

**DRAFT REPORT**



**Department of Defense  
Office of Inspector General**

---

## **More DOD Oversight Needed for Purchases Made Through the Department of Energy**

***Project No. D2009-D000CF-0069.000***

August 9, 2010

*We are issuing this proposed report to obtain comments and a statement of actions management will take. We may revise this report as a result of comments received and further reviews by the Department of Defense Office of Inspector General.*

*Distributing this proposed report outside the Federal Government is not authorized. You must safeguard this report to prevent publication or improper disclosure of the information in the report.*

*The final report that we issue from this draft will not have the "For Official Use Only" markings unless an exemption to the Freedom of Information Act requires the markings.*

## DRAFT REPORT

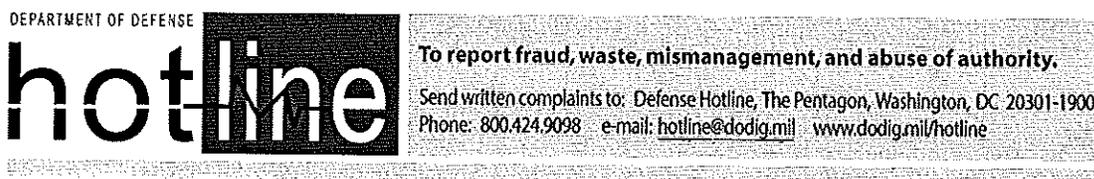
### Additional Information and Copies

The Department of Defense Office of the Deputy Inspector General for Auditing, for Acquisition and Contract Management prepared this report. If you have questions, contact the signer of this report.

### Suggestions for Audits

To suggest or request audits, contact the Office of the Deputy Inspector General for Auditing by phone (703) 604-9142 (DSN 664-9142), by fax (703) 604-8932, or by mail:

ODIG-AUD (ATTN: Audit Suggestions)  
Department of Defense Inspector General  
400 Army Navy Drive (Room 801)  
Arlington, VA 22202-4704



### Acronyms and Abbreviations

CEW	Cost Estimate Worksheet
COR	Contracting Officer's Representative
D&F	Determination and Findings
DFARS	Defense Federal Acquisition Regulation Supplement
DOE	Department of Energy
DTRA	Defense Threat Reduction Agency
FAR	Federal Acquisition Regulation
FPDS-NG	Federal Procurement Data System-Next Generation
GAO	Government Accountability Office
IACRO	Interagency Cost Reimbursement Order
IG	Inspector General
IGCE	Independent Government Cost Estimate
MIPR	Military Interdepartmental Purchase Request
NNSA	National Nuclear Security Administration
O&M	Operations and Maintenance
OIG	Office of Inspector General
RDT&E	Research, Development, Test, and Evaluation
SPIRITT	Spectral Infrared Remote Imaging Transition Testbed
TINA	Truth in Negotiations Act
U.S.C.	United States Code
WFO	Work for Others



INSPECTOR GENERAL  
DEPARTMENT OF DEFENSE  
400 ARMY NAVY DRIVE  
ARLINGTON, VIRGINIA 22202-4704

August 9, 2010

MEMORANDUM FOR UNDER SECRETARY OF DEFENSE FOR ACQUISITION,  
TECHNOLOGY, AND LOGISTICS  
UNDER SECRETARY OF DEFENSE (COMPTROLLER)/  
CHIEF FINANCIAL OFFICER  
ASSISTANT SECRETARY OF THE AIR FORCE  
(FINANCIAL MANAGEMENT AND COMPTROLLER)  
NAVAL INSPECTOR GENERAL  
AUDITOR GENERAL, DEPARTMENT OF THE ARMY  
DIRECTOR, DEFENSE THREAT REDUCTION AGENCY

SUBJECT: More DOD Oversight Needed for Purchases Made Through the Department  
of Energy (Project No. D2009-D000CF-0069.000)

We are providing this draft report for review and comment.

This draft report discusses significant contracting problems that occur when DOD activities use the Department of Energy Work for Others program, including potential violations of the Antideficiency Act. In accordance with DOD Regulation 7000.14-R, "DOD Financial Management Regulation," volume 14, chapter 3.C, action to review the potential violations must be initiated within 10 days.

DOD Directive 7650.3 requires that recommendations be resolved promptly. Please provide comments that state whether you agree or disagree with the findings and recommendations. If you agree with our recommendations, describe what actions you have taken or plan to take to accomplish the recommendations and include the completion dates of your actions. If you disagree with the recommendations or any part of them, please give specific reasons why you disagree and propose alternative action if that is appropriate. You should also comment on the internal control weaknesses discussed in the report.

If possible, send a pdf file containing your comments to [audacm@dodig.mil](mailto:audacm@dodig.mil). Copies of your comments must have the actual signature of the authorizing official for your organization. We are unable to accept the /Signed/symbol in place of the actual signature. If you arrange to send classified comments electronically, you must send them over the SECRET Internet Protocol Router Network (SIPRNET).

We should receive your comments by September 9, 2010, to be able to respond to them in writing in the final report. We normally include copies of the comments in the final report. If you consider any matters to be exempt from public release, you should mark them clearly for Inspector General consideration.

We appreciate the courtesies extended to the staff. Please direct questions to me at (703) 604-9288 (DSN 664-9288). If you desire, we will provide a formal briefing on the results.

  
Terry L. McKinney  
Program Director  
Acquisition and Contract Management

**DRAFT REPORT FOR OFFICIAL USE ONLY**





# Results in Brief: More DOD Oversight Needed for Purchases Made Through the Department of Energy

## What We Did

In accordance with the National Defense Authorization Act for FY 2009, we reviewed DOD procedures for purchases through the Department of Energy (DOE), specifically projects that DOE National Nuclear Security Administration (NNSA) sites performed under the DOE Work for Others (WFO) program. This draft report discusses significant contracting problems that occur when DOD activities use the Department of Energy Work for Others program, including potential violations of the Antideficiency Act.

## What We Found

DOD requesting activities continue to use DOE for assisted interagency acquisitions while DOE has not certified that it will comply with Defense procurement requirements in accordance with Section 801 of the FY 2008 National Defense Authorization Act, (Section 801). In addition, for all WFO projects that NNSA sites perform for DOD, NNSA contracting officers do not record detailed procurement data into the Federal Procurement Data System-Next Generation database, make price reasonableness determinations, obtain certified cost or pricing data, designate contracting officer's representatives, or designate individuals to review contractor invoices. This is because DOE does not believe that Section 801 applies to reimbursable activities performed by DOE and its contractors. As a temporary solution, the Director, Defense Procurement and Acquisition Policy, has issued a waiver to Section 801 allowing DOD to continue to do business with DOE through September 30, 2010, up to a total amount of \$2.2 billion. Our review of 14 WFO projects, valued at \$9.7 million, also determined that DOD officials did not adequately review contractor cost estimates for 11 WFO projects, prepare detailed independent Government cost estimates for the 14 WFO projects, or meet

DOD funding document specificity requirements for 19 DOD funding documents. (Finding A). These situations occurred due to a lack of DOD contracting officer involvement.

We also identified 31 potential bona fide needs rule violations, valued at \$641,188 (Finding B). This is because there is a lack of defined policy on the financing of all types of contracts using Research, Development, Test, and Evaluation funds.

## What We Recommend

We recommend that the Under Secretary of Defense for Acquisition, Technology, and Logistics resolve the Section 801 noncompliance issues we identified. We recommend the Under Secretary of Defense (Comptroller)/Chief Financial Officer instruct the Services and Defense Threat Reduction Agency to initiate preliminary reviews of potential Antideficiency Act violations and update the Financial Management Regulations with general and detailed funding guidance. We recommend that Acquisition Executives for the Army, Navy, and Air Force, and the Director, Defense Threat Reduction Agency make program and contracting officers aware of their responsibilities for obtaining and reviewing detailed cost information for individual WFO projects.

## Management Comments

We request that the Under Secretary of Defense for Acquisition, Technology, and Logistics; the Under Secretary of Defense (Comptroller)/Chief Financial Officer; and Acquisition Executives of the Army, Navy, Air Force, and the Director, Defense Threat Reduction Agency provide comments in response to this report. Please see the recommendations table on the back of this page.

**DRAFT REPORT**

Project No. D2009-D000CF-0069. 000.

August 9, 2010

**Recommendations Table**

<b>Management</b>	<b>Recommendations Requiring Comment</b>
Under Secretary of Defense for Acquisition, Technology, and Logistics	A.1, A.2, and B.1
Acquisition Executive of the Army	A.3
Acquisition Executive of the Navy	A.3
Acquisition Executive of the Air Force	A.3
Director, Defense Threat Reduction Agency	A.3
Under Secretary of Defense (Comptroller)/Chief Financial Officer	B.2

**Please provide comments by September 9, 2010.**

## DRAFT REPORT

# Table of Contents

<b>Results In Brief</b>	i
<b>Introduction</b>	1
Objectives	1
Background	1
Review of Internal Controls	3
<b>Finding A. DOD Has Significant Contracting Problems When Using DOE</b>	5
Contracting Officer Responsibilities Not Performed	5
Non-Compliance With Defense Procurement Requirements	6
Section 801 Waivers	7
DOD Procurement Data Is Not Reported	7
No Price Reasonableness Determinations	9
No Certified Cost or Pricing Data	10
No CORs Designated to Monitor Contractor Performance	11
No Review of Contractor Invoices	11
Work for Others Projects We Reviewed	12
DOD Activities Made Best Interest Determinations	12
Inadequate DOD Reviews of Contractor-Proposed Costs	13
Limited Access to Detailed Contractor Cost Information	14
Unsupported Independent Government Cost Estimates	16
DOD Funding Documents Lacked Specificity	17
Work Performed Beyond Period of Performance	18
Lack of Good Documentation	19
Improving the Management and Use of Interagency Acquisitions	19
Unconventional Procedures for Adding Defense Procurement	
Requirements to WFO Projects	20
Reasons for Contracting Problems	20
Conclusion	21
Recommendations	21
<b>Finding B. Potential Bona Fide Needs Rule Violations</b>	22
Inappropriate Use of RDT&E and O&M Funds	24
Large Scale Social Simulation WFO Project	25
Dynamic Explosive Training Site WFO Project	25
Raft Scoring WFO Project	27
Longwave Infrared Hyperspectral Imaging Spectrometer Module	
WFO Project	28
Smart Threads Integrated Radiological Sensors WFO Project	31
Test and Evaluation Support WFO Project	32

## DRAFT REPORT

Contributing Factors to Funding Problems	34
Conclusion	35
Recommendations	35

### Appendices

A. Scope and Methodology	36
B. Prior Coverage	38
C. Work for Others Projects We Reviewed	41
D. Inadequate DOD Review of Contractor Cost Estimates	42
E. MIPRs Lacked Specificity	43
F. Potential Funding Problems	44
G. Improving the Management and Use of Interagency Acquisitions	45
H. DOE FYs 2009 and 2010 Section 801 Certifications	47
I. Section 801 Waiver	49

**DRAFT REPORT**

**DRAFT REPORT FOR OFFICIAL USE ONLY**

## Introduction

### Objectives

Our overall audit objective was to review DOD procedures for purchases that the Department of Energy (DOE) made on behalf of DOD. Specifically, we examined the policies, procedures, and internal controls to determine whether there was a legitimate need for DOD to use DOE, whether DOD clearly defined requirements, whether DOE and DOD properly used and tracked funds, and whether DOD procurement requirements were complied with. See Appendix A for a discussion of the scope and methodology. See Appendix B for prior coverage related to the objectives. The DOE-IG prepared a separate audit report to DOE which included audit recommendations to DOE management.

### Background

This audit was performed as required by Section 804, Public Law 110-417, "Duncan Hunter National Defense Authorization Act for Fiscal Year 2009," October 14, 2008. Section 804 states:

(a) INCLUSION OF ADDITIONAL NON-DEFENSE AGENCIES IN REVIEW.—The covered non-defense agencies specified in subsection (c) of this section shall be considered covered non-defense agencies as defined in subsection (i) of section 817 of the John Warner National Defense Authorization Act for Fiscal Year 2007 (Public Law 109-364; 120 Stat. 2326) for purposes of such section.

(b) DEADLINES AND APPLICABILITY FOR ADDITIONAL NON-DEFENSE AGENCIES. —For each covered non-defense agency specified in subsection (c) of this section, section 817 of the John Warner National Defense Authorization Act for Fiscal Year 2007 (Public Law 109-364; 120 Stat. 2326) shall apply to such agency as follows:

(1) The review and determination required by subsection

(a) (1) of such section shall be completed by not later than March 15, 2009.

(2) The review and determination required by subsection (a) (2) of such section, if necessary, shall be completed by not later than June 15, 2010, and such review and determination shall be a review and determination of such agency's procurement of property and services on behalf of the Department of Defense in fiscal year 2009.

(3) The memorandum of understanding required by subsection (c) (1) of such section shall be entered into by not later than 60 days after the date of the enactment of this Act.

(4) The limitation specified in subsection (d) (1) of such section shall apply after March 15, 2009, and before June 16, 2010.

(5) The limitation specified in subsection (d) (2) of such section shall apply after June 15, 2010.

(6) The limitation required by subsection (d) (3) of such section shall commence, if necessary, on the date that is 60 days after the date of the enactment of this Act.

## DRAFT REPORT

(c) DEFINITION OF COVERED NON-DEFENSE AGENCY.—In this section, the term “covered non-defense agency” means each of the following:

- (1) The Department of Commerce.
- (2) The Department of Energy.

(d) MODIFICATION OF CERTAIN ADDITIONAL AUTHORITIES ON INTERNAL CONTROLS FOR PROCUREMENTS ON BEHALF OF DOD.—Section 801 of the National Defense Authorization Act for Fiscal Year 2008 (Public Law 110-181; 122 Stat. 202; 10 U.S.C. 2304 note) is amended—

- (1) in subsection (a)(2)—
  - (A) in subparagraph (B), by striking “each of the Department of the Treasury, the Department of the Interior, and the National Aeronautics and Space Administration” and inserting “the Department of the Interior”; and
  - (B) by adding at the end the following new subparagraph:
    - (D) “In the case of each of the Department of Commerce and the Department of Energy, by not later than March 15, 2015;” and
- (2) in subsection (f)(2)—
  - (A) by striking subparagraphs (B) and (D);
  - (B) by redesignating subparagraphs (C), (E), and (F) as subparagraphs (B), (C), and (D), respectively; and
  - (C) by adding at the end the following new subparagraphs:
    - (E) “The Department of Commerce.”
    - (F) “The Department of Energy.”

