



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

Audit Report

The National Nuclear Security
Administration Contractors' Disability
Compensation and Return-to-Work
Programs

DOE/IG-0867

June 2012



Department of Energy
Washington, DC 20585

June 18, 2012

MEMORANDUM FOR THE SECRETARY

FROM: 
Gregory H. Friedman
Inspector General

SUBJECT: INFORMATION: Audit Report on "NNSA Contractors' Disability Compensation and Return-to-Work Programs"

INTRODUCTION AND OBJECTIVE

The Department of Energy's National Nuclear Security Administration is responsible for the Nation's nuclear weapons programs. NNSA relies on contractors to manage and operate the seven sites that form its nuclear security enterprise, including three national laboratories. Under state workers' compensation laws, these contractors provide a wide range of benefits to employees, including those experiencing occupational disabilities. An occupational disability occurs when a job-related injury or illness renders an employee unable to perform a job. The contractors also have other disability plans, such as sick leave or salary continuation programs, that provide benefits for non-occupational disabilities and generally supplement workers' compensation. NNSA's contractors, whose costs are fully reimbursed, are required to promote efficient and effective administrative functions. In Fiscal Year 2009, NNSA reimbursed its contractors an estimated \$112 million in workers' compensation, sick leave and disability plan costs.

Studies have shown that employers can significantly reduce costs by actively managing worker disability programs and by implementing effective return-to-work efforts. For example, the Council of State Governments reported in *Workers' Comp Trends Alert, Critical Information for State Decision-Makers* that employers can reduce the costs of lost days for occupational injuries by 25 to 50 percent by implementing a return-to-work program. Because of the significant costs involved and the potential for savings, we initiated this audit to determine whether NNSA had ensured that contractor disability programs were managed effectively.

RESULTS OF AUDIT

NNSA had not ensured that its contractors managed their disability programs effectively, efficiently and in the Department's best interest. In performing work at the Lawrence Livermore National Laboratory, Los Alamos National Laboratory, Sandia National Laboratories, and Y-12 National Security Complex, we determined that:

- Livermore, Sandia and Y-12 had policies which effectively disincentivized employee return to work by supplementing workers' compensation with payments that gave the employees more net income when they were on disability than when they were working.

By following provisions in their contracts that limit supplemental payments, these contractors could eliminate the disincentives and save a combined average of at least \$146,000 annually;

- Livermore obtained "guaranteed cost" workers' compensation insurance with no deductible even though such insurance is likely to be one of the most costly plans available. We estimated that Livermore could save between \$645,000 and \$1.3 million annually by selecting an alternative plan, such as "large deductible" and "self-insurance" plans or a plan readily available through the Department that bases premiums on costs actually incurred during the year;
- In purchasing its guaranteed cost workers' compensation insurance, Livermore incurred and charged NNSA \$1.26 million in insurance broker compensation for FYs 2008 through 2011. In September 2007, the Livermore Site Office Contracting Officer specifically advised Livermore in writing that broker fees would not be reimbursable. NNSA officials explained to us that they believe their ruling regarding the allowability of the broker fees was appropriate because Livermore could have avoided such fees by obtaining coverage directly, for example, by purchasing the plan available through the Department, without a broker. We believe, therefore, that the \$1.26 million was an unreasonable expense and that NNSA should recoup these funds; and,
- Livermore, Los Alamos and Y-12 did not always implement best practices for managing disabilities covered by their paid sick leave programs. In many cases, the sites did not require physician certifications with return-to-work information for disabilities lasting five or more days and did not use disability duration guidelines, case managers, and case management software to manage sick leave claims. In contrast, Sandia implemented a disability management program with these features which contributed to its sick leave and short-term disability costs being significantly less than its sister NNSA laboratories. In this regard, we estimated that Livermore and Los Alamos could save approximately \$1.2 million annually by implementing more effective disability management programs. Further, to its credit, shortly after we began our audit, Y-12 hired a return-to-work coordinator to manage disabilities.

Livermore and Los Alamos had not implemented some other best practices that have been proven to reduce workers' compensation costs. Livermore, for example, did not use an approved medical provider network to treat employees injured on the job, as allowed under California regulations, even though an industry study established that such a practice could reduce workers' compensation costs and improve medical treatment. Further, with regard to adoption of industry best practices, Los Alamos continued to make workers' compensation payments for some union employees who had been medically released for modified duty rather than offering work outside the employees' normal duties. According to a union official, its agreement with Los Alamos did not prevent assigning such employees to modified duty outside their craft.

Finally, NNSA did not implement cost savings opportunities that according to an outside consultant could have saved between \$1.2 million and \$2.2 million annually. NNSA hired a consultant to identify actions that contractors could take to improve the efficiency and

effectiveness of its contractor employee benefits programs. The consultant issued a report in 2009, and suggested a number of actions that NNSA could implement to improve oversight, and reduce administrative and claims costs. The consultant, for example, suggested that self-insured NNSA contractors could consolidate, or share, their claims administrators where feasible to eliminate duplicate costs. However, such a consolidation was never pursued. We noted that Livermore and Los Alamos had already established a precedent for shared services because the sites currently share trustees and investment managers for their respective pension plans.

These issues occurred because NNSA, NNSA site offices, and contractor officials did not exercise adequate oversight of, or provide resources necessary to improve, contractor disability plans. For example, NNSA officials told us that they did not implement cost savings opportunities that their consultant identified regarding workers' compensation because of limited resources and their focus on other benefit areas, such as health plans. Finally, contractor officials at Livermore, Sandia, and Y-12 were not aware that their workers' compensation and supplemental payments practices were inconsistent with terms in their contracts with NNSA.

By increasing its oversight of contractor disability programs and implementing its consultant's recommendations, NNSA could save more than \$3.3 million annually as summarized in Appendix 1. As noted, we also questioned \$1.26 million in broker compensation costs that Livermore incurred because the Livermore Site Office Contracting Officer had expressly prohibited broker fees.

We found, however, that each of the contractors had certain meritorious policies and procedures that we believe helped to keep their workers' compensation disability costs in check. For example, with the exception of union craft employees at Los Alamos, each of the contractors had a policy or practice of offering modified duty to most employees injured on the job. Finally, all the contractors expressed a willingness to evaluate their programs in light of our findings and recommendations. This was encouraging. Despite these actions, additional effort is necessary to ensure that disability compensation and return-to-work programs are as effective and efficient as possible. We made several recommendations designed to help NNSA in this regard.

