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AUDIT REPORT

HEALTH PHYSICS TECHNICIAN SUBCONTRACTS AT BROOKHAVEN NATIONAL LABORATORY



U.S. DEPARTMENT OF ENERGY
OFFICE OF INSPECTOR GENERAL
OFFICE OF AUDIT SERVICES

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DEPARTMENT OF ENERGY

Washington, DC 20585

May 12, 1999

MEMORANDUM FOR THE MANAGER, CHICAGO OPERATIONS OFFICE

FROM: Terry L. Brendlinger, Manager
Eastern Regional Audit Office
Office of Inspector General

SUBJECT: INFORMATION: Audit Report on "Health Physics Technician Subcontracts at Brookhaven National Laboratory"

BACKGROUND

To supplement its health physics staff, Brookhaven National Laboratory (Brookhaven) subcontracted with a support service business (the subcontractor) to obtain the services of health physics technicians. During the performance of these subcontracts, certain issues arose concerning per diem payments to the subcontractor for local technicians. The objective of this audit was to determine whether Brookhaven fully enforced the terms and conditions of its subcontracts for health physics technicians.

RESULTS OF AUDIT

Brookhaven had not fully enforced the terms of its subcontracts, and as a result, Brookhaven and the Department paid about \$288,000 more than necessary for health physics technicians. For example, Brookhaven reimbursed the subcontractor for per diem on days when work was not performed and when the subcontractor did not pay subsistence expenses to its technicians. Brookhaven also increased the subcontracts' fixed reimbursement rates without adequate justification and reimbursed the subcontractor for overtime even though the subcontract did not provide for an overtime reimbursement rate.

We recommend that the Manager, Chicago Operations Office, recover the unreasonable costs identified in the audit and require Brookhaven to strengthen its subcontract administration practices.

MANAGEMENT REACTION

Management agreed in principle with the audit finding and recommendations. However, management stated that additional time was needed to further examine the issues.

HEALTH PHYSICS TECHNICIAN SUBCONTRACTS AT BROOKHAVEN NATIONAL LABORATORY

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Overview

INTRODUCTION AND OBJECTIVE

To supplement its health physics staff, Brookhaven subcontracted with a support service business to obtain the services of health physics technicians. From October 1994 through November 1998, these subcontract awards had a total value of about \$1.7 million. The subcontracts contained fixed reimbursement rates for each labor category and a per diem rate of \$50 for subsistence.

In May 1997, Brookhaven learned that the subcontractor had claimed per diem costs for technicians who lived in the local Brookhaven area and, therefore, were not entitled to reimbursement of subsistence expenses. At that time, Brookhaven requested its internal auditors to perform a limited review of payments to the subcontractor. The internal auditors identified \$98,800 in per diem payments for technicians who lived in the local area and recommended improvements in Brookhaven's invoice review process.

In response to the internal audit finding, Brookhaven agreed to improve its invoice review process. However, Brookhaven determined that the questionable per diem payments for local technicians were proper payments to the subcontractor. When this action came to our attention, we initiated a review of Brookhaven's administration of its subcontracts for health physics technicians.

A prior Office of Inspector General audit report, *Blanket Purchase Orders and Time and Material Subcontracts at Brookhaven National Laboratory*, dated July 1990, had found that Brookhaven did not fully enforce the terms of its subcontracts. Specifically, for certain time-and-material subcontracts, Brookhaven reimbursed its subcontractors for periodic wage increases that were not required by the subcontract terms and exceeded the maximum rates authorized in the subcontracts.

The objective of this audit was to determine whether Brookhaven had fully enforced the terms and conditions of its subcontracts for health physics technicians.

CONCLUSIONS AND OBSERVATIONS

Brookhaven had not fully enforced the terms of its health physics technician subcontracts. Specifically, Brookhaven reimbursed the subcontractor for per diem even when the subcontractor had not paid subsistence expenses to its technicians. Many of these technicians were local to the Brookhaven area and not entitled to subsistence expenses. Brookhaven also reimbursed the subcontractor for per diem on days when its technicians did not work. In addition, Brookhaven increased

the subcontracts' fixed reimbursement rates without adequate justification and reimbursed the subcontractor for overtime even though the subcontract did not provide for an overtime reimbursement rate. As a result of not enforcing the terms of its subcontracts, Brookhaven and the Department paid about \$288,000 more than necessary for health physics technicians.