### ***Interagency Acquisition***

Interagency acquisition is the term used to describe the procedure by which an agency needing supplies or services obtains them using another agency’s contract, the acquisition assistance of another agency, or both. Interagency acquisitions typically involve two Government agencies: the requesting agency is the agency with the requirement, and the servicing agency, which provides acquisition support, administers the contract for other agencies, or both. There are two types of interagency acquisitions, direct acquisitions and assisted acquisitions. In a direct acquisition, the requesting activity places an order against the servicing agency’s indefinite-delivery vehicle. The servicing agency manages the indefinite-delivery vehicle but does not participate in the placement of an order. In an assisted acquisition purchase, the servicing agency and requesting agency enter into an interagency agreement where the servicing agency performs acquisition activities on the requesting agency’s behalf. The servicing agency is responsible for awarding a contract, task order, or delivery order and for appointing a contracting officer’s representative (COR). The 14 Work for Others (WFO) projects we reviewed during this audit were hybrid assisted acquisitions in that DOE contracting officers did not perform many of the duties that they were responsible for performing.

### ***National Nuclear Security Administration***

Pursuant to the Atomic Energy Act of 1954, as amended, and the Economy Act of 1932, DOE and its semi-autonomous National Nuclear Security Administration (NNSA),

## DRAFT REPORT

established by Congress in 2000, provide research and technical assistance to other Federal agencies on a reimbursable full-cost recovery basis through the WFO program. NNSA is responsible for enhancing national security through the military application of nuclear energy. NNSA maintains and enhances the safety, security, reliability, and performance of the U.S. nuclear weapons stockpile without nuclear testing; works to reduce global danger from weapons of mass destruction; provides the U.S. Navy with safe and effective nuclear propulsion; and responds to nuclear and radiological emergencies in the U.S. and abroad. NNSA manages eight sites, which are Government-owned and contractor-operated facilities. During our audit, we reviewed 14 WFO projects that 3 of the 8 NNSA sites performed for 9 DOD requesting activities. The three NNSA sites are the Sandia National Laboratory (Sandia), Albuquerque, New Mexico; the Lawrence Livermore National Laboratory (Lawrence Livermore), Livermore, California; and the Y-12 National Security Complex (Y-12), Oak Ridge, Tennessee.

### ***Work for Others Program***

WFO is a DOE program in which NNSA personnel and/or their respective contractor personnel perform work for non-DOE entities or where NNSA facilities are used for work not directly funded by NNSA appropriations, per DOE Order 481.1C., "Work For Others (Non-Department of Energy Funded Work)," January, 24, 2005. WFO has the following objectives:

- Provide assistance to Federal agencies and non-Federal entities in accomplishing goals that otherwise may be unattainable and to avoid duplication of effort at Federal facilities;
- Provide access for non-DOE/non-NNSA entities to highly specialized or unique NNSA facilities, services, or technical expertise when private sector facilities are inadequate;
- Increase research and development interaction between NNSA facilities and industry;
- Transfer technology originating at NNSA facilities to industry for further development or commercialization; and
- Maintain core competencies and enhance the science and technology base at NNSA facilities.

### **Review of Internal Controls**

We identified several internal control weaknesses as defined by DOD Instruction 5010.40, "Manager's Internal Control (MIC) Program Procedures," January 4, 2006. Specifically, for individual WFO projects, NNSA contracting officers do not:

- record detailed procurement data into the Federal Procurement Data System-Next Generation (FPDS-NG) database;
- make price reasonableness determinations in accordance with the Federal Acquisition Regulation (FAR);
- designate CORs in writing to monitor contractor performance, or

## DRAFT REPORT

- designate individuals to review contractor invoices.

During our review of 14 WFO projects, we determined that DOD reviews of contractor cost estimates were inadequate and DOD officials did not support information included in independent Government cost estimates (IGCE's). DOD also did not have assurance that FAR requirements for obtaining certified cost or pricing data for WFO projects valued above \$650,000 were met or that monitoring of contractor performance was adequate. We identified funding problems related to how DOD requesting activities used Research, Development, Test, and Evaluation (RDT&E) funds. We also identified that interagency agreements did not meet the specificity requirements of DOD Instruction 4000.19, "Interservice and Intragovernmental Support." DOD funding documents also did not include a specific description of the supplies and services ordered or the delivery requirements in accordance with section 1535, title 31, United States Code (31 U.S.C. 1535) and DOD Financial Management Regulation, volume 11A, chapter 3, "Economy Act Orders." Implementation of recommendations in this report should correct the problems we identified. We will provide a copy of the final report to senior officials responsible for internal controls in the offices of the Under Secretary of Defense for Acquisition, Technology, and Logistics, and the Under Secretary of Defense (Comptroller)/Chief Financial Officer.

## **Finding A. DOD Has Significant Contracting Problems When Using DOE**

DOD requesting activities continue to use DOE for assisted interagency acquisitions even though DOE has not certified that it will comply with section 801 of the FY 2008 National Defense Authorization Act, Public Law 110-181 (Section 801). DOE does not believe that Section 801 applies to reimbursable activities performed by DOE and its contractors. Although DOE maintains that it complies with the FAR and DOE Acquisition Regulations, DOE does not comply with the FAR and the Defense Federal Acquisition Regulation Supplement (DFARS). Specifically, NNSA contracting officers do not:

- record procurement data into the FPDS-NG database,
- make price reasonableness determinations,
- obtain certified cost or pricing data,
- designate CORs to monitor contractor performance, or
- designate an individual to review contractor invoices.

The Director, Defense Procurement and Acquisition Policy, issued a Section 801 waiver permitting DOD requesting activities to use DOE to fulfill vital mission requirements. The waiver covers purchases made through September 30, 2010, up to a total amount of \$2.2 billion. (See Appendix I for the waiver.)

During our review of 14 WFO projects, we determined that DOD requesting activities supported their use of DOE sites. However, we also determined that DOD requesting activities were deficient in their oversight. They:

- performed inadequate reviews of contractor cost estimates (11 of 14 WFO projects),
- did not prepare IGCEs (8 of 14 WFO projects), prepared IGCEs that were not supported (6 of 14 WFO projects), and
- developed funding documents and interagency agreements that were not specific (19 of 23 DOD funding documents).

Until DOD resolves these issues, DOD requesting activities using DOE for assisted acquisition purchases will not be in compliance with Section 801 or the FAR. Furthermore, DOD will not have total visibility over which DOD requesting activities are using the WFO program, what they are purchasing, what they are spending, whether they are obtaining fair and reasonable prices, or whether contractor performance is monitored.

### **Contracting Officer Responsibilities Not Performed**

When NNSA sites perform assisted acquisition WFO projects for DOD, NNSA contracting officers do not perform several important contracting officer functions that

**DRAFT REPORT**

other non-DOD agency contracting officers normally perform for DOD for assisted acquisitions. Table 1 identifies some of these responsibilities, which the report discusses.

**Table 1. Comparison of NNSA With Other Federal Agencies**

<b>Assisted Interagency Acquisitions By Other Federal Agencies</b>	<b>Assisted Interagency Acquisitions Under DOE WFO Program</b>
Non-DOD Servicing Agency Certifies That It Will Comply With Defense Procurement Requirements	DOE Has Not Certified That It Will Comply With Defense Procurement Requirements
Non-DOD Contracting Officers Record Procurement Data Into FPDS-NG Database	NNSA Contracting Officers Do Not Record Detailed Procurement Data Into FPDS-NG Database
Non-DOD Contracting Officers Make Price Reasonableness Determinations	NNSA Contracting Officers Do Not Make Price Reasonableness Determinations
Non-DOD Contracting Officers May Be Required to Obtain Certified Cost or Pricing Data	NNSA Contracting Officers Are Not Required To Obtain Certified Cost Or Pricing Data
Non-DOD Contracting Officers Designate CORs	NNSA Contracting Officers Do Not Designate CORs
Non-DOD Contracting Officers Are Responsible For the Formal Review of Contractor Invoices	No Formal Review of Contractor Invoices Performed

## **Non-Compliance With Defense Procurement Requirements**

Congress enacted Section 801 of the FY 2008 National Defense Authorization Act because of abuses related to DOD purchases made through other agencies. Section 801 reads as follows:

(b) LIMITATION ON PROCUREMENTS ON BEHALF OF DEPARTMENT OF DEFENSE.—

(1) Except as provided in paragraph (2), an acquisition official of the Department of Defense may place an order, make a purchase, or otherwise procure property or services for the Department of Defense in excess of the simplified acquisition threshold through a non-defense agency only if—

(A) in the case of a procurement by any non-defense agency in any fiscal year, the head of the non-defense agency has certified that the non-defense agency will comply with defense procurement requirements for the fiscal year;

*DOE has not certified that it will comply with Defense procurement requirements in accordance with Section 801. This causes an internal control problem for DOD.*

DOE has not certified that it will comply with Defense procurement requirements in accordance with Section 801. This causes an internal control problem for DOD. On October 7, 2008, the DOE Chief Acquisition Officer signed a Section 801 certification for FY 2009; however, the certification did not state that DOE would comply

## DRAFT REPORT

with Defense procurement requirements. Instead, the certification states that DOE will comply with the FAR and DOE regulations. The Section 801 certification also states that DOE officials do not believe Section 801 applies to reimbursable activities performed by DOE and its contractors. On October 8, 2009, the senior NNSA Procurement Executive signed a Section 801 certification for FY 2010 that contains the same language as the FY 2009 certification. In our opinion, the DOE FY 2009 and FY 2010 Section 801 certifications do not meet the statutory requirements of Section 801 and do not clearly state whether DOE will comply with Defense procurement requirements. Copies of the FY 2009 and FY 2010 DOE Section 801 certifications are located in Appendix H.

### **Section 801 Waivers**

Subsection (b)(2) of Section 801 authorizes the Under Secretary of Defense for Acquisition, Technology, and Logistics to make exceptions to the limitations imposed on a non-Defense agency if determined, in writing, that "it is necessary in the interest of the Department of Defense to continue to procure property and services through the non-defense agency during such fiscal year." On November 23, 2009, the Director, Defense Procurement and Acquisition Policy, issued a Section 801 waiver to DOE. The waiver covered DOD requirements in FY 2010 to be placed through March 31, 2010, up to a total amount of \$900 million. Although this waiver was limited to cover purchases placed through March 31, 2010, up to a total amount of \$900 million, it was extended on March 30, 2010, and now covers total purchases made through September 30, 2010, up to a total amount of \$2.2 billion. We view the Section 801 waivers as a temporary solution until DOD becomes compliant. We do not believe that the Director, Defense Procurement and Acquisition Policy, should issue subsequent Section 801 waivers, but instead the Director should require DOE compliance or seek an alternative solution such as making direct acquisitions from DOE contractors. A copy of the Section 801 waiver and waiver extension is located in Appendix I.

### **DOD Procurement Data Is Not Reported**

NNSA contracting officers do not report DOD procurement data related to individual WFO projects into the FPDS-NG database as required by the FAR. This situation creates an internal control problem for DOD in that DOD management does not know which DOD requesting activities use the WFO program, which NNSA sites they use, what they are buying, or how much they are paying. Without detailed procurement data and adequate oversight, the possibility exists that DOD requesting activities may be using the

*DOD management does not know which DOD requesting activities use the WFO program, which NNSA sites they use, what they are buying, or how much they are paying.*

NNSA sites unnecessarily, using different NNSA sites for similar WFO projects at significantly different prices, and using the NNSA sites for projects not considered a priority by management. A DOE acquisition official stated in a January 15, 2009, NNSA memorandum that executing specific contract modifications for individual WFO programs would be too labor intensive. Specifically, the DOE acquisition

official stated that:

## DRAFT REPORT

. . . FPDS-NG is not programmed to collect multiple funding sources on a single transaction. Therefore, the contracting officer must execute multiple contract modifications in order to report actions that have more than one funding source. This requirement places a significant burden on DOE's acquisition workforce.

Instead of entering detailed project information into FPDS-NG, NNSA enters global contract modification information into the system. During our review of two DOD funding documents, valued at \$150,000.00 and \$221,823.30, related to one WFO project, we identified that the contract modification that included these two funding documents also included 2,155 other funding documents, all totaling \$10,700,100.92.

### ***Applicable Criteria***

The following FAR and Office of Management and Budget guidance identifies Executive agency responsibilities for reporting and certifying procurement data into the Federal Procurement Data System-Next Generation database.

#### **FAR 4.603**

FAR 4.603, "Policy," states that, in accordance with the Federal Funding Accountability and Transparency Act of 2006 (Pub. L. No. 109-282), all Federal award data must be publicly accessible. FAR 4.603 also requires Executive agencies to use the FPDS-NG database to maintain publicly available information about all contract actions exceeding the micro-purchase threshold and any modifications to those actions that change previously reported contract action report data, regardless of dollar value. In addition, FAR 4.603 also requires agencies that award assisted or direct acquisitions to report them.

#### **FAR 4.604**

FAR 4.604, "Responsibilities," states that the senior procurement executive in coordination with the head of the contracting activity is responsible for developing and monitoring a process to ensure timely and accurate reporting of contractual actions into the FPDS-NG database. FAR 4.604 also assigns the responsibility for the submission and accuracy of the individual contract action report to the contracting officer who awarded the contract action. Since NNSA contracting officers awarded the management and operating contracts, it is their responsibility to input DOD procurement information related to individual WFO projects into the FPDS-NG database. Failure to do so not only violates the FAR but also conflicts with public law.