We recognize that there may be a number of impediments to implementing change in how contractors manage their employee disability plans. For example, self-insurance and some large deductible plans require collateral and could involve making a deposit or purchasing a bond or letter of credit. However, our concern, as presented in the report, is that contractors were not aggressively exploring the options available for reducing disability costs.

MANAGEMENT REACTION

Management agreed with the findings and recommendations in the report. Management indicated that site office officials had discussed the issues with the contractors and planned actions to address each of the recommendations. Management's comments, including its concerns and our response, are more thoroughly discussed in the body of the report and are included in their entirety in Appendix 4.

Attachment

cc: Deputy Secretary
Associate Deputy Secretary
Acting Under Secretary of Energy
Acting Under Secretary for Science
Under Secretary for Nuclear Security
Chief of Staff

REPORT ON NNSA CONTRACTORS' DISABILITY COMPENSATION AND RETURN-TO-WORK PROGRAMS

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NNSA CONTRACTORS' DISABILITY COMPENSATION AND RETURN-TO-WORK PROGRAMS

DISABILITY COMPENSATION AND RETURN-TO-WORK PROGRAMS

The National Nuclear Security Administration (NNSA) had not ensured that its contractor sites always managed their disability plans effectively and reduced costs by implementing return-to-work programs. Specifically:

- Lawrence Livermore National Laboratory (Livermore), Sandia National Laboratories (Sandia), and Y-12 National Security Complex (Y-12) provided disincentives to employees to return to work by supplementing workers' compensation with payments that gave employees more net income when they were on disability payments than when they were working;
- Livermore purchased guaranteed cost workers' compensation insurance with no deductible, which may not be the most cost-effective plan available. According to our analysis, there are less costly alternatives such as a retrospective rating plan available through the Department of Energy (Department) that bases premiums on costs actually incurred during the year, large deductible plans, or a self-insurance option;
- In purchasing its guaranteed cost workers' compensation insurance, Livermore incurred, charged and was subsequently reimbursed approximately \$1.26 million by NNSA in potentially unallowable broker compensation for Fiscal Years (FYs) 2008 through 2011. In September 2007, the Livermore Site Office Contracting Officer advised Livermore that broker fees incurred in obtaining workers' compensation coverage would be unallowable. The Contracting Officer explained that Livermore could have obtained coverage directly without the use of a broker, including purchasing the plan available through the Department, and therefore, fees for broker services would not be allowable;
- In most cases, Livermore, Los Alamos National Laboratory (Los Alamos), and Y-12 did not implement best practices such as using case managers, software to track case management activities, and disability duration guidelines to manage sick leave claims associated with non-occupational disabilities; and,
- Livermore and Los Alamos did not adopt some other best practices that have been proven to reduce workers' compensation costs. For example, Livermore did not

Workers' Compensation Supplement

utilize an approved network of health care providers to treat employees with work injuries; and, Los Alamos paid some employees to stay off work even though they had been released for modified duty.

We also noted that NNSA did not implement cost savings opportunities that its consultant reported could save between \$1.2 million and \$2.2 million annually.

NNSA sites did not manage their workers' compensation programs effectively. Specifically, Livermore, Sandia, and Y-12 supplemented workers' compensation with payments that gave employees more net pay when disabled than when working. Livermore permitted employees to supplement workers' compensation with sick leave up to 100 percent of gross pay. Sandia and Y-12 paid salary continuation at 100 percent of gross pay. Because workers' compensation is not subject to Federal payroll and income taxes, these payments actually resulted in an increase in net pay. For example:

- A Livermore employee's bi-weekly net pay increased from \$2,042 to \$2,666 during a disability because tax withholdings decreased by \$624; and,
- Similarly, a Sandia employee's bi-weekly net pay increased from \$1,356 to \$1,816 during a disability because tax and other withholdings decreased by \$460.

In contrast, Los Alamos limited workers' compensation and other paid leave to 80 percent of gross pay, a practice that could result in the payments approximating the employees' net pay depending on applicable tax rates. Moreover, a consultant that NNSA hired to study contractor employee benefits stated that paying employees more than net pay when they are off work creates an incentive for them to stay off work.

Although NNSA approved contractor pay plans providing supplements up to 100 percent of gross pay, the Livermore contract contained a provision limiting workers' compensation and supplemental payments to 80 percent of gross pay and the Sandia and Y-12 contracts limited them to net pay. Livermore was initially concerned that California law might prohibit limits on the use of sick leave. However, an attorney at Livermore explained that the California law did not require employers to provide sick leave and that if an employer chose to provide sick leave, then the law would likely not prohibit limiting it, as a supplement to workers' compensation, to net pay or 80 percent of gross pay. We

noted that several large employers in California have policies limiting workers' compensation and supplemental payments to amounts less than gross pay.

Y-12 previously paid workers' compensation and a supplemental short-term disability benefit to employees disabled by work injuries, a practice that could ultimately result in employees receiving more pay than they were entitled. In 2010, Y-12 changed its process and began making salary continuation payments and withheld payroll and income taxes from the full amount so that employees received the same net pay as before the disability. However, after we discussed concerns with contractor officials about full withholding, Y-12 obtained an outside legal opinion verifying that the amount of salary continuation that replaced workers' compensation was not taxable. Therefore, employees could be entitled to a refund or credit of excess tax withholdings and ultimately receive more than net pay. Livermore, Sandia and Y-12 officials told us that they would review their pay practices and develop corrective actions as appropriate.

Livermore, Sandia and Y-12 officials estimated that they paid a total of \$732,995 to supplement workers' compensation during FYs 2008 through 2010. We estimated that about 60 percent¹ of these payments, or \$439,797², exceeded the limits in their contracts. The costs paid by the Department could be even greater because other sites also supplement workers' compensation payments. Specifically, we performed an informal survey and found that an additional three NNSA contractors had similar pay practices to those at Livermore, Sandia and Y-12.

RECOMMENDATION

We recommend that NNSA Contracting Officers direct Contractors to:

1. Review their sick leave and disability pay practices to verify that they comply with all applicable contract terms.

MANAGEMENT REACTION

NNSA agreed that contractors should review their pay practices for contract compliance and stated that NNSA's Contractor Human

¹ Workers' compensation pays up to 67 percent of salary. Livermore, Sandia and Y-12 pay up to an additional 33 percent of salary to reach 100 percent. Los Alamos pays only an additional 13 percent to reach 80 percent of salary. Therefore, 60 percent of what Livermore, Sandia and Y-12 pay is in excess of what Los Alamos pays as follows: $(33 - 13) / 33 = 60$ percent.