The audit identified issues that management should consider when preparing its yearend assurance memorandum on internal controls.

(Signed)

Office of Inspector General

ADMINISTRATION OF HEALTH PHYSICS TECHNICIAN SUBCONTRACTS

Brookhaven Paid Excessive Per Diem

Since October 1994, Brookhaven has awarded the subcontractor four fixed-rate subcontracts to provide the services of health physics technicians. These competitively awarded subcontracts contained fixed daily rates to reimburse the subcontractor for technician labor and benefit costs, the subcontractor's administrative cost, and profit. The subcontracts also contained a daily per diem rate of \$50 per technician. It is generally recognized that per diem is an allowance for subsistence expenses such as lodging, meals, and incidental expenses. The first two subcontracts defined per diem as such. The two later subcontracts did not contain a definition of per diem. However, all four subcontracts required the subcontractor to submit invoices that state the number of days expended for work and subsistence.

The subcontractor claimed per diem costs for every day that its technicians worked at Brookhaven, regardless of whether the technicians were local to Brookhaven or whether the subcontractor had paid the technicians for subsistence expenses. Brookhaven routinely reimbursed the subcontractor for these claimed per diem costs.

In 1997, Brookhaven's internal auditors performed a limited review of the subcontractor's invoices and questioned \$98,800 in per diem payments for technicians who lived in the local area. Brookhaven elected not to recover these payments from the subcontractor.

We found the questionable per diem payments for technicians to be more extensive than were identified by the internal auditors. Specifically, Brookhaven had reimbursed the subcontractor about \$172,000 in per diem costs for local technicians and about \$21,000 for non-local technicians when the subcontractor had not paid subsistence expenses to these technicians. As part of the \$172,000, about \$51,000 represented per diem for days on which the technicians did not even work.

Brookhaven Increased Reimbursements Rates

Even though Brookhaven elected not to recover the per diem payments for local technicians, Brookhaven advised the subcontractor in February 1998 that per diem for local technicians would not be paid in the future. At the same time, Brookhaven modified the subcontract to increase the fixed daily rates, apparently to compensate the subcontractor for ending the per diem payments for local technicians. This subcontract modification increased all fixed reimbursement rates by \$25 per day. In addition, new labor categories with higher reimbursement rates were added to the subcontract. The subcontractor then reclassified most of its technicians to these new labor categories and was reimbursed at the

higher rates. However, the subcontractor did not increase the rates paid to these technicians to reflect that they were working in new labor categories. We estimated that these subcontract changes increased payments to the subcontractor by about \$74,000.

Overtime Was Not Provided for in Subcontract

Under one of the subcontracts, the subcontractor claimed \$21,000 for overtime. However, the subcontract did not provide for an overtime rate. Nonetheless, Brookhaven did not challenge the subcontractor's claim and paid the overtime. The subcontractor billed an hourly rate for this overtime that was about two-and-one-half times the hourly equivalent of the daily reimbursement rate.

Subcontract Terms Should be Enforced to Ensure Costs Are Reasonable

Brookhaven's contracts with the Department require that costs must be reasonable as a condition of their allowability. To ensure that costs are reasonable and that goods and services are obtained at the best available prices, the Department's contractors should enforce the terms and conditions of their subcontracts. For example, subcontractor invoices should be reviewed to ensure that claimed costs comply with the subcontract, and recovery should be sought for any overpayments. Furthermore, when a subcontractor is selected competitively based on having the lowest quoted rates, these rates, once agreed-to in a subcontract, should not be increased during the term of the subcontract except in unusual circumstances. In subcontracts where agreed-to fixed rates are intended to reimburse the subcontractor for cost and profit, the subcontractor accepts the normal business risks, such as gains or losses, that result from such an agreement.

Brookhaven Did Not Enforce Subcontracts

Insufficient review of invoices prevented Brookhaven from readily observing that the subcontractor claimed per diem for days when its technicians did not work and for local technicians who were not paid subsistence. However, even after becoming aware of this condition, Brookhaven elected not to enforce subcontract terms. In response to the internal audit questioning \$98,800 of per diem payments for local technicians, Brookhaven's Office of Laboratory Counsel (Counsel) opined that the questioned per diem costs were allowable and payable to the subcontractor. Brookhaven's Counsel stated that the per diem payments were proper because (1) the terms of the subcontract were ambiguous as to when per diem was to be paid, and (2) the subcontractor had lost money on the subcontract.