### **Office of Management and Budget Guidance**

The Office of Management and Budget, Office of Federal Procurement Policy, memorandum, "Improving Acquisition Data Quality — FY 2008 FPDS Data," May 9, 2008, requires all agencies to certify that their agency's procurement data are in the FPDS-NG database and that they have completed their data quality plans. On January 15, 2009, the DOE Chief Acquisition Officer provided the Office of Federal Procurement Policy with the DOE FY 2008 statement of FPDS-NG data verification and

## DRAFT REPORT

validation as required. The DOE Chief Acquisition Officer acknowledged in the certification that DOE has problems in reporting interagency funds placed on contracts.

### No Price Reasonableness Determinations

When NNSA sites perform WFO projects for DOD requesting activities, DOE contracting officers do not make price reasonableness determinations for the prices DOD requesting activities pay. In other interagency audits we performed, we identified that non-DOD contracting officers made price reasonableness determinations for assisted acquisitions they performed for DOD. The DOE Inspector General stated in report DOE/IG-0829, "Work for Others Performed by the Department of Energy for the Department of Defense," October 2009 that,

. . . an NNSA official explained that they do not make price reasonableness determinations or obtain certified cost or pricing data for individual WFO technical projects performed for DoD, or any other Federal customer. According to this official, the evaluation of price reasonableness and cost and pricing data is performed as part of the original award of its management and operating contract.

DOD requesting activity officials we met with also stated that they do not make price reasonableness determinations for individual WFO projects because price reasonableness determinations are the responsibility of the DOE contracting officer. From our perspective, NNSA contracting officers' price reasonableness determinations made

*The lack of contracting officer price reasonableness determinations for individual WFO projects is not in accordance with the FAR.*

during the original award of the overall management and operating contracts alone does not give DOD requesting activities reasonable assurance that the prices they pay for individual WFO projects are fair and reasonable. The lack of contracting officer price reasonableness determinations for individual WFO projects is not in accordance with the FAR. DOD needs to ensure that contracting officers make price reasonableness determinations for individual WFO projects. The lack of

price reasonableness determinations for individual WFO projects causes an internal control problem for DOD.

### Applicable Criteria

The following FAR criteria identify contracting officer responsibilities for obtaining supplies and services at fair and reasonable prices. It is important to note that DOE contracting officers are responsible for evaluating the prices and determining the reasonableness of prices for assisted acquisitions made under the WFO program.

#### FAR 15.402

FAR 15.402, "Pricing Policy," states that contracting officers must purchase supplies and services from responsible sources at fair and reasonable prices.

## DRAFT REPORT

### **FAR 15.403-3**

FAR 15.403-3, "Requiring Information other than cost or pricing data," states that the contracting officer is responsible for obtaining information that is adequate for evaluating the reasonableness of the price or determining cost realism.

### **FAR 15.404-1**

FAR 15.404-1, "Proposal Analysis Techniques," states that the contracting officer is responsible for evaluating the reasonableness of the offered prices.

### **FAR 15.406-3**

FAR 15.406-3, "Documenting the Negotiation," states that the contracting officer must document in the contract file the principal elements of the negotiation agreement including documentation of fair and reasonable pricing.

## **No Certified Cost or Pricing Data**

TINA requires offerors to submit cost or pricing data if a procurement exceeds the \$650,000 TINA threshold, or cite and support one of the exceptions to cost or pricing data. Under TINA, the contracting officer obtains accurate, complete, and current data from offerors to establish a fair and reasonable price. TINA also allows for a price adjustment remedy if it is later found that a contractor did not provide accurate, complete, and current data. FAR 15.403-4, "Requiring Cost or Pricing Data," states that the threshold for obtaining certified cost or pricing data is \$650,000. FAR 15.403-1 (b), "Exceptions to Cost or Pricing Data Requirements," states that contracting officers are not required to obtain certified cost or pricing data when they determine that:

- the prices paid are based on adequate price competition,
- the prices agreed upon are based on prices set by law or regulation,
- a commercial item is being acquired, or
- a waiver has been granted.

Of the 14 WFO projects we reviewed, 5 were valued above the \$650,000 threshold requiring certified cost or pricing data in accordance with the Truth In Negotiation Act (TINA), 10 U.S.C. 2306a, 41 U. S. C. 254(b), and the FAR. However, contracting officers did not obtain certified cost or pricing data. According to an NNSA official, DOE Acquisition Regulation Subpart 970.1504-3-1, "Cost or pricing data," does not require DOE contracting officers to obtain certified cost or pricing data for cost reimbursement management and operating contracts. The NNSA official also stated that DOE Acquisition Regulation Subpart 970.1504-3-1 provides DOE with the "waiver" exception for not having to obtain certified cost or pricing data. However, the NNSA procurement official was not able to provide us with a copy of the TINA waiver document. Certified cost or pricing data for WFO projects would be appropriate since WFO projects are, in effect, sole-source purchases. From our perspective, DOE did not comply with TINA or the FAR.

## DRAFT REPORT

### No CORs Designated to Monitor Contractor Performance

NNSA contracting officers do not designate CORs in writing and do not establish roles and responsibilities for monitoring contractor performance for individual WFO projects. The DOE Inspector General stated in his report that:

NNSA officials explained that they do not have either the resources or the special knowledge of the customer that is needed to monitor each WFO technical project performed for DoD. These officials also indicated that such services could be provided to the DoD customer, but that it would be provided at added cost since the Department's policy is to recover the full cost of WFO work.

The limited surveillance that DOD requesting activities performed varied. However, since DOD requesting activities did not base their contractor monitoring efforts on any pre-determined set of roles and responsibilities, we were unable to determine the

*The lack of CORs and the absence of roles and responsibilities for monitoring contractor performance for individual WFO projects cause an internal control problem for DOD.*

adequacy of their monitoring efforts. The lack of CORs and the absence of roles and responsibilities for monitoring contractor performance for individual WFO projects cause an internal control problem for DOD. On August 22, 2008, the Deputy Secretary of Defense issued a memorandum to DOD agencies requiring them to ensure that properly trained and ready CORs are assigned prior to contract award. Individuals designated as CORs

should have access to NNSA contractor sites and information needed to perform their duties.

### No Review of Contractor Invoices

DOD and DOE did not establish roles and responsibilities for the review of contractor invoices. An NNSA procurement official stated that he did not believe that there is a formal monthly review of invoices done by DOD sponsors. The procurement official also stated that NNSA contracting officers do not review each invoice for every WFO project because "there is not enough capacity for them to do that." During our visit to Lawrence Livermore, we selected 15 contractor invoices related to 6 WFO projects to review. For 5 of the 15 contractor invoices, we identified situations where the Lawrence Livermore contractor was charging overtime as a miscellaneous charge instead of a direct labor charge. We could not determine how long this situation had been occurring. Had CORs been designated for the six WFO projects, they probably would have identified this problem. When overtime is charged as an indirect expense, the overtime costs are spread across different WFO projects as opposed to the project where the overtime occurred and could affect the overhead rate being used. We brought this issue to the attention of the Lawrence Livermore site contractor. We also discussed this issue at our exit conference with NNSA and DOE Office of Inspector General (OIG) officials who were unaware of this situation. Individuals designated to review invoices should ensure that DOD makes

## DRAFT REPORT

payments to NNSA contractors only for goods and services received. The individual reviewing invoices should ensure that:

- products have been delivered or the services have been performed,
- any billed items and/or services were not included in previously paid invoices,
- all other direct costs have been properly substantiated,
- labor hours were billed at appropriate rates, and
- arithmetic calculations are correct.

Our review of contractor invoices required that we work closely with NNSA contractor personnel in order to obtain information to complete our review. Likewise, individuals designated to review contractor invoices should also have access to NNSA contractor information needed to complete their reviews.

### **WFO Projects We Reviewed**

We reviewed 14 WFO projects that had new or continuing requirements in FY 2008. The 14 WFO projects involved 23 DOD funding documents, valued at \$9.7 million, and 9 DOD requesting activities. We reviewed interagency agreements, determination and findings (D&F) documents, NNSA contractor cost estimate information, DOD reviews of NNSA contractor cost information, DOD IGCEs, and DOD funding documents. Appendix C identifies the 14 WFO projects and 23 DOD funding documents we reviewed along with the corresponding NNSA laboratories and DOD requesting activities.

### **DOD Activities Made Best Interest Determinations**

The Economy Act allows DOD requesting activities to place orders with a different Military Department, Defense agency, or another Federal agency for goods or services. DOD Financial Management Regulation, volume 11A, chapter 3, "Economy Act Orders," updated February 2008, prescribes policies and procedures applicable to transactions where goods or services are procured from other Federal agencies under the Economy Act, sections 1535 and 1536, title 31, United States Code (31 U.S.C. 1535 and 1536). FAR 17.503, "Determinations and findings requirement," states that each Economy Act order shall be supported by a D&F that states the use of an interagency acquisition is in the best interest of the Government, and the supplies or services cannot be obtained as conveniently or economically by contracting directly with a private source.

Thirteen of the 14 WFO projects we reviewed were subject to the Economy Act. The 13 projects had the required D&F and each stated that the use of an interagency acquisition was in the best interest of the Government and that the supplies or services cannot be provided as conveniently or economically by contracting directly with a private source. The 13 D&Fs also described the capabilities of the NNSA sites. The other WFO project was subject to the Government Employee Training Act and did not require a D&F. The DOD requesting activity prepared a Justification for Selection document that described why the DOD activity selected the NNSA site. We determined that the Justification for Selection document was inadequate because it was not signed or dated.

## DRAFT REPORT

One of the DOD requesting activities we visited, the Defense Threat Reduction Agency (DTRA), took additional steps to support its use of NNSA sites. DTRA required its program managers to prepare “Justification for Selection” memoranda that address six questions:

- Can the work be performed by the private sector?
- Why is it more effective to have the work performed by a Government agency?
- Were other alternatives considered to satisfy this requirement?
- What are the qualifications of the selected servicing agency?
- Will significant elements of the work be contracted out or be done in-house?
- Is there a service fee/charge?

The DTRA contracting officer used the information in the Justification for Selection document to prepare the D&F supporting the use of NNSA sites. Other DOD requesting activity officials we met with described market research efforts they performed; however, they did not document their market research efforts. Accordingly, we were unable to determine the adequacy of their market research efforts.

### **Inadequate DOD Reviews of Contractor-Proposed Costs**

For 11 of 14 WFO projects reviewed, DOD requesting activities performed inadequate reviews of contractor cost estimates. The DOD requesting activities’ pricing reviews were inadequate because they did not base their reviews on detailed cost information and because there was some confusion as to whether NNSA contractors were required to provide DOD requesting activities with detailed cost information. In some situations, there was no evidence that the DOD requesting activity even reviewed contractor prices. During our review of the 14 WFO projects, we saw only one instance where a DOD requesting activity asked a NNSA contractor for more detail. In that situation, the DOD requesting activity asked the Sandia contractor to provide additional detail. However, the contractor provided only limited data to the DOD requesting activity. The lack of detailed contractor cost data causes an internal control problem for DOD that needs to be

*The lack of detailed contractor cost data causes an internal control problem for DOD that needs to be resolved.*

resolved. From our perspective, DOD reviews of contractor costs, at a minimum, should detail the assessment of the need for the number of labor hours, the labor mix, and the quantities and kinds of materials proposed. Table 2 provides two examples of cost information that DOD requesting activities provided to us for two WFO projects performed by Lawrence Livermore that we reviewed. The cost information that the DOD requesting activities provided to us lacked detail, and we did not see any indication that the DOD requesting activities asked for more detail. We know that detailed cost information existed for these two WFO projects because we obtained the detailed data during our visit to Livermore.

## DRAFT REPORT

**Table 2. Cost Information That Lacked Detail**

Example 1	
<i>Estimated Cost</i>	
The cost of each of the four tasks described above is as follows:	
Task 1	\$ 40,000
Task 2	\$160,000
Task 3	\$400,000
Task 4	\$400,000

Example 2	
Description	Costs
Manpower	
Mission support including post mission activities	\$100,000

### ***Limited Access To Detailed Contractor Cost Information***

During our review of DOD records, we obtained documentation indicating that the NNSA policy was not to provide DOD requesting activities with detailed cost information related to individual WFO projects. For example, according to an NNSA contracting officer memorandum sent to a DOD requesting activity:

Sandia's specific over head cost recovery rates and individual salary rates are proprietary information and are generally not released externally. However, because of its contractual relationship with DOE, Sandia's operations and accounting practices are fully auditable by the DOE Inspector General (DOE IG) on a regular basis, as well as by Sandia Corporation's Internal Audit Department. Sandia has established protocols for DOE IG audits of Sandia operations, consistent with the terms and conditions of the contract.

Therefore, it is DOE/NNSA policy, to not provide detailed cost information. Rather, the review and approval by DOE/NNSA of rate information proposed by Sandia, and the oversight efforts by DOE on Sandia indirect rates, should satisfy, in DOE/NNSA's opinion, your requirements for price reasonableness determinations.

According to information that a NNSA contracting officer provided to a DOE-IG auditor during their audit, the decision to withhold detailed cost information from customers is as follows:

The Y-12 Site Office does not provide detailed cost information on WFO projects to their customers. We provide direct cost information at a higher level such as labor costs, material costs, travel costs, subcontracting costs, etc. When requested by another federal agency to provide detailed cost information, we explain to them that the direct and indirect rates are the same for them as they are for DOE and that the rates will not change. These rates have already been approved by DOE and the costs are what they are – the federal agency is coming to

## DRAFT REPORT

DOE because they cannot get this work from the domestic private sector. The costs are not negotiable. By providing this detailed cost information, we are allowing the other federal agencies to question every rate. We will be spending more time and effort explaining to them why every detailed rate is what it is and why DOE is not going to change the rate for another customer. This simply is not cost-effective and allows for scrutiny from the customer.

One DOD requesting activity we visited identified a long history of tension with Sandia relating to not being able to obtain detailed cost information and transferred a WFO project from Sandia to the NNSA Idaho National Laboratory. A DOD requesting activity official stated:

Obtaining the cost breakdown information that is required to effectively justify the costs that are being proposed by Sandia's Project Activity Statement (PAS) has been extremely difficult and time consuming.