² The annual average over 3 years is: $\$439,797 / 3 = \$146,599$

Resources will assist in implementing the recommendation. However, in technical comments to NNSA, Livermore stated that its contract limited injury and extended sick leave but not accrued sick leave. Thus, Livermore asserted that the use of accrued sick leave to supplement workers' compensation to 100 percent of regular pay was permitted.

AUDITOR COMMENTS

NNSA's comments are responsive to our recommendation. Regarding Livermore's technical comments, we noted that the Livermore contract states that the total amount of all payments shall not exceed 80 percent of the employee's regular pay. We interpreted "all payments" to include injury leave, accrued sick leave and any other paid leave. Los Alamos has the same provision in its contract and it applies the 80 percent limit to injury time benefits, sick leave and vacation pay. Overall, NNSA's plans to assist contractors in reviewing their pay practices should clarify the interpretation of "injury leave" under the contract.

Procurement of Insurance Coverage

Due to contract transition time constraints, Livermore initially planned to obtain a large deductible workers' compensation insurance policy; however, effective October 2007, it obtained guaranteed cost insurance with no deductible based on its conclusion that it would cost less than a large deductible plan. Although the Livermore Site Office Contracting Officer approved guaranteed cost insurance with no deductible, it may not be the most cost effective workers' compensation insurance available. As noted in a 2009 report, NNSA's consultant found that Livermore could reduce workers' compensation costs by replacing its plan with a large deductible plan, a retrospective rating plan³, or self-insurance. Additionally, our review identified recent industry and Government studies supporting that large deductible insurance and self-insurance options offer potential cost savings. The Journal of Risk and Insurance published a study in 1999, entitled *Workers' Compensation Deductibles and Employers' Costs*, that showed a large deductible plan instead of full coverage can reduce high-dollar claim costs 12 percent in the first year and indemnity claims 39.8 percent by the third year. The Department of Defense's Office of the Deputy Under Secretary of Defense Acquisition and Technology issued a report in 2009 entitled, *Report to Congress: Acquisition Strategy for Defense Base Act Insurance*, stating that its contractors could save 17 to 63 percent of their costs under a self-insurance program versus acquiring full coverage. In addition, we question the cost effectiveness of Livermore's guaranteed cost

³ Using a simplified definition, a retrospective rating plan (retro) is a pricing plan available in which the workers' compensation premium is developed, in its final form, by the losses sustained during the policy period.

insurance with no deductible over other available options based on our own analysis. For example, Livermore estimated that a large deductible insurance plan for FY 2008 would have cost about \$5.3 million as opposed to the \$3.6 million it paid for the guaranteed cost plan. However, we found that Livermore's \$5.3 million estimate for the large deductible plan was likely overstated because it did not fully consider factors that would have reduced the plan's net cost. Specifically, Livermore's estimate for a large deductible plan included:

- A \$2.1 million trust deposit that would ultimately be refunded, or would serve as a credit against future losses;
- \$300,000 of potentially unallowable broker compensation; and,
- \$1.9 million in losses paid through August 2011 that Livermore did not reduce to its 2008 present value. According to Livermore officials, the present value of losses paid over time is roughly 86 percent of the losses, which would be approximately \$1.6 million rather than \$1.9 million.

Adjusting Livermore's estimate for a large deductible insurance plan to remove the deposit and broker compensation and to reduce the losses to present value would result in a net cost of \$2.7 million or \$952,470 less than the \$3.6 million that Livermore paid for its guaranteed cost with no deductible plan. Furthermore, under the Department's retrospective rating plan, using Livermore's \$1.9 million estimate for losses plus a basic premium rate, taxes and a claims handling fee, we estimated the net cost would be roughly \$1.3 million less than the \$3.6 million that Livermore paid. Finally, we estimated that with a self-insured plan, Livermore could have avoided broker fees, insurance company profits and administration costs, as well as reduced premium-based taxes and surcharges, resulting in an average cost savings of at least \$645,354 annually.

We recognize that in each case, there could still be additional losses, which would reduce the potential savings. We also recognize that self-insurance and some large deductible plans have requirements for collateral that could involve bond or letter of credit fees, or a deposit and thus a lost investment opportunity. However, these costs, in our view, would be only a fraction of the potential savings and could be minimized or eliminated by depositing cash in an interest-bearing account or by depositing

interest-bearing securities in trust. Moreover, officials at the California Office of Self-Insurance Plans and the California Department of Insurance stated that the collateral requirements for self-insurance decline substantially after three years and that some insurance companies for large deductible plans will waive their collateral requirements. Further, the Livermore Site Office Contracting Officer stated that these types of start-up costs could be allowable.

In an August 2007 letter to the Contracting Officer, Livermore stated that it planned to seek approval for self-insurance as soon as allowed under the law. However, as of March 2012, Livermore had not applied to self-insure. In fact, Livermore renewed its guaranteed cost insurance policy for FY 2012 at a cost of \$4.1 million.

RECOMMENDATION

We recommend that the Contracting Officer, Livermore Site Office, direct Livermore to:

2. Obtain an independent analysis of alternative workers' compensation coverage plans that may be more cost effective than the present plan.

MANAGEMENT REACTION

NNSA agreed that the Livermore Site Office Contracting Officer should direct Livermore to explore more cost effective workers' compensation coverage. To its credit, Livermore informed us that it initiated a cost study to evaluate its workers' compensation insurance options.

AUDITOR COMMENTS

NNSA's comments are responsive to our recommendation.

Broker Compensation

We determined that Livermore incurred, charged and was reimbursed by NNSA for \$1.26 million in potentially unallowable broker compensation. In September 2007, the Livermore Site Office Contracting Officer approved Livermore's procurement of workers' compensation insurance, but advised in writing that any broker fees it incurred in obtaining the coverage would not be reimbursable. Nevertheless, Livermore used a broker to acquire its workers' compensation insurance. Accounting records showed that the broker billed Livermore for the cost of the coverage, including the broker compensation, and that Livermore paid the broker. In its initial disclosures to Livermore, the broker showed a commission of \$300,000. However, in a subsequent disclosure, the broker showed \$330,000 in fees and stated that there were no commissions. The disclosure also showed that the broker would receive \$330,000 in fees regardless of the workers' compensation

policy that Livermore selected. Finally, except for a one-time increase of \$30,000, we found that the amounts the broker received were the same each year for FYs 2008 to 2011, even though the cost of Livermore's insurance fluctuated annually. Livermore asserted that the payments were commissions and, therefore were not the type of fees that the Contracting Officer had deemed to be unallowable. Livermore also stated that the Contracting Officer subsequently ratified the payments as allowable commissions.