We do not consider the ongoing subcontract arrangement between

**Department Paid More
Than Necessary for Health
Service Technicians**

Brookhaven and the subcontractor to be ambiguous as to when per diem should be paid. Although the two later subcontracts did not define "per diem," its meaning as an allowance for subsistence is generally understood and was stated in the two prior subcontracts. Furthermore, the subcontracts required invoices to state the number of days actually expended for subsistence. In our opinion, it was improper for the subcontractor to claim per diem for days when the subcontractor did not pay subsistence to its technicians or for days when technicians did not work. Therefore, the per diem should not have been allowed.

Counsel's argument that the subcontractor sustained a loss on the subcontract was neither supported nor relevant. The belief that the subcontractor sustained a loss was apparently based on a limited desk review of unaudited subcontractor data performed by a Brookhaven procurement specialist. Nevertheless, these subcontracts were fixed-rate subcontracts by which the subcontractor agreed to fixed reimbursement rates for cost and profit and, therefore, accepted the risk of loss that could result from such an agreement. Brookhaven had selected this subcontractor because the subcontractor had consistently quoted the lowest rates. The subcontracts did not provide for rate increases, and the subcontract terms should have been enforced even if the subcontractor had incurred a loss.

As a result of Brookhaven not enforcing the terms and conditions of its subcontracts, the Department paid about \$288,000 more than necessary for health service technicians. We consider these costs to be unreasonable and, therefore, unallowable under Brookhaven's contract with the Department. In addition, Brookhaven did not give other support service businesses an opportunity to competitively bid lower rates on the subcontract work when the reimbursement rates were increased or new labor categories were added.

We recommend that the Manager, Chicago Operations Office:

RECOMMENDATIONS

1. Recover the unreasonable costs identified in this audit, and
2. Require Brookhaven to strengthen its subcontract administration to hold subcontractors to the terms and conditions of subcontracts.

**MANAGEMENT
REACTION**

Management stated that it tentatively agreed in principle with the audit finding and recommendations. However, management stated that additional time was needed to further examine the issues and the systems and internal controls in place, in order to determine what appropriate actions may be required. Management further stated that the issues and actions are complicated by the fact that the period of performance covered by the subcontracts in question spanned two management and operating contractors.

AUDITOR COMMENTS

We consider management's comments to be responsive. However, management did not establish a corrective action plan or an expected date of completion.

Appendix

SCOPE

The audit was performed from November 1998 to March 1999 at Brookhaven National Laboratory in Upton, New York and at the subcontractor's office. The four subcontracts for health physics technicians covered in our audit were:

Subcontract Number	Periods of Performance	Subcontract Value	Costs Claimed (Through Nov. 1998)
740533	October 1994 to August 1995	\$ 40,164	\$ 40,116
724619	January 1995 to June 1995	22,966	22,341
770880	August 1995 to July 1997	446,925	441,442
837655	April 1997 to March 1999	1,160,000	1,077,835
Total		\$1,670,055	\$1,581,734

To accomplish the audit objective, we:

METHODOLOGY

- Reviewed subcontract terms and conditions;
- Reviewed Federal and Department regulations relevant to the administration of subcontracts and allowability of costs;
- Interviewed Department, Brookhaven, and subcontractor representatives;
- Analyzed the subcontractor's billings and Brookhaven's payments;
- Reviewed accounting records and supporting documentation maintained by Brookhaven and the subcontractor; and
- Reviewed Brookhaven's internal audit workpapers.

The audit was performed in accordance with generally accepted Government auditing standards for performance audits and included tests of internal controls and compliance with laws and regulations to the extent necessary to satisfy the audit objective. Accordingly, we assessed the significant internal controls and performance measures established under the Government Performance and Results Act related to Brookhaven's enforcement of the terms and conditions of its subcontracts for health physics technicians. Because our review was limited, it would not necessarily have disclosed all internal control deficiencies that may have existed at the time of our audit. Our review did not rely on computer processed data.

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