. . . Business Development, as well as the Program Management requires detailed information in order to prepare the Justification for Selection, Technical Evaluation, and eventually the Determination and Findings.

Sandia has been extremely reluctant to provide any additional information, and if they do, they will only provide this information verbally.

However, during our visits to Y-12 and Lawrence Livermore in December 2009, NNSA and contractor officials were eager to provide us with detailed cost information they had prepared for WFO projects we reviewed. They also went to great lengths to explain how they determine costs for individual WFO projects. NNSA and contractor officials explained that NNSA contractors usually prepare two cost estimates for individual WFO projects. One of the cost estimates is not detailed. NNSA provides this cost estimate to DOD requesting activities. The other cost estimate, the cost estimate worksheet (CEW), is very detailed; however, according to NNSA and contractor officials, the CEW is an internal document and NNSA does not provide the CEW to DOD requesting activities. The CEWs we reviewed included information such as labor rates, labor hours, material costs, travel, subcontract costs, general and administrative expenses, etc., which we believe is the level of detail that DOD requesting activities should have for their reviews of contractor cost estimates. NNSA and contractor officials located at Y-12 and Lawrence Livermore stated that they did not have a problem providing detailed cost information such as the information contained in the CEWs to DOD requesting activities, if approved to do so by senior NNSA officials. NNSA and contractor officials at Lawrence Livermore and Y-12 also provided documentation showing that their contractor charges DOD requesting activities the same rates as other Federal and NNSA customers. We believe that DOD requesting activities should not proceed with WFO projects until asking for, receiving, and reviewing detailed cost information related to their individual WFO projects. The DOE IG identified in his report the importance of DOD requesting activities' access to detailed cost information. The DOE-IG stated in his report that:

## DRAFT REPORT

Without detailed cost and pricing information, DoD customers may not be able to obtain all pricing information they believe is necessary to satisfy defense procurement regulation requirements.

According to an NNSA procurement official, cost information at the Department's facility and management contractors is Federal information and is available to other Federal agencies. This official also agreed that WFO agreements should clearly define roles and responsibilities of the Federal partners for overseeing the facility contractors' performance. Accordingly, NNSA issued guidance on August 26, 2009, to its site offices regarding the availability of cost information to Federal agencies and roles and responsibilities on WFO agreements.

The DOD requesting activities' lack of detailed cost data for individual WFO projects and their inadequate reviews of contractor costs causes an internal control weakness for DOD. However, recent actions taken by senior-level NNSA officials should correct the problem. In addition, it is important to note that DOD requesting activities are responsible for specifying to NNSA the exact information they need and to show where they have reviewed the information. Appendix D lists the 11 of 14 WFO projects reviewed where DOD requesting activities proceeded with WFO projects before obtaining and reviewing detailed NNSA contractor cost information.

### **Unsupported Independent Government Cost Estimates**

DOD requesting activities did not prepare adequate IGCEs for any of the 14 WFO projects we reviewed. For eight WFO projects, DOD requesting activities did not prepare IGCEs. For six WFO projects, DOD requesting activities prepared IGCEs; however, they were inadequate because they did not identify the basis for the estimated information or were not signed or dated. In one situation, the IGCE was the same as the NNSA contractor's cost estimate. For the eight other WFO projects, DOD requesting activities did not document why they did not prepare an IGCE. For IGCEs to be of any use in the review of prices, the information contained in them needs to be supported. Table 3 identifies the specific issues we found related to IGCEs that were prepared.

**DRAFT REPORT**

**Table 3. Independent Government Cost Estimate Issues**

<b>NNSA Proposal Information</b>	<b>IGCE Amount</b>	<b>DOD Activity</b>	<b>Issues</b>
<b>Sandia National Laboratory</b>			
1) Proposal 041031209-3 Update and revise Sandia intrusion detection report produced in 2006	\$94,000.00	Naval Surface Warfare Center, Panama City, FL	√ IGCE not supported √ IGCE not signed or dated
2) Proposal 059080812-0 Dynamic explosive training site (DETS) training course	204,894.00	Headquarters (HQ) Air Force Civil Engineering Support Agency Tyndall Air Force Base (AFB), FL	√ IGCE not supported √ IGCE not dated
<b>Y-12 National Security Complex</b>			
3) Proposal 2276-Z042-06 Eagle Eyes	3,236,763.00	DTRA Fort Belvoir, VA	√ IGCE not supported √ IGCE not signed or dated
4) Proposal 2276-Z081-07 Radiation detector testing and development	2,536,609.00	DTRA Fort Belvoir, VA	√ IGCE not supported √ IGCE not signed or dated
5) Proposal 2276-Z241-08 Smart threads integrated radiological sensor (STIRS) program	745,684.00	DTRA Fort Belvoir, VA	√ IGCE not supported √ IGCE not signed or dated
6) Proposal 2276-Z151-08 Radiological Field Training Exercise	102,000.00	DTRA Fort Belvoir, VA	√ IGCE not supported √ IGCE not signed or dated

***DOD Funding Documents Lacked Specificity***

For 19 of the 23 DOD funding documents reviewed, the funding documents did not meet the specificity requirements of DOD Instruction 4000.19, 31 U.S.C. 1535, or DOD Financial Management Regulation, volume 11A, chapter 3. The funding documents did not meet the specificity requirements such as a description of the services requested and the period of performance. Instead, DOD funding documents identified NNSA contractor proposal numbers, project names, or references to the statement of work and did not include the period of performance. Many of the funding documents did not identify the entire period of performance but only when the period of performance was to end. Appendix E identifies the 19 of 23 DOD funding documents that lacked specificity.

**DOD Instruction 4000.19**

DOD Instruction 4000.19, "Interservice and Intragovernmental Support," implements policies, procedures, and responsibilities for intragovernmental support as a result of agreements among Federal Government activities. According to DOD Instruction 4000.19, recurring interservice and intragovernmental support that require reimbursement shall be documented on DD Form 1144, "Support Agreement," or a

## DRAFT REPORT

similar format that contains all of the information required on DD Form 1144. The information should include a specific description of the supplies and services purchased and the delivery date or period of performance of when the purchase is to occur. None of the 14 WFO projects we reviewed included a DD Form 1144. Seven of the 9 DOD requesting activities that we visited or contacted stated that they used the Military Interdepartmental Purchase Requests (MIPRs) in lieu of the DD Form 1144 as the interagency agreement. Accordingly, we used the 23 DOD MIPRs to determine whether the MIPRs met the specificity requirements of DOD Instruction 4000.19.

### **Section 1501, Title 31, United States Code**

Section 1501, title 31, United States Code, "Documentary Evidence Requirement for Government Obligations," states that to establish a valid obligation and satisfy requirements, an agency has to be specific in defining its requirements.

### **DOD Financial Management Regulation, Volume 11A, Chapter 3**

DOD Financial Management Regulation, volume 11A, chapter 3, states that Economy Act orders shall be specific, definite, and certain as to both the work encompassed by the order and the terms of the order itself. An Economy Act order should include a description of the supplies and services ordered, delivery requirements, a funds citation, payment provisions, and acquisition authority.

### **Other Issues**

During the audit, we also identified some other issues that merit attention. Specifically, NNSA contractors performed work beyond the period of performance and DOD requesting activities did not maintain detailed files for individual WFO projects. On June 6, 2008, the Office of Management and Budget, Office of Federal Procurement Policy, issued new guidance related to interagency acquisitions in a memorandum titled "Improving the Management and Use of Interagency Acquisitions." (June 6, 2008, OMB Guidance)

### ***Work Performed Beyond Period of Performance***

For 3 of the 14 WFO projects reviewed, NNSA contractors continued to perform work beyond the period of performance without any written authorization to do so. Lawrence Livermore performed two of the three WFO projects, and Y-12 performed the other WFO project. Table 4 identifies these three WFO projects.

**Table 4. Work Performed Beyond Period of Performance**

<b>Contractor Proposal No.</b>	<b>DOD MIPR No.</b>	<b>Statement of Work Period of Performance End Date</b>	<b>Contractor Performed Work Until</b>
L12162	F4FDAG8179G002	3-15-2009	11-2009
L11925	F4DEB18246G001	9-30-2008	5-2009
2276-Z04206	IACRO 09-46768I	9-30-2009	10-2009

## DRAFT REPORT

### ***Lack of Good Documentation***

DOD requesting activities did not maintain detailed files for individual WFO projects. Instead, DOD requesting activity officials we met with gathered WFO documentation for us from computers, e-mails, and in some cases from the desks of DOD requesting activity personnel. DOD requesting activities should maintain files for individual WFO projects, and the files should include documents such as D&Fs, funding documents, contractor cost estimates, DOD program office reviews of contractor cost estimates, contracting officer's price reasonableness determinations, COR letters and training certificates, DOE points of contact, e-mails, and any other pertinent information. In its *Contract Pricing Guide*, dated September 16, 2002, Defense Procurement and Acquisition Policy states:

*Need for Good Documentation.* Good documentation is essential to good contracting. As time goes on, you forget times, dates, persons involved, and other elements that are important in all aspects of contracting and pricing in particular. While fresh in your mind, you should document:

- Events;
- Actions; and
- Decisions.

*Problems from Poor Documentation.* Lack of good documentation can create serious problems. Since you will not always be available to explain what you did, or why, other contracting personnel will not know what happened, or about any special circumstances that may have affected your decisions. If your files lack proper documentation:

- Other contracting personnel may take the time to accomplish an action or make a decision that you have already completed. These actions or decisions may conflict with yours.
- Legal advisors and management review teams may question your action or lack of action because they do not have all of the relevant information.
- You will find that the lack of documentation is generally treated as a lack of action. If it is not documented, it never happened.

### ***Improving the Management and Use of Interagency Acquisitions***

On June 6, 2008, the Office of Management and Budget, Office of Federal Procurement Policy issued new guidance related to interagency acquisitions in a memorandum titled, "Improving the Management and Use of Interagency Acquisitions." The guidance focuses on clear lines of responsibilities between agencies with requirements (DOD) and the agencies that provide acquisition support (DOE). The guidance focuses on the clear identification of roles and responsibilities for requesting agencies and servicing agencies. Included in the guidance are roles and responsibilities for determining price reasonableness, designating CORs, and designating individuals to review invoices, which were also areas where we identified problems.

## DRAFT REPORT

We did not see any evidence in the interagency guidance that exempts DOE from following it. A copy of the memorandum is located in Appendix G.

### ***Unconventional Procedures For Adding Defense Procurement Requirements to WFO Projects***

According to the June 6, 2008, OMB Guidance, DOD requesting activities are responsible for apprising the servicing agency of all terms, conditions, and requirements to be incorporated into the contract/order as necessary to comply with the statutes, regulations, and directives that are specific to the requesting agency. The servicing agencies are responsible for ensuring that requesting activity-specific laws, restrictions, data collection, and reporting requirements that have been identified by the requesting activity are followed. The servicing agency should also work with the requesting agency to mutually agree to appropriate contract clauses addressing customer-specific laws and policies. The DOE Inspector General stated in his report that:

Although NNSA does not believe that it is appropriate to modify existing contracts to incorporate defense procurement requirements, an NNSA official stated that specific defense procurement requirements can be incorporated into the interagency agreement for a WFO technical project.

DOD requesting activities need to be aware of their responsibility for apprising NNSA of all terms, conditions, and requirements that they want NNSA to incorporate into WFO interagency agreements.

### **Reasons for Contracting Problems**

The problems we identified occurred because DOE does not believe that Section 801 applies to reimbursable activities performed by DOE and its contractors and because DOD contracting officers' involvement in WFO projects was very limited. While DOD Financial Management Regulation, volume 11, chapter 18, requires DOD contracting officers to review non-Economy Act orders above \$500,000, volume 11, chapter 3 does not require DOD contracting officers to review Economy Act orders such as WFO projects. DOD contracting officer involvement in the 14 WFO projects we reviewed was quite limited. The exception was DTRA. During a site visit, DTRA contracting officers provided us with detailed documentation supporting their reviews of contractor cost information for individual WFO projects. While their analyses was detailed and had many of the aspects of a price reasonableness determination, the DTRA contracting officers stated that the NNSA contracting officer was required to make a final determination of price reasonableness. As a result of the contracting issues we identified, we believe that DOD contracting officers need to be as involved in reviewing WFO projects that fall under the Economy Act as they are required to be involved for non-Economy Act orders. Furthermore, we believe that if DOD contracting officers become more involved and, in particular, use the direct acquisition approach instead of the assisted acquisition approach, many of the problems we identified in this report could be resolved. More DOD contracting officer involvement in WFO projects will give DOD greater assurance that DOD is complying with Section 801 requirements, Defense procurement requirements, and that DOD is obtaining best value when using DOE.

## DRAFT REPORT

### Conclusion

DOD requesting activities can benefit from well-executed interagency acquisitions and the expertise that DOE can provide. However, until DOE and DOD correct the contracting problems we identified, DOD requesting activities using DOE will not be in compliance with Section 801, the FAR, or the June 6, 2008, OMB Guidance. The Director, Defense Procurement and Acquisition Policy, Section 801 waiver is a temporary solution that will allow DOD requesting activities to continue to use DOE until DOD and DOE resolve these problems.

### Recommendations

A.1. We recommend that the Under Secretary of Defense for Acquisition, Technology, and Logistics either obtain certification from the Department of Energy regarding Section 801 requirements or work with the Department of Energy to develop alternative plans to make direct purchases from National Nuclear Security Administration sites. Use of direct purchases would alleviate most of the problems identified in this report. If the Department of Energy certifies that it will comply with Defense procurement requirements, DOD needs to ensure that:

a. Detailed DOD procurement data related to individual Work for Others projects is entered into the Federal Procurement Data System-Next Generation database.

b. Price reasonableness determinations are made for all Work for Others projects.

c. Contracting officer's representatives are designated for individual Work for Others projects.

d. Individuals are designated to review contractor invoices.