However, the Livermore Site Office Contracting Officer told us that the intent was to disallow any costs for broker services that would ultimately be charged to NNSA, and therefore, the amounts were unallowable whether called fees or commissions. In fact, the former NNSA Procurement Executive indicated directing the Contracting Officer not to allow broker fees because Livermore could obtain coverage without using a broker. Further, the Contracting Officer also told us that the payments had not been ratified by the Government.

Finally, the Livermore Site Office Contracting Officer told us that if Livermore did not understand or agree with the prohibition on broker fees, then Livermore had an obligation to notify the Government in writing. Instead, Livermore paid its broker a total of \$1.26 million and charged NNSA this amount as part of its total insurance cost. Therefore, we question whether NNSA should have reimbursed Livermore for payments to the broker regardless of whether those payments were labeled fees or commissions.

RECOMMENDATION

We recommend that the Contracting Officer, Livermore Site Office:

3. Determine the allowability of the amounts paid to the workers' compensation insurance broker and recover all unallowable costs.

MANAGEMENT REACTION

NNSA agreed that the Contracting Officer should determine the allowability of the amounts paid to the broker. In technical comments to NNSA, Livermore stated that it had to use a broker because California law requires anyone who sells insurance to have a broker's license.

AUDITOR COMMENTS

NNSA's comments are responsive to our recommendation. We agree that California law requires a seller of insurance to have a broker-agent license. However, the law does not require the purchaser to pay broker compensation. As did the Contracting Officer in this case, we determined that Livermore had options to

avoid paying a broker. NNSA's consultant and the California Office of Self-Insurance Plans told us that some insurance companies in California would sell a policy directly without a broker. In fact, Livermore's insurer told us that it would consider selling directly and could do so by having one of its employees licensed as a broker-agent. Also, the Contracting Officer told us that Livermore could issue a request for proposal to purchase insurance directly. Further, as previously discussed, Livermore could have been self-insured or purchased the Department's retrospective rating plan without using a broker.

Non-Occupational Disability Management

Livermore, Los Alamos and Y-12 did not always manage non-occupational disabilities effectively. Non-occupational disabilities include employees on paid sick leave at Livermore and Los Alamos or short term disability leave at Y-12 due to a non-work related injury or illness. While not specific to disability management, the Livermore, Los Alamos, Sandia and Y-12 contracts did incorporate acquisition regulations requiring the contractors to maintain effective systems of management controls for administrative functions and to promote efficient and effective operations.

For the most part, Livermore and Los Alamos did not have programs for managing the non-occupational disabilities of employees on paid sick leave. Although Y-12 had established a program, it had not fully implemented its policies and procedures for managing non-occupational disabilities. In contrast, Sandia had a non-occupational disability management program that its officials believed reduced its sick leave and short-term disability costs. For example, according to a Sandia Site Office official, Sandia implemented a non-occupational disability management program similar to its parent company's (Lockheed-Martin) best practices that included the following features:

- Requirement for employees to submit physician certifications of disability with return-to-work information for disabilities lasting five or more days;
- Use of specialized software to track disabilities;
- Use of official disability guidelines to assess lengths of disabilities;
- Case manager communications with employees and their outside physicians; and,

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- On-site medical examinations to validate lengths of disabilities.

Livermore stated that it had a long-standing return-to-work program and Los Alamos informed us that it had a system for managing non-occupational disabilities. However, our review confirmed that in most cases, Livermore and Los Alamos did not implement any of the above measures for employees when on paid sick leave. For example, officials at Livermore responsible for sick leave and return-to-work told us that they did not have a policy requiring physician certifications to support sick leave. Further, 4 of the 10 supervisors that we interviewed erroneously told us that they could not request physician certifications due to privacy concerns or because they thought another department was responsible for requesting them. In fact, we tested 52 sick leave claims lasting 5 or more days and determined that Livermore had received physician certifications for only 12. Further, managers at Los Alamos verified that its program for managing non-occupational disabilities was limited to employees who qualified under the Family and Medical Leave Act of 1993 (FMLA) and that 87 percent of the employees who took more than 5 days of paid sick leave did not qualify under FMLA. These managers verified that for the 13 percent of employees who qualified under FMLA, the Los Alamos program did not involve tracking case management activities, using disability duration guidelines, communications with outside physicians, or on-site medical examinations. Y-12 also did not implement the above measures, except that it had a procedure requiring a physician certification with return-to-work information for disabilities lasting more than three days. However, the physician certifications sometimes did not specify that the employee was unable to work and lacked return-to-work information, such as light-duty restrictions and an expected return to light-duty date.

Livermore, Los Alamos and Y-12 had combined sick leave and short-term disability costs per thousand dollars of payroll that were significantly higher than those of Sandia. For example, Sandia's costs in 2009 were \$25.60 and Los Alamos' costs were \$33.96, as shown in the table below:

Sick Leave and Short-Term Disability Costs

	Total Costs ⁴	Payroll	Unit Cost ⁵
Los Alamos	\$30,712,876	\$904,358,385	\$33.96
Livermore	\$21,981,881	\$671,228,798	\$32.75
Y-12	\$12,412,950	\$360,044,779	\$34.48
Sandia	\$22,802,281	\$890,558,051	\$25.60

We recognize that some of the cost differences could be attributable to factors other than disability management, such as the quality of disability prevention programs and investments in on-site medical services. Therefore, these figures are not an absolute measure of the effectiveness of Sandia's disability management program, but rather an indication of the potential opportunities for cost savings at the other sites.

Non-Occupational Disability Requirement and Incentives

NNSA had neither required contractors to develop nor had it provided incentives for contractors to establish non-occupational disability management programs. Current contracts required contractors to develop safety and health programs that protect employees and prevent injuries and provided contract incentives geared towards measuring the effectiveness of such programs. However, NNSA had neither specifically required nor incentivized contractors to establish programs to manage non-occupational disabilities. Therefore, Livermore and Los Alamos officials told us that they focused their efforts on occupational injuries affecting occupational safety reporting. Shortly after the start of our audit, Y-12 hired a manager to oversee non-occupational disability management.

