were used or were to be sent out of the secure area in which they were normally stored. WINCO officials stated that, due to the large volume of documents in their files, they had planned to properly mark the documents as they were identified.

The WFO project files maintained at the then Office of Intelligence, IDO, and WINCO also contained a "Classification Guide Summary" attached to a customer agency memorandum dated March 9, 1993. Under the element "ASSOCIATION" the summary stated "Unclassified." Based upon the classification guidance contained in the November 19, 1992, memorandum from the then Office of Intelligence, we believe that the "Classification Guide Summary" was incorrect in stating that the association was "Unclassified."

#### Recommendations

We recommend that the Director, Office of Energy Intelligence:

19. For the WFO project inspected, direct the review, in conjunction with the customer agency, of the project's "Classification Guide Summary" to determine the correct entry in that portion of the summary dealing with "Association."

20. Notify the DOE recipients of the inspected WFO project's "Classification Guide Summary" of the correct classification of information regarding association.

The Director, Office of Energy Intelligence, concurred with Recommendations 19 and 20.

Concerning Recommendation 19, the Director commented that the sponsoring organization was contacted and did confirm that the "Classification Guide Summary" was correctly marked. The sponsor was also reminded of the requirement to provide WINCO with complete written project classification guidance.

With regard to Recommendation 20, the Director stated the Office of Energy Intelligence had contacted IDO and WINCO to ensure complete understanding of this association.

We recommend that the Manager, Idaho Operations Office:

21. Ensure that documents containing the two information elements for making the classified association be appropriately marked for security classification by IDO and WINCO.

Idaho Operations Office management concurred with Recommendation 21.

RELEASE OF CLASSIFIED RESTRICTED DATA INFORMATION TO AN EMPLOYEE OF ANOTHER GOVERNMENT AGENCY

DOE Order 5635.1A, "CONTROL OF CLASSIFIED DOCUMENTS AND INFORMATION," states that:

"Restricted Data may be furnished to employees of other Government agencies only upon the basis of certification in writing by, or in the name of, authorized officials of the agency requesting the information. Each certification shall . . . include: verification of appropriate security clearance for each person; a statement that each person needs and is authorized access to the reports in the performance of official duties; and a statement that the common defense and security will not be endangered by the access to be granted."

The FY 1992 Annual Report for this WFO project had a classification level of SECRET and a classification category of RESTRICTED DATA. In November 1992, a copy of this report was mailed to a named employee of the customer agency.

However, neither IDO nor WINCO program or security

management officials had obtained the required certification for the named person of the other government agency. Based upon our inquiry, the security manager for the WFO project subsequently requested and received the required written certification from the customer agency.

#### Recommendation

We recommend that the Manager, Idaho Operations Office:

22. Emphasize to WINCO the need, prior to furnishing Restricted Data to employees of other Government agencies, to obtain the required certifications specified in DOE Order 5635.1A.

Idaho Operations Office management concurred with Recommendation 22.