A.2. We recommend that the Under Secretary of Defense for Acquisition, Technology, and Logistics establish a requirement that DOD warranted contracting officers review all Economy Act Work for Others orders greater than \$500,000 prior to sending the order to the funds certifier or issuing the Military Interdepartmental Purchase Request to the Department of Energy if DOE certifies compliance with Section 801 requirements and continues to provide assisted acquisition support.

A.3. We recommend that the Acquisition Executives for the Army, Navy, Air Force, and the Director, Defense Threat Reduction Agency make DOD requesting activities aware of their responsibilities for obtaining and reviewing detailed cost information for individual Work for Others projects including certified cost or pricing data, when applicable.

## Finding B. Potential Bona Fide Needs Rule Violations

DOD requesting activities did not always follow the bona fide needs rule for WFO projects. Funds that had expired and were no longer available for new obligations were used to pay for WFO projects. This issue occurred because of the lack of defined policy in the FAR and the DOD Financial Management Regulations regarding the use of Research, Development, Test, and Evaluation (RDT&E) funds. Potential bona fide needs rule violations and the use of appropriated funds after they have expired and were no longer available for new obligations occurred for 8 of the 23 DOD funding documents we reviewed. This resulted in 31 potential Antideficiency Act violations, valued at \$641,188.42.

### ***Applicable Criteria***

The following criteria were relevant to our analysis of 23 DOD funding documents used to pay for the 14 WFO projects we reviewed.

### **Antideficiency Act**

Congress passed the Antideficiency Act to curb the fiscal abuses that frequently created “coercive deficiencies” that required supplemental appropriations. The Antideficiency Act consists of several statutes that include administrative and criminal sanctions for the unlawful use of appropriated funds (31 U.S.C. 1341, 1342, 1350, 1351, and 1511–1519). These statutory provisions enforce the Constitutional budgetary powers entrusted to Congress with respect to the purpose, time, and amount of expenditures made by the Federal Government. Violations of other laws may trigger violations of Antideficiency Act provisions, such as the “bona fide needs rule,” 31 U.S.C. 1502(a). Violations of the Antideficiency Act may result in administrative and/or criminal sanctions against those responsible.

### **Bona Fide Needs Rule**

Appropriations are generally available for limited periods. An agency must incur a legal obligation to pay money within an appropriation’s period of availability. If an agency fails to obligate funds before they expire, they are no longer available for new obligations. Expired funds retain their “fiscal year identity” for 5 years after the end of the period of availability. During this time, the funds are available to adjust existing obligations or to liquidate prior valid obligations. However, expired funds are not available for new obligations nor can they be used for new requirements. Appropriations are available for the bona fide needs of an appropriation’s period of availability (31 U.S.C. 1502[a]). The bona fide needs rule states:

The balance of an appropriation or fund limited for obligation to a definite period is available only for payment of expenses properly incurred during the period of availability or to complete contracts properly made within that period of availability and obligated

## DRAFT REPORT

consistent with section 1501 of this title. However, the appropriation or fund is not available for expenditure for a period beyond the period otherwise authorized by law.

### **DOD Financial Management Regulation Guidance**

Annual Appropriation Acts define the use of each appropriation and set specific timelines for use of the appropriations. The DOD Financial Management Regulation, volume 2A, chapter 1, provides guidelines on the most commonly used DOD appropriations for determining the correct appropriation to use when planning acquisitions. The WFO projects we reviewed were subject to the Economy Act. DOD Financial Management Regulation, volume 11A, chapter 3, applies to the Economy Act. Chapter 3 does not state that performance of severable services must begin during the funds period of availability as chapter 18 states. In addition, chapter 3 and chapter 18 do not provide guidance on how to fund severable and nonseverable contracts involving multiple-year appropriations.

DOD Financial Management Regulation, volume 11A, chapter 3, paragraph 030404, "Appropriation Policy," states that,

an Economy Act order obligates the applicable appropriation of the requesting agency or unit upon acceptance of the order by the servicing agency. The entire amount of a reimbursable order should be obligated by the requesting agency when the order is accepted.

It also states that:

it is critical that activities reconcile the obligation status of Economy Act orders and deobligate unused funds, as needed, before the end of the funds availability. Funds must be deobligated by both the requesting and servicing agency to the extent that the servicing agency or unit filling the order has not, before the end of the period of availability of the appropriation of the requesting or ordering agency, (1) provided the goods or services, or (2) entered into an authorized contract with another entity to provide the requested goods or services."

### **RDT&E Appropriations**

Research, development, test, and evaluation requirements, including designing prototypes and processes, should be budgeted using RDT&E appropriations. In general, all developmental activities included in bringing a program to its objective system are to be budgeted in RDT&E. RDT&E funds are available for obligation for 2 years.

### **O&M Appropriations**

Expenses incurred in continuing operations and current services are budgeted in Operations and Maintenance (O&M) appropriations. Modernization costs under \$250,000 are considered expenses, as are one-time projects, such as development of planning documents and studies. O&M funds are available for obligation for 1 year. According to 10 U.S.C. 2410a, the performance of severable services can begin in one fiscal year and end in the next provided the period of performance does not exceed

## DRAFT REPORT

12 months. However, Government Accountability Office (GAO) Decision B-317636, "Severable Services Contracts," April 21, 2009, indicates that the use of 10 U.S.C. 2410a is limited to severable contracts funded by annual appropriations.

### **Air Force Instruction 65-601**

Air Force Instruction 65-601, "Budget Guidance and Procedures," March 3, 2005, implements the DOD budget policy for RDT&E contracts. The instruction limits the use of RDT&E appropriations in the second year to specific circumstances, such as cost growth, that do not involve a change to the scope of requirements that were a bona fide need of the appropriation year. The appropriation year is the first year of the 2-year appropriation period, not the second year.

### **Defense Acquisition Regulations**

Neither the FAR nor the DFARS provide sufficient guidance on how to fund contracts using multiple-year appropriations. According to FAR 32.703, "Contract Funding Requirements," if the contract is fully funded, funds are obligated to cover the price or target price of a fixed-price contract or the estimated cost and any fee of a cost-reimbursement contract. If the contract is incrementally funded, funds are obligated to cover the amount allotted and any corresponding increment of fee. However, the FAR does not provide enough guidance on when contracts should be incrementally or fully funded.

DFARS 232.702, "Policy," states that fixed-price contracts shall be fully funded except as permitted by DFARS 232.703-1, "General." According to DFARS 232.703-1(1), a fixed-price contract may be incrementally funded if the contract is for severable services. However, DFARS 232.7 does not provide any guidance on the procedures for funding other types of contracts. The 14 WFO projects we reviewed were performed under cost-reimbursement contracts.

### **Inappropriate Use of RDT&E and O&M Funds**

During previous interagency audits, we identified significant funding problems related to the inappropriate use of O&M funds. The use of O&M funds is limited and only available for new obligations for 1 year. During this interagency audit, we identified potential funding problems primarily involving the use of RDT&E funds. These funds are multiple-year funds and available for use for new obligations for 2 years. We were

*However, based on the number of potential funding violations we found in the relatively small number of DOD funding documents reviewed, we believe potential funding problems involving DOD funds sent to DOE are significant.*

unable to determine the magnitude of the funding issues we identified. However, based on the number of potential funding violations we found in the relatively small number of DOD funding documents reviewed, we believe potential funding problems involving DOD funds sent to DOE are significant.

Accordingly, the Under Secretary of Defense (Comptroller)/Chief Financial Officer needs to determine the magnitude of the problem and take appropriate actions to correct the problems. The following are specific funding

## DRAFT REPORT

problems we identified. Appendix F is a summary of the 31 potential funding violations we identified.

### ***Large Scale Social Simulation WFO Project***

On August 4, 2008, the Navy Engineering Logistics Office, Arlington, Virginia, issued MIPR N4175608GO18508 to provide incremental funds of \$734,972 for a Large Scale Social Simulation WFO project, with an overall value of \$1.8 million. The WFO project was performed under DOE Proposal Number 063080731. Sandia accepted MIPR N4175608GO18508 on August 29, 2008. MIPR N4175608GO18508 cited 9780400 funds, which were FY 2008 Defense-wide RDT&E funds. These funds are 2-year funds, and were available for new obligations until September 30, 2009. According to the statement of work, the contractor was to deliver the prototype software tool to include all necessary software source code, technical data, servers, databases, connections, and other elements necessary to operate, use, and maintain the system. Based on this description, we believe that the WFO project was for nonseverable services since the services were related to a specified end product. According to GAO decision B-317139 dated June 1, 2009, (the June 1, 2009, GAO Decision), "a nonseverable service is one that requires the contractor to complete and deliver a specified end product." It also states that "whether a contract is for severable or nonseverable services affects how the agency may fund the contract; severable services contracts may be incrementally funded, while nonseverable services contracts must be fully funded at the time of the award of the contract" absent specific statutory authority. Accordingly, the Navy should have fully funded the entire \$1.8 million amount up front. We determined that a potential bona fide needs rule violation existed, because the Navy inappropriately incrementally funded a nonseverable WFO project.

### ***Dynamic Explosive Training Site WFO Project***

On August 18, 2008, Headquarters, Air Force Civil Engineer Support Agency, Tyndall Air Force Base, Florida, issued MIPR F4ATA78231G004 to provide \$210,300 of funds to Sandia. The funds were for a WFO project to provide Air Force explosive ordinance disposal technicians three courses related to Dynamic Explosive Training Site training and practical exercises. The NNSA contractor performed this WFO project under DOE Proposal Number 059080812-0. Sandia accepted MIPR F4ATA78231G004 on August 27, 2008. MIPR F4ATA78231G004 cited 5783400 funds, which are Air Force FY 2008 O&M funds. These funds are 1-year funds and were available for new obligations until September 30, 2008. According to DOD Financial Management Regulation, volume 3, chapter 8:

Training courses that begin on or after 1 October may constitute a bona fide need of the prior year if the need for training is an immediate need in the prior year and if the commencement of the course in the next fiscal year is beyond the agency's control. The time between award of the contract for the training and performance the training should not be excessive.

The Air Force did not support that the training courses were an immediate need in FY 2008 in accordance with DOD Financial Management Regulation, volume 3,

## DRAFT REPORT

chapter 8. In fact, MIPR F4ATA78231G004 did not even identify when the classes would occur. Instead, the MIPR stated that the presentation of the classes would occur on a future date to be determined by the customer. Other documentation identified that the training classes would occur in FY 2009. In addition, the time between when the Air Force sent MIPR F4ATA78231G004 to Sandia and when the classes occurred was excessive. For example, the classes did not occur until December 19, 2008; April 17, 2009; and June 26, 2009. We also determined that the statutory exception to the bona fide needs rule contained in 10 U.S.C. 2410a did not apply because the Air Force did not demonstrate that performance began in FY 2008. While \$13,742.97 was expended on September 19, 2008, information we obtained showed that the costs did not have to be expended then. According to a Sandia official, the \$13,742.97 cost was:

Associated to the Site 9940 training facility. Any project utilizing this facility is charged for that usage in order to cover general maintenance and upkeep.

For smaller projects we customarily take out the usage fee as soon as the money comes in. This is not mandatory but gives the project lead a better understanding of how much they really have to work with and avoids any overages late in the project.

Accordingly, we believe this FY 2009 bona fide need should have been satisfied by using FY 2009 O&M funds. Table 5 identifies MIPR and invoice information. The third column identifies that the funds expired on September 30, 2008, and were no longer available for new obligations. The twelve dates in column five that are shaded identify situations where the contractor performed work and incurred costs after September 30, 2008.

**DRAFT REPORT**

**Table 5. Potential Bona Fide Needs Rule Violation Related to DETS WFO Project**

<b>MIPR No.</b>	<b>MIPR Amount</b>	<b>Funds Expiration Date</b>	<b>Invoice No.</b>	<b>Invoice Date</b>	<b>Invoice Amount</b>
F4ATA78231G004	\$210,300.00	9/30/2008			
		"	20091262	9/2008	\$13,742.97
		"	20092209	11/2008	18,919.25
		"	20093097	12/2008	5,587.90
		"	20093934	1/2009	36,024.04
		"	20094923	2/2009	32,956.39
		"	20095807	3/2009	6,277.95
		"	20096731	4/2009	419.83
		"	20097677	5/2009	19,837.73
		"	20098619	6/2009	12,919.34
		"	20099780	7/2009	16,135.41
		"	20100792	8/2009	45,750.08
		"	20101973	9/2009	1,718.98
		"	20103198	9/2009	10.13
<b>Total</b>					<b>\$210,300.00</b>

***Raft Scoring WFO Project***

On September 2, 2008, the Air Force 576 FLTS/TMO, Air Force Space Command, Vandenberg Air Force Base, California, issued MIPR F4DEB18246G001 to provide \$100,000 to Lawrence Livermore. The funds were for a WFO project for Lawrence Livermore to perform raft scoring<sup>1</sup> downrange support to the Air Force and NNSA related to a test launch of an Intercontinental Ballistic Missile in support of the Joint Testing and Assessment of the Nuclear Weapons Stockpile Program. The NNSA contractor performed this WFO project under DOE Proposal Number L11925. Lawrence Livermore accepted MIPR F4DEB18246G001 on September 5, 2008. MIPR F4DEB18246G001 cited 5783400 funds, which are Air Force FY 2008 O&M funds. These funds are 1-year funds and were available for new obligations until September 30, 2008. According to the statement of work, the NNSA contractor was to complete all work under any funding no later than September 30, 2008. Section 2410a, title 10, United States Code, permits the performance of severable services to begin in one fiscal year and end in the next provided the period of performance does not exceed one year. DOD Financial Management Regulation volume 11A, chapter 18 also states that "the performance of severable services must begin during funds period of availability and may not exceed one year." A potential bona fide needs rule violation occurred because the Air Force did not demonstrate that performance began in FY 2008. According to contractor invoice records, all work performed and all costs expended under MIPR

<sup>1</sup> Raft scoring refers to rafts with on-board tracking instruments used to score the accuracy of the re-entry vehicle when it strikes the water.