We estimated that Livermore could potentially realize annual net savings of \$445,835 and Los Alamos a net savings of \$718,242, by implementing effective disability management programs. Approximately 30 percent of Sandia's sick leave and short-term disability costs were for disabilities lasting five or more days and thus qualified for disability management under Sandia's program. In 2006, the Journal of Occupational & Environmental Medicine published a study entitled *Impact of a Disability Management Program on Employee Productivity in a Petrochemical Company* showing that managing non-occupational disabilities, with a program strikingly similar to Sandia's, decreased absences at a

⁴ At Livermore and Los Alamos, sick leave represented about 98 percent of total costs.

⁵ Unit Cost is per \$1000 of payroll.

large company between 10.4 and 18.2 percent. Therefore, to estimate the potential cost savings at Livermore and Los Alamos, we multiplied 30 percent of their sick leave and short-term disability costs by 10.4 percent and then subtracted the salary and benefits costs of two disability case managers.

RECOMMENDATION

We recommend that NNSA's Procurement Executive:

4. Develop requirements and performance incentives for contractors to control non-occupational disability costs.

MANAGEMENT REACTION

NNSA agreed with our recommendation and stated that NNSA's Contractor Human Resources would assist the Procurement Executive with the development of a performance metric that would drive contractors to modify programs to be more like industry. Livermore provided technical comments to NNSA stating that its return-to-work program incorporated the best practices noted above. Livermore acknowledged that its program focused primarily on occupational injuries, but stated that the program was available to management to assist with non-occupational cases.

AUDITOR COMMENTS

NNSA's comments are responsive to our recommendation. We do not dispute that Livermore, Los Alamos, Sandia and Y-12 employ some of the best practices with respect to occupational disabilities. In fact, each of the contractors had policies and procedures that we believe reduced workers' compensation disability costs. For example, with minor exceptions, each of the contractors had a policy or practice of offering modified duty to most employees injured on the job. However, our findings and recommendation are focused on managing sick leave for non-occupational disabilities, and we found that Livermore did not implement the best practices noted above in most of these cases.

Cost Reduction Best Practices

Livermore and Los Alamos did not adopt best practices that have been proven to be effective in reducing workers' compensation costs in various corporate settings. For example, Livermore did not utilize a medical provider network, which is an entity or group of health care providers set up by an insurer or self-insured employer and approved by California's Division of Workers' Compensation to treat workers injured on the job. A medical provider network can reduce costs by giving an employer substantial control over which providers are in the network and who workers see for care for the life of a claim. Additionally, Los Alamos paid some union employees to stay off work even though they had been released to modified duty.

Medical Provider Selection

Livermore had not adopted a best practice for selecting the medical provider for work injuries that has been demonstrated to, among other things, reduce workers' compensation costs. Specifically, Livermore did not always use a medical provider network to treat injured employees who had not pre-designated a provider. Instead, Livermore allowed employees to select the provider. Although Livermore allowed its employees to select their own medical provider, Livermore officials told us that most injured employees received treatment at Livermore's on-site clinic and that everyone who received treatment outside the clinic chose a provider in the insurer's network. However, in 4 of the 10 claims that we reviewed, the employees received treatment from providers outside the network.

In 2005, the Public Policy Institute of California (PPI) and the Workers' Compensation Research Institute (WCRI) jointly published a study entitled *The Impact of Provider Choice on Workers' Compensation Costs and Outcomes* showing that when workers selected the medical provider, return-to-work outcomes were poorer, compensation payments were 8 to 15 percent higher, and medical payments were 10 to 21 percent higher. The study determined that employers and their insurers are better positioned than employees to select good-quality, lower cost providers because they generally have more experience and superior information about the practices of providers. As a potential best practice, Department guidance directs contractors to review medical cost containment programs, such as managed-care networks, where allowed by state law. Los Alamos and Sandia selected their on-site medical clinics as the provider under New Mexico law and referred injured workers to specialists as appropriate. Y-12 provided employees with a choice of three physicians that it had designated under Tennessee law.

In California, an insurer or self-insured employer may establish a medical provider network to treat work injuries. If an employer uses a medical provider network, then employees receive treatment from network providers for the life of a claim unless they pre-designated a provider. Employees may only pre-designate a provider that treated them in the past and they must do so in writing before an injury. Livermore's insurer maintained a medical provider network that was approved by the California Division of Workers' Compensation. The network permitted employees to choose from an extensive directory of qualified medical doctors,

specialists and other providers experienced in treating work injuries. However, Livermore did not specifically require employees to use members of the network.

By allowing employees to select their own medical providers, Livermore could incur unnecessary claim costs. In one claim, for example, the employee initially received treatment from Livermore's on-site clinic and a board certified orthopedic surgeon that was a member of Livermore's insurance company's approved medical provider network. However, after both physicians released the employee to work, the employee stopped work, consulted an attorney, and changed the treating physician to an attorney-recommend chiropractor that was not in the network. The insurance company authorized the change because Livermore did not require employees to use the insurer's network of medical providers. The chiropractor declared total disability, creating a conflict in the medical evidence and potential liability for up to \$99,633 of disability compensation. The insurer finally denied the claim based on a report from an independent medical evaluator, but paid at least \$6,710 for a medical-legal evaluation, attorney fees and other expenses. If Livermore had used the medical provider network, these liabilities likely would not have existed because the California Workers' Compensation Appeals Board has held that reports from a provider outside the network are not admissible in situations where employees are required to use the employer's/insurer's network.

Medical Provider Selection Policy Support

The Livermore Site Office had not ensured that Livermore based its medical provider selection policy on cost effectiveness and overall benefits to the employees. Specifically, the Livermore Site Office did not ensure that Livermore performed a cost analysis of the alternatives for selecting medical providers. Additionally, Livermore based its policy to allow employees to select their own providers based on concerns that have not been demonstrated at other sites. Livermore officials, for example, told us that they were concerned that some employees would stop cooperating with medical treatment and return-to-work efforts if they could not choose their own provider. Officials at Los Alamos, Sandia and Y-12 stated that selecting their on-site clinics as the provider or providing employees a list of selected providers rarely or never led to employees not cooperating with medical treatment and return-to-work efforts. Moreover, the sites that relied on on-site clinics or selected providers reported that their practices resulted in better medical treatment and lower costs.

Overall, Livermore's practice likely increased costs by as much as \$142,932 annually. Using Livermore's payments history, we estimated the net present value of its compensation and medical losses at \$690,690 and \$1,009,470, respectively. According to the previously mentioned joint study by the PPI and the WCRI, Livermore's practice likely increased compensation losses at least 8 percent and medical losses at least 10 percent. Therefore, Livermore's practice likely increased annual compensation and medical costs by \$51,162 and \$91,770.⁶

RECOMMENDATION

We recommend that the Contracting Officer, Livermore Site Office:

5. Direct Livermore to analyze the options for selecting the medical provider, and pursuant to that analysis, adopt a policy that reflects best practices.

MANAGEMENT REACTION

NNSA agreed with our recommendation. NNSA stated that Livermore was asked to analyze the options for selecting the medical provider and that Livermore would present a business case to support the approach it selects. In technical comments to NNSA, Livermore stated that a network for its site would have to cover an area too large to result in savings.

AUDITOR COMMENTS

NNSA's comments are responsive to our recommendation. Regarding Livermore's assertion about the viability of a network, a risk manager for a large university with multiple sites told us that a regional network servicing the Livermore site could be very beneficial. Moreover, the potential savings that we reported are consistent with another large insurance company's 2009-2010 study indicating that implementing a network reduced the medical severity of claims up to 15 percent and resulted in returns to work up to 10 percent faster. Finally, Livermore is not limited to its insurer's currently provided network. Livermore's insurer has established networks for other employers; other insurers offer different networks; and, under a self-insurance plan, Livermore could potentially establish its own network.

Modified Duty

Los Alamos had not effectively managed return-to-work policies. In particular, Los Alamos had not ensured that union employees on workers' compensation temporary disability, who were capable of performing modified duties, returned to work. When modified duty was not available within a union craft area, Los Alamos did

⁶ Increase in Compensation \$690,690 – (\$690,690 / 1.08) = \$51,162
Increase in Medical Services \$1,009,470 – (\$1,009,470 / 1.10) = \$91,770

not perform a search for modified duty elsewhere on site for the union employees. From 2008 through 2010, Los Alamos paid union employees a total of \$15,392, or an average of \$5,131 annually, to remain on temporary disability even though they were capable of performing modified duty according to their treating physicians. Los Alamos' policy stated that when economically and programmatically feasible, Los Alamos would make work adjustments to enable employees to return to work as soon as possible. According to a Los Alamos official, modified duty is offered to non-union employees and each manager is responsible for identifying modified work. Other NNSA sites have similar policies that could be viewed as a potential best practice. For example, Sandia had a policy requiring site-wide searches for modified duty when work was not available in an employee's own department. Moreover, Livermore had a policy requiring departments to accommodate temporary restrictions in all work injury cases.

Return-to-Work Oversight

Los Alamos Site Office officials were not aware that union employees were not considered for modified duty. A Los Alamos manager stated that it was not industry practice to assign a union employee to work outside his or her craft and that the unions would object if the employee were assigned to another craft. However, the manager and a business representative for one of the unions confirmed that union agreements did not prevent Los Alamos from assigning union employees to modified duty outside the crafts. In fact, the business representative told us that Los Alamos had previously assigned union employees to modified duty as security escorts and that the unions had not objected. In discussing our concerns with management, Los Alamos Site Office officials agreed that it was a good practice to find modified duty for union employees when possible.

By offering modified duty for union employees, Los Alamos could potentially save the Government \$5,131 annually in workers' compensation costs. In addition to potential cost savings, Los Alamos could increase employee morale; and, as stated in its own policy, it is in the best interest of Los Alamos to return employees to productive employment as soon as the employee is medically able.

RECOMMENDATION

We recommend that the Contracting Officer, Los Alamos Site Office:

-
6. Direct Los Alamos to adopt a policy of performing a site-wide search for modified duty when not available in an employee's own department and bargain with the unions, if necessary, to implement the policy for union employees.

**MANAGEMENT
REACTION**

NNSA agreed with our recommendation.

AUDITOR COMMENTS

NNSA's comments are responsive to our recommendation.

**Additional Cost
Savings Opportunities**

NNSA did not implement cost savings opportunities that its consultant reported could save \$1.2 million to \$2.2 million annually. In April 2009, an NNSA consultant reported that among other opportunities NNSA could reduce contractors' post-claim workers' compensation costs by:

- Adopting independent claim audit standards;
- Consolidating self-insured sites' third-party claims administrators where feasible;
- Accelerating legacy claim closures; and,
- Negotiating claim-handling charges on a fee per claim basis rather than as a percentage of losses.

The consultant's report suggested that NNSA's implementation of these opportunities could improve oversight, reduce administrative costs and reduce claim expenses. For example, the Livermore Site Office's Contracting Officer told us that Livermore and Los Alamos have shared trustees and investment managers for their pension plans to reduce administrative costs. As suggested by the report, if the two sites consolidated or shared their claims administrator, costs could be reduced.

NNSA officials confirmed that they have not developed any policies or procedures to implement the consultant's recommendations as of April 2011. NNSA expressed concerns that the consultant's recommendation to consolidate claims administrators was not feasible because all the contractors would need to be self-insured. However, the consultant did not recommend mandating self-insurance, but rather consolidating claims administrators at self-insured sites where feasible and communicating the potential savings to other sites. We noted that Los Alamos, Sandia and Y-12 were self-insured and that Los Alamos and Sandia were already using the same claims

administrator. NNSA officials also expressed concerns that contractors might have to hire additional staff for self-insurance. However, a third-party claims administrator would handle most of the same functions that an insurance company handles; and, in Livermore's case it already has a qualified risk manager and staff who are capable of managing a self-insurance plan.

Implementation of Cost Savings Measures

NNSA officials told us that they did not have adequate resources to implement all the consultant's suggested cost savings measures, as the consultant report reviewed several contractor benefits, including health benefits and workers' compensation. NNSA decided to focus on overseeing contractor health plans, rather than the workers' compensation opportunities for improvement, because it believed the health plans had greater potential for cost savings. As a result, NNSA did not take any actions on the proposed opportunities related to disabilities, or send the consultant's report to NNSA Site Offices and contractors. Although NNSA and its Site Office officials did not commit to implementing any suggested opportunities at this time, they agreed that the opportunities for cost-savings and implementing best practices were always worth consideration. Furthermore, NNSA stated that it could present for consideration the potential savings opportunities to the contractors or the Business Management Advisory Council (BMAC), which has the authority to oversee cost savings initiatives in contractor human resources.

NNSA could potentially save \$1.2 to \$2.2 million annually on contractors' workers' compensation costs by implementing the consultant opportunities for savings. As the Department faces continuous budget cuts, potential cost savings at each site could benefit the Department overall.