## DRAFT REPORT

F4DEB18246G001 occurred in FY 2009. Table 6 identifies MIPR and invoice information. The third column identifies that the funds expired on September 30, 2008, and were no longer available for new obligations. The four dates in column five that are shaded identify situations where the contractor performed work and incurred costs after September 30, 2008.

**Table 6. Potential Bona Fide Needs Rule Problems Related to Raft Scoring WFO Project**

MIPR No.	MIPR Amount	Funds Expiration Date	Invoice No.	Invoice Date	Invoice Amount
F4DEB18246G001	\$100,000.00	9/30/2008			
		"	2009503611	2/2009	\$43,244.97
		"	2009504333	3/2009	1,877.15
		"	2009504947	4/2009	51,973.55
		"	2009506063	5/2009	947.84
<b>Total</b>					<b>\$98,043.51</b>

We determined that a potential Antideficiency Act violation involving the augmentation of funds also exists because NNSA supplemented its appropriations by using DOD funds without specific statutory authority. According to 31 U.S.C., Section 1341a (1)(A):

An officer or employee of the United States Government or of the District of Columbia government may not make or authorize an expenditure or obligation exceeding an amount available in an appropriation or fund for the expenditure or obligation . . .

In this situation, the Air Force paid for work that, according to an Air Force official, the Air Force had not paid for in the past. After reviewing a February 16, 2001, memorandum of understanding regarding the joint testing and assessment of the nuclear weapons stockpile between NNSA and the Air Force, we were unable to identify who was responsible for paying for the work. While it was not clear who was responsible for paying for the work, it appears that the Air Force augmented NNSA funds.

### ***Longwave Infrared Hyperspectral Imaging Spectrometer Module WFO Project***

On September 15, 2008, Wright-Patterson Air Force Base 659 Aeronautical Systems Squadron, Ohio, issued MIPR F4FDAG8179G002 to Lawrence Livermore to provide \$150,000 of incremental funds to Lawrence Livermore. The funds were for a WFO project for the contractor at Lawrence Livermore to complete development of a longwave infrared hyperspectral imaging spectrometer channel for the Spectral Infrared Remote

## DRAFT REPORT

Imaging Transition Testbed (SPIRITT) program<sup>2</sup> that had been started earlier. The NNSA contractor performed this WFO project under DOE Proposal Number L-12162. Lawrence Livermore accepted MIPR F4FDAG8179G002 on September 16, 2008. According to the statement of work, all work was to be completed and all deliverables received 6 months from receipt of the funding, which occurred on September 16, 2008. Accordingly, the period of performance should have ended on March 15, 2009. The MIPR cited 5783600 funds, which were Air Force FY 2008 RDT&E funds. These funds are 2-year funds and were available for new obligations until September 30, 2009. According to the June 1, 2009 GAO Decision:

A severable service is a recurring service or one that is measured in terms of hours or level of effort rather than work objectives. B-277165, Jan. 10, 2000, at 5; 60 Comp. Gen. 219, 221-22 (1981). Whether a contract is for severable or nonseverable services affects how the agency may fund the contract; severable services contracts may be incrementally funded, while nonseverable services contracts must be fully funded at the time of the award of the contract. 73 Comp. Gen. 77; 71 Comp. Gen. 428 (1992)

After reviewing how the Air Force used the funds, we determined that a potential bona fide needs rule violation would exist regardless of whether the Air Force determined that the services were severable or nonseverable. For example, if Air Force officials determined that the services were severable, they should not have used the funds after September 30, 2009, when the funds expired and were no longer available for new obligations. However, they did use some of the funds after September 30, 2009. On the other hand, if Air Force officials determined that the services were nonseverable, they should have funded the entire WFO project up front, which they did not. Air Force Instruction 65-601, "Budget Guidance and Procedures," March 3, 2005, states:

Limit reapplying of funds in the second year to cost growth within scope or to requirements which are a bona fide need of the appropriation year as defined by DFAS-DE *Interim Guidance on Accounting for Obligations*. Commands should identify funds above programmed requirements to be obligated in the first year to SAF/FMBIZ [Financial Management and Comptroller, Air Force Investments and Integration Division] and SAF/AQXR [Acquisition Program Integration Division], so the Air Force can reapply funds to other priority programs.

We also determined that Wright Patterson Air Force Base officials did not follow Air Force Instruction 65-601 since none of the costs related to MIPR F4FDAG8179G002 occurred during the first year. Table 7 identifies MIPR and invoice information. The third column identifies that the funds expired on September 30, 2009, and were no longer available for new obligations.

---

<sup>2</sup> The purpose of the SPIRITT program is to develop a day/night, long-range reconnaissance imaging testbed composed of a hyperspectral sensor system with integrated high-resolution imaging, demonstrate it on-board a representative aircraft, and transition it to an operational prototype.

**DRAFT REPORT**

The two dates that are shaded in column five identify situations where the contractor performed work and incurred costs after September 30, 2009.

**Table 7. Potential Use of Expired Funds Related to Longwave Infrared Hyperspectral Imaging Spectrometer Module**

<b>MIPR No.</b>	<b>MIPR Amount</b>	<b>Funds Expiration Date</b>	<b>Invoice No.</b>	<b>Invoice Date</b>	<b>Invoice Amount</b>
F4FDAG8179G002	\$150,000.00	9/30/2009			
		”	2009503627	2/2009	\$14,890.22
		”	2009504348	3/2009	104,030.71
		”	2009506619	5/2009	14,887.78
		”	2010500813	10/2009	852.09
		”	2010501541	11/2009	2,418.58
<b>Total</b>		”			<b>\$137,079.38</b>

On September 16, 2008, Wright-Patterson Air Force Base 659 AESS/SP issued another MIPR, F4FDAG8179G001, to Lawrence Livermore that was also for work related to the longwave infrared hyperspectral imaging spectrometer channel for SPIRITT WFO project. The MIPR value was \$221,823.30. Lawrence Livermore accepted MIPR F4FDAG8179G001 on September 16, 2008. While these funds were also Air Force RDT&E funds, they were FY 2007 RDT&E funds and due to expire in 14 days on September 30, 2008.

After reviewing how the Air Force used the funds and the June 1, 2009, GAO Decision, we determined that a potential bona fide needs rule violation occurred. If Air Force officials determined that the services were severable, they should not have used the funds for new obligations after the funds expired on September 30, 2008. However, they used all of the funds after September 30, 2008. On the other hand, if Air Force officials determined that the services were nonseverable, they should have funded the entire WFO project up front, which they did not. Again, we also determined that the Air Force did not follow Air Force Instruction 65-601 since none of the funds were expended either in the first year or second year but rather in the third year. Table 8 identifies MIPR and invoice information. The third column identifies that the funds expired on September 30, 2008, and were no longer available for new obligations. The five dates that are shaded in column five identify situations where the contractor performed work and incurred costs after September 30, 2008.

**DRAFT REPORT**

**Table 8. Potential Bona Fide Needs Rule Problems Related to Longwave Infrared Hyperspectral Imaging Spectrometer Module**

<b>MIPR No.</b>	<b>MIPR Amount</b>	<b>Funds Expiration Date</b>	<b>Invoice No.</b>	<b>Invoice Date</b>	<b>Invoice Amount</b>
F4FDAG8179G001	\$221,823.30	9/30/2008			
		"	2009501002	10/2008	\$73,224.70
		"	2009501637	11/2008	26,459.83
		"	2009502241	12/2008	47,865.36
		"	2009502871	1/2009	24,679.59
		"	2009503626	2/2009	49,593.82
<b>Total</b>					<b>\$221,823.30</b>

***Smart Threads Integrated Radiological Sensors WFO Project***

On September 12, 2008, DTRA, Fort Belvoir, Virginia, issued Interagency Cost Reimbursement Order (IACRO) 08-4518I, valued at \$745,684 to Y-12. The purpose was to provide incremental funding for a \$20 million WFO project to provide the Smart Threads Integrated Radiological Sensors joint capability technology demonstration with all technical support necessary for completion of the man-portable detection systems-land operational demonstration exercise. The DOE Proposal Number was 2276-Z241-08. Y-12 accepted IACRO 08-4518I on September 18, 2008. The scope of work included five specific tasks, to be completed from September 15, 2008, until November 30, 2009. IACRO 08-4518I cited 9780400 funds, which were FY 2008 Defense-wide RDT&E funds. These funds are 2-year funds and were available for new obligations until September 30, 2009.

We determined that a potential bona fide needs rule violation would occur regardless of whether DTRA officials determined that the services were severable or nonseverable. If DTRA officials determined that the services were severable, they should not have used the funds for new obligations after the funds expired on September 30, 2009. However, DTRA officials used \$114,879.26 of the funds after September 30, 2009. On the other hand, if DTRA officials determined that the services were nonseverable, they should have funded the entire WFO project up front, which it did not. Table 9 identifies MIPR and invoice information. The third column identifies that the funds expired on September 30, 2009, and were no longer available for new obligations. The date that is shaded in column five identifies a situation where the contractor performed work and incurred costs after September 30, 2009.

**DRAFT REPORT**

**Table 9. Potential Use of Expired Funds Related to Smart Threads Integrated Radiological Sensors WFO Project**

<b>MIPR No.</b>	<b>MIPR Amount</b>	<b>Funds Expiration Date</b>	<b>Invoice No.</b>	<b>Invoice Date</b>	<b>Invoice Amount</b>
IACRO 08-4518I	\$745,684.00	9/30/2009			
		"	90074134	9/2008	\$24,735.95
		"	90074276	10/2008	72,408.86
		"	90074523	11/2008	54,984.61
		"	90074726	12/2008	54,130.20
		"	90074899	1/2009	112,775.99
		"	90075152	2/2009	104,416.66
		"	90075562	3/2009	7,089.27
		"	90075742	4/2009	40,894.97
		"	90075881	5/2009	839.39
		"	90076164	6/2009	9,725.31
		"	90076348	7/2009	6,224.65
		"	90076552	8/2009	4,867.08
		"	90076981	10/2009	114,879.26
<b>Total</b>					<b>\$607,972.20</b>

**Test and Evaluation Support WFO Project**

On May 21, 2007, DTRA issued IACRO 07-4248I, valued at \$25,000 to Y-12. Y-12 accepted IACRO 07-4248I on June 18, 2007. IACRO 07-4248I provided incremental funding for a test and evaluation support WFO project with an overall budget of \$2,552,590 performed under DOE Proposal Number 2276-Z081-07. IACRO 07-4248I cited 9770400 funds, which were FY 2007 Defense-wide RDT&E funds. These funds were 2-year funds and available for new obligations until September 30, 2008.

After reviewing how DTRA used the funds and the June 1, 2009, GAO Decision, we determined that a potential bona fide needs rule violation would exist regardless of whether DTRA determined that the services were severable or nonseverable. For example, if DTRA officials determined that the services were severable, they should not have used the funds for new obligations after the funds expired on September 30, 2008. However, DTRA used some of the funds after September 30, 2008. On the other hand, if DTRA officials determined that the services were nonseverable, they should have funded the entire WFO project up front, which they did not. The undefined period of performance contributed to the potential bona fide needs rule violation. The statement of work identified the period of performance as "five years" with no specific beginning or ending. The DOD funding document, IACRO 07-4248I, identified a specific period of performance that began on February 1, 2006, which was before the FY 2007 RDT&E funds were available for use. Table 10 identifies MIPR and invoice information. The third column identifies that the funds expired on September 30, 2008, and were no longer

**DRAFT REPORT**

available for new obligations. The four dates that are shaded in column five identify situations where the contractor performed work and incurred costs after September 30, 2008.

**Table 10. Potential Use of Expired Funds Related to Test and Evaluation Support WFO Project**

<b>MIPR No.</b>	<b>MIPR Amount</b>	<b>Funds Expiration Date</b>	<b>Invoice No.</b>	<b>Invoice Date</b>	<b>Invoice Amount</b>
IACRO 07-4248I	\$25,000.00	9/30/2008			
		"	90071570	7/2007	\$658.05
		"	90071773	8/2007	164.50
		"	90072061	10/2007	345.97
		"	90072299	11/2007	1,902.77
		"	90072325	12/2007	172.98
		"	90072548	1/2008	1,383.82
		"	90073678	7/2008	843.42
		"	90073885	8/2008	15,227.62
		"	90073916	8/2008	(497.45)
		"	90074131	9/2008	172.98
		"	90074273	10/2008	183.66
		"	90074519	11/2008	91.83
		"	90074723	12/2008	367.32
		"	90074897	1/2009	3,718.56
		"	90076161	6/2009	(7.24)
<b>Total</b>					<b>\$24,728.79</b>

On October 17, 2007, DTRA issued another funding document, IACRO 07-4312I, valued at \$69,116.00, to Y-12 for the Test and Evaluation Support WFO project performed under DOE Proposal Number 2276-Z081-07. Y-12 accepted IACRO 07-4312I on October 30, 2007. IACRO 07-4312I also cited 9770400 funds, which were FY 2007 Defense-wide RDT&E funds. These funds are 2-year funds, and were available for incurring new obligations until September 30, 2008.

We determined that a potential bona fide needs rule violation existed because DTRA officials used some of the funds for new obligations after September 30, 2008. Table 11 identifies MIPR and invoice information. The third column identifies that the funds expired on September 30, 2008, and were no longer available for new obligations. The two dates that are shaded in column five identify situations where the contractor performed work and incurred costs after September 30, 2008.