RECOMMENDATION

We recommend that NNSA's Procurement Executive:

7. Present the potential cost savings opportunities from the consultant to the contractors as well as senior Department and NNSA management, including the BMAC, and monitor implementation efforts.

MANAGEMENT REACTION

NNSA agreed with the recommendation, but noted that it had not validated the consultant's cost savings opportunities. Regardless, NNSA stated that the opportunities identified would be reviewed again for possible action.

AUDITOR COMMENTS NNSA's comments are responsive to our recommendation.

Cost Savings Impact NNSA could save more than \$3.3 million annually in contractor employee disability costs by implementing the recommendations made in our report and the recommendations of its consultant. Accordingly, we believe it is vitally important that matters discussed in this report receive senior NNSA management attention. Appendix 1 summarizes the potential annual cost savings of our findings. Management's comments are included in their entirety in Appendix 4.

Appendix 1

TABLE OF SAVINGS

The National Nuclear Security Administration could save more than \$3.3 million annually if it increases its oversight of contractor disability programs and implements its consultant's recommendations. The following table summarizes the potential annual cost savings associated with our findings:

Finding	Annual Savings
Workers' Compensation Supplements	\$ 146,599
Coverage Procurement	\$ 645,354 - \$1,293,063
Non-Occupational Disability Management – Lawrence Livermore National Laboratory	\$ 445,835
Non-Occupational Disability Management – Los Alamos National Laboratory	\$ 718,242
Medical Provider Selection	\$ 142,932
Modified Duty	\$ 5,131
Consulting Study	\$1,200,000 – \$2,200,000
Total Annual Savings	\$3,304,093 – \$4,951,802

Appendix 2

OBJECTIVE

The objective of the audit was to determine whether National Nuclear Security Administration (NNSA) had ensured that contractor disability programs were managed effectively.

SCOPE

We conducted the audit from September 2010 to May 2012, at Lawrence Livermore National Laboratory (Livermore) in Livermore, CA; Los Alamos National Laboratory (Los Alamos) in Los Alamos, NM; Sandia National Laboratories (Sandia) in Albuquerque, NM; and, Y-12 National Security Complex (Y-12) in Oak Ridge, TN.

METHODOLOGY

To accomplish the audit objective, we:

- Interviewed officials from Livermore, Los Alamos, Sandia, Y-12, NNSA, the State of California, and consulting, brokerage and insurance companies;
- Reviewed laws, regulations, policies, procedures, Department of Energy (Department) contracts, Department guidance, insurance policies, prior audit and consultant reports, and best practices studies related to the audit objective;
- Judgmentally selected samples of sick leave, short-term disability and workers' compensation claims; and,
- Tested claims for compliance with laws, regulations, policies, and procedures, as well as consistency with established best practices.

We conducted this performance audit in accordance with generally accepted Government auditing standards. Those standards require that we plan and perform the audit to obtain sufficient, appropriate evidence to provide a reasonable basis for our findings and conclusions based on our audit objectives. We believe that the evidence obtained provides a reasonable basis for our findings and conclusions based on our audit objective. Accordingly, the audit included reviews of Department and regulatory policies and procedures related to the Department's management of return-to-work programs. We also assessed the Department's implementation of the *GPRA Modernization Act of 2010* and concluded that the Department had not established performance measures related to return-to-work programs. 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.

Appendix 2 (continued)

Finally, We conducted an assessment of computer-processed data relevant to our audit objective and found it to be sufficiently reliable.

An exit conference was held with Department officials and contractor management on May 14, 2012.

Appendix 3

RELATED REPORTS

Office of Inspector General Reports

- Inspection Report on [*Management of the Workers' Compensation Program at Department of Energy Headquarters*](#) (DOE/IG-0769, June 2007). The inspection revealed that the Department of Energy (Department) had not maintained adequate records and had not adequately monitored long-term workers' compensation cases. There were no files for 4 of 19 cases reviewed and the employees in two long-term cases should have returned to work. The Department did not have written policies or procedures for managing open cases and lacked performance measures to assess its management of the workers' compensation program. Management concurred with the findings and recommendations and identified corrective actions.
- Inspection Report on [*Allegations of Improper Hanford Workers' Compensation Payments*](#) (INS-L-09-07, August 2009). The inspection found that a contractor at the Hanford Site had paid some employees on workers' compensation more than 100 percent of their net salaries. Specifically, the contractor paid employees 100 percent of their gross salaries when workers' compensation payments were not taxable, which resulted in increases in weekly net pay of \$200 to \$400. However, Department Order 350.1, *Contractor Human Resource Management Programs*, allowed workers to be paid only up to 100 percent of their net salaries. At the time of the inspection, management was in the process of taking corrective action.

Other Reports

- Report on [*Impact of a Disability Management Program on Employee Productivity in a Petrochemical Company*](#) (Journal of Occupational and Environmental Medicine, May 2006). This study documented the results from the implementation of a non-occupational disability management program at one of the largest petrochemical companies in the United States. The study showed that utilization of procedures such as consultation of official disability guidelines, submission of medical certification forms, and application of return-to-work programs to non-occupational illnesses and injuries resulted in decreased absences by 10.4 to 18.2 percent. It also found that such a program resulted in a four to one return on investment and a savings of \$2.3 million in one year.
- Report on [*The Impact of Provider Choice on Workers' Compensation Costs and Outcomes*](#) (A Joint Publication of the Workers' Compensation Research Institute and the Public Policy Institute of California, November 2005). The purpose of the study was to determine if measurable costs and outcomes in workers' compensation cases were affected by who selected the health care provider. In comparing cases in which the worker selected a new provider with cases in which the employer selected the provider, the study found that when the employee selected the provider, return-to-work outcomes

Appendix 3 (continued)

were poorer, compensation payments were 8 to 15 percent higher, and medical payments were 10 to 21 percent higher. The study determined that employers on average are better positioned than employees to select good quality, lower cost providers because they generally have more experience and superior information about the practices of providers.

- Report on [*Workers' Comp Trends Alert, Critical Information for State Decision-Makers*](#) (The Council of State Governments, February 2004). This report stated that employers can reduce the costs of lost days for occupational injuries by 25 to 50 percent by implementing a return-to-work program. In addition, return-to-work programs benefit employees by reducing skills loss, increasing job retention, and reducing the risk of future unemployment.
- Report on [*Workers' Compensation Deductibles and Employers' Costs*](#) (Journal of Risk and Insurance, June 1999). The purpose of the study was to address the assertion that deductibles, as incentives for employers to prevent injuries and control the costs of claims, contributed to the downward turn in loss ratios. The study found that large deductible plans can reduce high-dollar claim costs by 12 percent in the first year and indemnity claims by 39.8 percent in the third year. These costs savings resulted from reducing the cost of individual high-dollar claims and by reducing the frequency of claims.
- Report on [*Report to Congress: Acquisition Strategy for Defense Base Act Insurance*](#), (Department of Defense, Office of the Deputy Under Secretary of Defense, Acquisition and Technology, September 2009). The report identified a listing of potential sources of savings (expenses eliminated or reduced) including self-insurance with a potential overall savings of 17 to 63 percent.