**DRAFT REPORT**

**Table 11. Potential Use of Expired Funds Related to Test and Evaluation Support WFO Project**

<b>MIPR No.</b>	<b>MIPR Amount</b>	<b>Funds Expiration Date</b>	<b>Invoice No.</b>	<b>Invoice Date</b>	<b>Invoice Amount</b>
IACRO 07-4312I	\$69,116.00	9/30/2008			
		"	90072172	11/2007	\$346.01
		"	90072326	12/2007	7,709.79
		"	90072549	1/2008	3,177.63
		"	90072676	2/2008	8,173.25
		"	90072921	3/2008	4,497.48
		"	90072943	3/2008	346.01
		"	90072983	3/2008	(346.01)
		"	90073132	4/2008	8,043.57
		"	90073325	5/2008	8,086.77
		"	90073431	6/2008	22,467.35
		"	90073680	7/2008	954.56
		"	90073886	8/2008	2,971.04
		"	90074274	10/2008	2,098.34
		"	90074520	11/2008	154.94
		"	90076162	6/2009	(3.86)
		"	90076690	9/2009	(79.37)
<b>Total</b>					<b>\$68,597.50</b>

**Contributing Factors To Funding Problems**

The DOD Financial Management Regulation does not clearly address how DOD requesting activities should use multiple-year appropriations to fund severable and nonseverable contracts, either fully or incrementally. The Financial Management Regulation also does not address whether the statutory requirements of 10 U.S.C 2410a apply to contracts funded by multiple-year appropriations or whether it is only applicable to annual appropriations. The FAR and DFARS also do not address the issues. According to GAO Decision B317139, June 1, 2009:

Whether a contract is severable or nonseverable services affects how the agency may fund the contract; severable services contracts may be incrementally funded, while nonseverable services contracts must be fully funded at the time of the award of the contract. 73 Comp.Gen. 77; 71 Comp. Gen. 428 (1992).

According to GAO Decision B-317636, April 21, 2009, an agency using multiple-year or no-year appropriations does not need to refer to section 2410a because these types of appropriations already extend 1-year beyond the first year.

## DRAFT REPORT

In the absence of detailed DOD guidance, DOD requesting activities provided incremental funding to WFO projects and then used the funds after they expired and were no longer available for new obligations.

### Conclusion

Funding problems such as those that we identified in this report will continue to occur until the FAR, DFARS, and the DOD Financial Management Regulation include clear guidance on how to fund contracts using RDT&E funds. Specifically, the guidance needs to address procedures for incrementally funding and fully funding severable and nonseverable contracts.

### Recommendations

B.1. We recommend that the Under Secretary of Defense for Acquisition, Technology, and Logistics initiate changes to the Federal Acquisition Regulation and Defense Federal Acquisition Regulation Supplement or both as appropriate to include guidance on the financing of all types of contracts with multiple-year appropriations. This should be coordinated with the DOD Comptroller's changes to the Defense Financial Management Regulation.

B.2. We recommend that the Under Secretary of Defense (Comptroller)/Chief Financial Office:

a. Instruct the Services and the Defense Threat Reduction Agency to initiate preliminary reviews of the potential Antideficiency Act violations we identified and to adjudicate each potential Antideficiency Act violation.

b. Perform additional reviews of DOD funding documents related to Work for Others projects to determine the magnitude of the potential funding problems we identified and take appropriate actions to prevent these issues from occurring in the future.

c. Update guidance in the DOD Financial Management Regulation on how to fund severable and nonseverable contracts when using multiple-year appropriations, in particular, those using research, development, test, and evaluation funds.

d. Require financial personnel to receive training that focuses on the use of research, development, test, and evaluation funds. The training should emphasize the bona fide needs rule and potential Antideficiency Act violations.

## Appendix A. Scope and Methodology

We conducted this performance audit from November 2008 through July 2010 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 performed this audit as required by Section 804 of Public Law 110-417, "Duncan Hunter National Defense Authorization Act for Fiscal Year 2009" (the Act). The Act requires the Inspector Generals of DOD and DOE to conduct a joint review of interagency transactions between DOD and DOE. Our review focused on projects that NNSA sites performed for DOD under the DOE WFO program. The DOE Inspector General stated in his report that "with annual expenditures exceeding \$1 billion, the Department of Defense (DOD) is one of the Department's largest WFO customers."

The DOE OIG provided us with a list of 218 WFO projects that had new or continuing requirements in the fourth quarter of 2008 as our universe. The WFO projects were valued at \$394.4 million and related to six of the eight NNSA sites. We non-statistically selected 14 WFO projects that three of the six NNSA sites performed for DOD to review. The three NNSA sites were the Sandia National Laboratory, Albuquerque, New Mexico; the Lawrence Livermore National Laboratory, Livermore, California; and the Y-12 National Security Complex, Oak Ridge, Tennessee. We also selected 23 DOD funding documents related to the 14 WFO projects for review. The 23 DOD funding documents were valued at \$9.7 million. The documents that the DOE OIG provided to us lacked detail, which made our sample selection process difficult. As part of our audit, we reviewed:

- DOD compliance with Section 801,
- procedures for recording procurement data into the FPDS-NG database,
- D&Fs that DOD prepared to support its use of DOE laboratories,
- NNSA contractor cost information,
- DOD reviews of NNSA contractor cost information,
- DOD IGCEs,
- DOD funding documents,
- procedures for monitoring DOE contractor performance, and
- procedures for reviewing contractor invoices.

In March 2009, we requested access to data from DOE in order to perform our review. We did not obtain the data until November and December 2009. The additional time it took us to obtain the data increased the time it took to perform the audit. We also requested additional data from a Navy requesting activity in December 2008. However, we did not obtain the information until April 14, 2009.

### Use of Computer-Related Data

Using the FPDS-NG database, we were unable to identify a universe of assisted acquisition purchases that DOE made on behalf of DOD in FY 2008. As an alternative,

## **DRAFT REPORT**

the DOE OIG provided us with a list of 218 WFO projects that 6 DOE laboratories performed for DOD requesting activities that had new or continuing requirements in the fourth quarter of 2008 as our universe. We did not perform detailed testing of the information because we used the information only to select our sample.

## DRAFT REPORT

### Appendix B. Prior Coverage

During the last 5 years, GAO, the DOD Inspector General (IG), the U.S. Department of the Army, the DOE IG and the VA IG issued 26 reports discussing interagency acquisitions. Unrestricted GAO reports can be accessed at <http://www.gao.gov>. Unrestricted DOD IG reports can be accessed at <http://www.dodig.mil/audit/reports>. Unrestricted Army reports can be accessed at <https://www.aaa.army.mil>. Unrestricted DOE IG reports can be accessed at <http://www.ig.energy.gov/reports.htm>. Unrestricted VA OIG reports can be accessed at <http://www.va.gov>

#### GAO

GAO Report No. GAO-08-1063, "DOD Financial Management Improvements Are Needed In Antideficiency Act Controls and Investigations," September 2008

GAO Report No. GAO-07-310, "High-Risk Series: An Update," January 2007

GAO Report No. GAO-06-996, "Interagency Contracting Improved Guidance, Planning, and Oversight Would Enable The Department of Homeland Security To Address Risks," September 2006

GAO Report No. GAO-05-456, "Interagency Contracting Franchise Funds Provide Convenience, but Value to DOD is Not Demonstrated," July 2005

GAO Report No. GAO-05-201, "Interagency Contracting Problems With DOD's and Interior's Orders to Support Military Operations," April 2005

GAO Report No. GAO-05-274, "Contract Management Opportunities to Improve Surveillance on Department of Defense Service Contracts," March 2005

#### DOD IG

DOD IG Report No. D-2009-064, "FY 2007 DoD Purchases Made Through the National Institutes of Health," March 24, 2009

DOD IG Report No. D-2009-043, "FY 2007 DoD Purchases Made Through the U.S. Department of Veterans Affairs," January 21, 2009

DOD IG Report No. D-2008-122, "Follow-up on DoD Purchases Made Through the Department of the Interior," August 18, 2008

DOD IG Report No. D-2008-082, "Summary Report on Potential Antideficiency Act Violations Resulting From DoD Purchases Made Through Non-DoD Agencies (FY 2004 Through FY 2007)," April 25, 2008

DOD IG Report No. D-2008-066, "FY 2006 and FY 2007 DoD Purchases Made Through the Department of the Interior," March 19, 2008

## **DRAFT REPORT**

DOD IG Report No. D-2008-050, "Report on FY 2006 DoD Purchases Made Through the Department of the Treasury," February 11, 2008

DOD IG Report No. D-2008-036, "FY 2006 DoD Purchases Made Through the U.S. Department of Veterans Affairs," December 20, 2007

DOD IG Report No. D-2008-022, "FY 2006 DoD Purchases Made Through the National Institutes of Health," November 15, 2007

DOD IG Report No. D-2007-044, "FY 2005 DoD Purchases Made Through the Department of the Interior," January 16, 2007

DOD IG Report No. D-2007-042, "Potential Antideficiency Act Violations on DoD Purchases Made Through Non-DoD Agencies," January 2, 2007

DOD IG Report No. D-2007-032, "Report on FY 2005 DoD Purchases Made Through the Department of the Treasury," December 8, 2006

DOD IG Report No. D-2007-023, "FY 2005 DoD Purchases Made Through the National Aeronautics and Space Administration," November 13, 2006

DOD IG Report No. D-2007-007, "FY 2005 DoD Purchases Made Through the General Services Administration," October 30, 2006

DOD IG Report No. D-2006-029, "Report of Potential Antideficiency Act Violations Identified During the Audit of the Acquisition of the Pacific Mobile Emergency Radio System," November 23, 2005

DOD IG Report No. D-2005-096, "DoD Purchases Through the General Services Administration," July 29, 2005

### **Army**

Army Report No. A-2007-0096-FFH, "Proper Use of Non-DOD Contracts, U.S. Army Medical Command," March 22, 2007

Army Report No. A-2004-0244-FFB, "Information Technology Agency Contract Management," May 25, 2004

### **DOE IG**

DOE IG Report No. DOE/IG-0829, "Work for Others Performed by the Department of Energy for the Department of Defense," October 2009

## **DRAFT REPORT**

### **VA IG**

VA Report No. 06-03540-24, "Audit of VA Purchases Made on Behalf of the Department of Defense," November 19, 2007

VA Report No. 04-03178-139, "Audit of VA Acquisitions for Other Government Agencies," May 5, 2006

**DRAFT REPORT**

# Appendix C. Work for Others Projects We Reviewed

<b>DOE Proposal No. DOD Funding Doc.</b>	<b>Funding Document Amount</b>	<b>DOD Requesting Activity</b>	<b>Purpose</b>
<b>Sandia National Laboratory</b>			
1) DOE Proposal 041031209-3 1) N61331081P00002	\$90,000.00	Naval Surface Warfare Center, Panama City Division, Panama City, Florida	Technical services required to update and revise Sandia National Laboratory-Intrusion Detection Report produced in 2006
2) DOE Proposal 059080812-0 2) F4ATA78231G004	210,300.00	HQ Air Force Civil Engineering Support Agency, Tyndall AFB, Florida	Dynamic Explosive Training Site (DETS) training course
3) DOE Proposal 063080731-0 3) N4175608GO18508-0	734,972.00	Navy Engineering Logistics Office, Arlington, Virginia	Services related to the development of human, social, and cultural behavior modeling toolkit
4) DOE Proposal 021060510 4) N0003008MP80033	2,144,000.00	Department of the Navy Strategic Systems Programs, Arlington, Virginia	Hardware and engineering services in support of the Navy Re-entry Program
<b>Y-12 National Security Complex</b>			
5) DOE Proposal 2276-Z151-08 5) IACRO 08-44091	\$102,000.00	Defense Threat Reduction Agency, Fort Belvoir, Virginia	Radiological Field Training Exercise
6) DOE Proposal 2276-Z042-06 6) IACRO 08-44281 7) IACRO 06-40991 8) IACRO 07-42431	630,000.00 239,000.00 1,161,000.00	Defense Threat Reduction Agency, Fort Belvoir, Virginia	Development and test of "Eagle Eyes," a nuclear technology to characterize exterior areas for traces of nuclear material
7) DOE Proposal 2276-Z081-07 9) IACRO 07-43131 10) IACRO 07-43121 11) IACRO 08-44081 12) IACRO 07-42481	93,258.00 69,116.00 800,000.00 25,000.00	Defense Threat Reduction Agency, Fort Belvoir, Virginia	Test and development of radiation detection equipment
8) DOE Proposal 2276-Z241-08 13) IACRO 08-45181	745,684.00	Defense Threat Reduction Agency, Fort Belvoir, Virginia	Smart Threads Integrated Radiological Sensor program that detects, intercepts, and defeats threats
<b>Lawrence Livermore National Laboratory</b>			
9) DOE Proposal L-11925 14) F4DEB18246G001	\$100,000.00	576 Flight Test Squadron Air Force Space Command, Vandenberg AFB, California	Services related to "Raft Scoring" in support of the Air Force 576th Flight Test Squadron Force Development Evaluation mission
10) DOE Proposal L-11374 15) N00014081P20005 16) N00014071P20080	925,000.00 475,000.00	Office of Naval Research, Attn: Code 822, Arlington, Virginia	Services related to Office of Naval Research Railgun Program
11) DOE Proposal L-11889 17) N00014081P20100	111,900.00	Office of Naval Research, Attn: Code 822, Arlington, Virginia	Services to support the ONR program: "The Impact of Alternative Fuels On Combustion Kinetics"
12) DOE Proposal L-11588 18) N00014081P20044 19) N00014071P20103	173,782.00 75,000.00	Office of Naval Research, Attn: Code 822, Arlington, Virginia	Major upgrade of Lagrange structural solver module in the Dynamic System Mechanics Advanced Simulation family of codes
13) DOE Proposal L-12162 20) F4FDAG8179G001 21) F4FDAG8179G002	221,823.30 150,000.00	659 Aeronautical Systems Squadron, Wright Patterson AFB, Ohio	Development and delivery of longwave hyperspectral channel for "SPIRITT"
14) DOE Proposal L-12098 22) MIPR7LO89TGAVI-00 23) MIPR8JO89CPS25-00	400,000.00 40,000.00	U.S. Army Space and Missile Defense Command/Army Forces Strategic Command, Huntsville, Alabama	Demonstration of Tactical Integrated Power System (TIPS) to integrate it with a high power directed energy device