Appendix 4

MANAGEMENT COMMENTS



**Department of Energy
National Nuclear Security Administration
Washington, DC 20585**



February 27, 2012

MEMORANDUM FOR GREGORY H. FRIEDMAN
INSPECTOR GENERAL

FROM: *Cynthia A. Lersten*
CYNTHIA A. LERSTEN
ACTING ASSOCIATE ADMINISTRATOR
FOR MANAGEMENT AND BUDGET

SUBJECT: NNSA's Comments on Inspector General Draft Report Titled
"NNSA Contractors' Disability Compensation and Return-to-
Work Program;" Project No. A10LL005/IDRMS No. 2010-
01969

The National Nuclear Security Administration (NNSA) appreciates the opportunity to review the Inspector General's (IG) draft report, "NNSA Contractors' Disability Compensation and Return-to-Work Program." We understand that this audit was performed to determine whether NNSA has ensured that contractor disability programs are effectively managed.

NNSA agrees with the findings and recommendations in the report. The enclosure to this memorandum provides a summary of our initial planned actions to address each of the recommendations. In addition, we have provided a list of general comments to help clarify and ensure the factual accuracy of the report. We appreciate the IG's efforts and insight into this area.

If you have any questions concerning this response, please contact Dean Childs, Director, Internal Controls, at 301- 903-1341.

Attachment



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Appendix 4 (continued)

National Nuclear Security Administration Comments on IG Draft Report

"NNSA Contractors' Disability Compensation and Return-to-Work Program"

Initial Response to Report Recommendations

Recommendation 1

NNSA Site Office Managers ensure that contractors review their pay practices to verify that they comply with all applicable contract terms.

Management Response: Generally Agree

NNSA agrees that contractors should review their practices for contract compliance, and Contractor Human Resources (CHR) will assist in the implementation of this recommendation. However, to clarify the pay practices in question and properly direct the recommendation, we propose the recommendation be amended to read:

"NNSA Contracting Officers direct contractors to review their sick leave pay and disability practices to verify that they comply with all applicable contract terms."

Recommendation 2

The Manager, Livermore Site Office:

- a) *Direct the Contracting Officer to determine the allowability of the amounts paid to the workers' compensation insurance broker and recover all unallowable costs; and*
- b) *Ensure Livermore obtains appropriate workers' compensation coverage based on an independent feasibility study.*

Management Response: Generally Agree

NNSA agrees that allowability determinations should be made and that a study of workers' compensation should be performed. The Livermore Site Office Contracting Officer has been in discussions with Lawrence Livermore National Security (LLNS) on these actions, and CHR will assist in the implementation of these recommendations. However, to clarify the study to be performed and properly direct the recommendation, we propose the recommendation be amended to read:

"The Contracting Officer, Livermore Site Office:

- a) *Determine the allowability of the amounts paid to the workers' compensation insurance broker and recover all unallowable costs; and*
- b) *Direct Livermore National Security LLC (LLNS) to explore alternative workers compensation coverage that is more cost effective than the present coverage, guaranteed costs coverage with no deductible."*

Appendix 4 (continued)

Recommendation 3

The Manager, Livermore Site Office:

- a) *Ensure Livermore arranges for periodic audits of its claims administrator; and*
- b) *Direct Livermore to review and resolve the claim issues identified in the report*

Management Response: Generally Agree

NNSA agrees that periodic audits should be conducted and that Livermore should resolve claims issues. The LSO Contracting Officer has been in discussions with LLNS on these actions. CHR will assist in implementing these actions. However, to link the recommendation to contract requirements and properly direct the recommendation, we propose the recommendation be amended to read:

"The Contracting Officer, Livermore Site Office:

- a) *Ensure LLNS arranges for periodic audits of its claims administrator in accordance with its contract with NNSA; and*
- b) *Direct Livermore to review and resolve the claim issues identified in the report."*

Recommendation 4

NNSA's Procurement Executive develop requirements and performance incentives for contractors to control non-occupational disability costs.

Management Response: Agree

Contractor Human Resources will assist the Procurement Executive with the development of a performance metric that will drive contractors' to modify programs to be more like industry.

Recommendation 5

The Manager, Livermore Site Office, ensure Livermore analyzes the options for selecting the medical provider and adopts a policy that reflects best practices.

Management Response: Generally Agree

NNSA agrees with the recommendation, and LLNS has been asked to analyze the options available for selecting a medical provider and will present a business case for the selected approach. However, to refine the action and properly direct the recommendation, we propose the recommendation be amended to read:

"The Contracting Officer, Livermore Site Office, direct LLNS to analyze the options for selecting the medical provider and, pursuant to that analysis, put into effect a policy that reflects best practices."

Recommendation 6

The Manager, Los Alamos Site Office, ensure Los Alamos adopts a policy that includes site-wide searches for modified duty when it is not available within an employee's own department;

Management Response: Generally Agree.

LANL will be directed to discuss this issue with the union if necessary and then apply the applicable policies regarding site-wide searches for modified duty opportunities. However, to

Appendix 4 (continued)

acknowledge potential union requirements and properly direct the recommendation, we propose the recommendation be amended to read:

"The Contracting Officer, Los Alamos Site Office, ensure Los Alamos National Security LLC (LANS) bargains with the applicable unions, if necessary, regarding bargaining unit employee performance of modified duty in areas other than the employee's normal work area. Thereafter, if applicable, the Contracting Officer should direct LANS to adopt a policy that requires LANS to perform a site-wide search for available modified duty work if such work is not available within the employee's own department."

Recommendation 7

That NNSA's Procurement Executive present the potential cost savings opportunities from its consultant to contractors as well as senior Department and NNSA management, including BMAC, and monitor their implementation

Management Response: Generally Agree

NNSA agrees that validated potential cost savings opportunities should be presented as noted in the recommendations. However, the potential cost savings identified by the consultant were not validated, with that said the opportunities identified will be reviewed again for possible action.

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