DRAFT REPORT

# Appendix D. Inadequate DOD Review of Contractor Cost Estimates

NNSA Proposal No. and Description of WFO Project	Proposal Amount	DOD Requesting Activity	Issues
<b>Sandia National Laboratory</b>			
1) DOE Proposal 041031209-3 Technical services required to update and revise Sandia National Laboratories Intrusion Detection Report produced in 2006	\$90,000.00	Naval Surface Warfare Center, Panama City Division, Panama City, Florida	Navy proceeded with WFO project without first obtaining detailed contractor cost information.
2) DOE Proposal 063080731-0 Services related to the development of human, social, and cultural behavior modeling toolkit	1,814,098.00	Navy Engineering Logistics Office, Arlington, Virginia	Navy did not have detailed contractor cost information. Navy asked for additional detail but received only limited information.
3) DOE Proposal 021060510 Hardware and engineering services in support of the Navy Re-entry Program	2,144,000.00	Department of the Navy Strategic Systems Programs, Arlington, Virginia	Navy proceeded with WFO project without first obtaining detailed contractor cost information.
<b>Y-12 National Security Complex</b>			
4) DOE Proposal 2276-Z151-08 Radiological Field Training Exercise	\$102,000.00	Defense Threat Reduction Agency, Fort Belvoir, Virginia	DTRA proceeded with this WFO project without first obtaining detailed cost information.
5) DOE Proposal 2276-Z081-07 Radiation Detection, Testing, and Evaluation	2,552,590.00	Defense Threat Reduction Agency, Fort Belvoir, Virginia	Contractor cost information was not detailed; however, DTRA performed a detailed review of the cost information it received.
<b>Lawrence Livermore Laboratory</b>			
6) DOE Proposal L-11925 Services related to "Raft Scoring" in support of the Air Force 576th Flight Test Squadron FDE mission	\$100,000.00	576 Flight Test Squadron Air Force Space Command Vandenberg AFB, California	Air Force proceeded with WFO project without first obtaining detailed contractor cost information.
7) DOE Proposal L-11374 Services related to Office of Naval Research Railgun Program	2,465,976.00	Office of Naval Research, Attn: Code 822, Arlington, Virginia	Office of Naval Research proceeded with WFO project without first obtaining detailed contractor cost information.
8) DOE Proposal L-11889 Services to support the ONR program: "The Impact of Alternative Fuels On Combustion Kinetics"	311,900.00	Office of Naval Research, Attn: Code 822, Arlington, Virginia	Office of Naval Research proceeded with WFO project without first obtaining detailed contractor cost information.
9) DOE Proposal L-11588 Major upgrade of Lagrange structural solver module in the Dynamic System Mechanics Advanced Simulation family of codes	250,000.00	Office of Naval Research, Attn: Code 822, Arlington, Virginia	Office of Naval Research proceeded with WFO project without first obtaining detailed contractor cost information.
10) DOE Proposal L-12162 Development and delivery of longwave hyperspectral channel for "SPIRITT"	399,905.00	659 Aeronautical Systems Squadron, Wright Patterson AFB, Ohio	Air Force did not have detailed contractor cost information. Air Force stated that proposal, technical evaluation, price reasonableness documentation would be the responsibility of the DOE contracting activity.
11) DOE Proposal L-12098 Demonstration of Tactical Integrated Power System (TIPS) to integrate it with a high power directed energy device	1,000,000.00	U.S. Army Space and Missile Defense Command/Army Forces Strategic Command, Huntsville, Alabama	Army proceeded with WFO project without first obtaining detailed contractor cost information.

**DRAFT REPORT**

## Appendix E. MIPRs Lacked Specificity

<b>DOE Servicing Activity</b>	<b>DOD Requesting Activity</b>	<b>Issues</b>
<b>Sandia National Laboratory</b>		
DOE Proposal 059080812-0 1) F4ATA78231G004	Headquarters, Air Force Civil Engineering Support Agency, Tyndall Air Force Base, Florida	1) Funding document lacks specificity 1) No period of performance
DOE Proposal 063080731-0 2) N4175608GO18508-0	Navy Engineering Logistics Office, Arlington, Virginia	2) Funding document lacks specificity 2) No period of performance
DOE Proposal 021060510 3) N0003008MP80033	Department of the Navy Strategic Systems Programs, Arlington, Virginia	3) Funding document lacks specificity 3) No period of performance
DOE Proposal 041031209-3 4) N6133108IP00002	Naval Surface Warfare Center Panama City Division, Panama City, Florida	4) No period of performance
<b>Y-12 National Security Complex</b>		
DOE Proposal 2276-Z042-06 5) IACRO 08-44281 6) IACRO 06-40991 7) IACRO 07-42431	Defense Threat Reduction Agency, Fort Belvoir, Virginia	5) Funding document lacks specificity 6) Funding document lacks specificity 6) No period of performance 7) Funding document lacks specificity
DOE Proposal 2276-Z081-07 8) IACRO 07-43131 9) IACRO 07-43121	Defense Threat Reduction Agency, Fort Belvoir, Virginia	8) No period of performance 9) No period of performance
<b>Lawrence Livermore Laboratory</b>		
DOE Proposal L-11374 10) N00014081P20005 11) N00014071P20080	Office of Naval Research, Attn: Code 822, Arlington, Virginia	10) Funding document lacks specificity 10) No period of performance 11) Funding document lacks specificity 11) No period of performance
DOE Proposal L-11889 12) N00014081P20100	Office of Naval Research, Attn: Code 822, Arlington, Virginia	12) Funding document lacks specificity 12) No period of performance
DOE Proposal L-11588 13) N00014081P20044 14) N00014071P20103	Office of Naval Research, Attn: Code 822, Arlington, Virginia	13) Funding document lacks specificity 13) No period of performance 14) Funding document lacks specificity 14) No period of performance
DOE Proposal L-12098 15) MIPR7LO89TGAV1-00 16) MIPR8JO89CPS25-00	U.S. Army Space and Missile Defense Command/Army Forces Strategic Command, Huntsville, Alabama	15) No period of performance 16) No period of performance
DOE Proposal L-12162 17) F4FDAG8179G002 18) F4FDAG8179G001	659 Aeronautical Systems Squadron, Wright Patterson Air Force Base, Ohio	17) No period of performance 18) No period of performance
DOE Proposal L-11925 19) F4DEB18246G001	576 Flight Test Squadron Air Force Space Command, Vandenberg Air Force Base, California	19) No period of performance

DRAFT REPORT

# Appendix F. Potential Funding Problems

DOD Funding Document No.	Funding Document Amount	Funds Expiration Date	Invoice No.	Invoice Date	Invoice Amount
<b>Sandia National Laboratory</b>					
1) F4ATA78231G004	\$210,300.00	9/30/2008	20092209	11/2008	\$18,919.25
2)		"	20093097	12/2008	5,587.90
3)		"	20093934	1/2009	36,024.04
4)		"	20094923	2/2009	32,956.39
5)		"	20095807	3/2009	6,277.95
6)		"	20096731	4/2009	419.83
7)		"	20097677	5/2009	19,837.73
8)		"	20098619	6/2009	12,919.34
9)		"	20099780	7/2009	16,135.41
10)		"	20100792	8/2009	45,750.08
11)		"	20101973	9/2009	1,718.98
12)		"	20103198	9/2009	10.13
13) N4175608G018508-0	734,972	9/30/2009	N/A*	N/A	N/A
<b>Y-12 National Security Complex</b>					
14) IACRO 08-4518I	\$745,684.00	9/30/2009	90076981	10/2009	\$114,879.26
15) IACRO 07-4248I	25,000.00	9/30/2008	90074273	10/2008	183.66
16)		"	90074519	11/2008	91.83
17)		"	90074723	12/2008	367.32
18)		"	90074897	1/2009	3,718.56
19) IACRO 07-4312I	69,116.00	9/30/2008	90074274	10/2008	2,098.34
20)		"	90074520	11/2008	154.94
<b>Lawrence Livermore National Laboratory</b>					
21) F4DEB18246G001	\$100,000.00	9/30/2008	2009503611	2/2009	\$43,244.97
22)		"	2009504333	3/2009	1,877.15
23)		"	2009504947	4/2009	51,973.55
24)		"	2009506063	5/2009	947.84
25) F4FDAG8179G002	150,000.00	9/30/2009	2010500813	10/2009	852.09
26)		"	2010501541	11/2009	2,418.58
27) F4FDAG8179G001	221,823.30	9/30/2008	2009501002	10/2008	73,224.70
28)		"	2009501637	11/2008	26,459.83
29)		"	2009502241	12/2008	47,865.36
30)		"	2009502871	1/2009	24,679.59
31)		"	2009503626	2/2009	49,593.82
<b>Total</b>					<b>\$641,188.42</b>

\* We did not review invoices. Instead, we determined the services were nonseverable and should have been fully funded up front.

DRAFT REPORT

# Appendix G. Improving the Management and Use of Interagency Acquisitions



OFFICE OF FEDERAL  
PROCUREMENT POLICY

EXECUTIVE OFFICE OF THE PRESIDENT  
OFFICE OF MANAGEMENT AND BUDGET  
WASHINGTON, D.C. 20503

June 6, 2008

MEMORANDUM FOR CHIEF ACQUISITION OFFICERS  
SENIOR PROCUREMENT EXECUTIVES

FROM:

Paul A. Denett  
Administrator

SUBJECT:

Improving the Management and Use of Interagency Acquisitions

Interagency acquisitions offer important benefits to federal agencies, including economies and efficiencies and the ability to leverage resources. The attached guidance is intended to help agencies achieve the greatest value possible from interagency acquisitions.

Effective management and use of interagency acquisitions is a shared responsibility, especially for assisted acquisitions. Lack of clear lines of responsibility between agencies with requirements (requesting agencies) and the agencies which provide acquisition support and award contracts on their behalf (servicing agencies) has contributed to inadequate planning, inconsistent use of competition, weak contract management, and concerns regarding financial controls.

This document provides guidance to help agencies (1) make sound business decisions to support the use of interagency acquisitions and (2) strengthen the management of assisted acquisitions. Particular emphasis is placed on helping requesting agencies and servicing agencies manage their shared fiduciary responsibilities in assisted acquisitions. The guidance includes a checklist of roles for each responsibility in the acquisition lifecycle and a model interagency agreement to reinforce sound contracting and fiscal practices. The guidance reflects comments provided by Chief Acquisition Officers, Senior Procurement Executives, and Chief Financial Officers. The document was also shared with other interested stakeholders, including the Chief Information Officers and the Government Accountability Office (GAO), and reflects comments received from those parties as well.

Beginning on October 1, 2008, and thereafter, agencies shall ensure that decisions to use interagency acquisitions are supported by best interest determinations, as described in the attached guidance. Agencies shall further ensure that new interagency agreements for assisted acquisitions entered on or after November 3, 2008, contain the elements enumerated in Appendix 2 or follow the model agreement in Appendix 3. Agencies shall use the checklist at Appendix 1 to facilitate the clear identification of roles and responsibilities. Agencies shall also consider modifying existing long-term interagency agreements for assisted acquisitions in accordance with this guidance, as appropriate and practicable.

DRAFT REPORT FOR OFFICIAL USE ONLY

## DRAFT REPORT

2 |

Providing for the sound management and use of interagency acquisitions is a key step for realizing the intended efficiencies of interagency contracts. Improving the governance structure for creating and renewing these vehicles is equally important, especially for multi-agency contracts. We have made important strides to leverage the government's vast buying power under the Federal Strategic Sourcing Initiative (FSSI) and to identify suitable executive agents that can manage government-wide acquisition contracts (GWACs) on behalf of customers across government. We must build on these efforts in order to maximize the contribution of interagency contracts to mission success. I intend to work with members of the Chief Acquisition Officers Council, including its Strategic Sourcing Working Group, to design a business case review process similar to that currently used for the designation of executive agents for GWACs and to define the structure required to support such a process.

Please have your acquisition officials work with program managers, contracting officers, technical representatives, finance officers, information technology officers, legal staff and others involved in your agency's interagency acquisitions to ensure the effective implementation of this guidance and compliance with its requirements. Questions may be referred to [REDACTED]

Thank you for your attention to this important subject.

Attachment

cc: Chief Financial Officers  
Chief Information Officers  
Performance Improvement Officers  
Danny Werfel, Acting Controller, Office of Federal Financial Management

DRAFT REPORT

# Appendix H. DOE FYs 2009 and 2010 Section 801 Certifications



Department of Energy  
Washington, DC 20586  
October 7, 2008

Shay D. Assad  
Director, Defense Procurement  
Acquisition Policy, and  
Strategic Sourcing  
Acquisition, Technology and Logistics  
Office of the Under Secretary of Defense  
U. S. Department of Defense  
3000 Defense Pentagon  
Washington, DC 20301-3000

Dear Mr. Assad:

I, Dr. Francis C. Spampinato, Jr., as the Chief Acquisition Officer of the Department of Energy, certify that, to the best of my knowledge all reimbursable work conducted on behalf of the Department of Defense (DOD) by this agency in Fiscal Year 2009 will comply with the Federal Acquisition Regulation and the Department of Energy Acquisition Regulation. DOE acknowledges that DOD may determine that additional requirements in the performance of such work are necessary to meet the requirements of Section 801 of the National Defense Authorization Act for Fiscal Year 2008. While DOE does not believe Section 801 applies to reimbursable activities performed by DOE and its contractors, we are committed to reaching agreement on additional work requirements prior to the performance of any work. DOD shall reimburse costs associated with meeting requirements beyond those required in the contract.

If you require any additional information, please contact [REDACTED]

Sincerely,

Dr. Francis C. Spampinato, Jr.  
Chief Acquisition Officer

DRAFT REPORT



Department of Energy

Washington, DC 20585

October 8, 2009

Shay J. Assad  
Director, Defense Procurement  
Acquisition Policy, and  
Strategic Sourcing  
Acquisition, Technology and Logistics  
Office of the Under Secretary of Defense  
U.S. Department of Defense  
3000 Defense Pentagon  
Washington, DC 20301-3000

Dear Mr. Assad:

As the Senior Procurement Executives for the Department of Energy (DOE) and National Nuclear Security Administration, we are providing certification that, to the best of our knowledge, all reimbursable work conducted on behalf of the Department of Defense (DOD) by this Department's contractors in Fiscal Year 2010 will comply with the Federal Acquisition Regulation and the Department of Energy Acquisition Regulation. DOE acknowledges that DOD may determine that additional requirements in the performance of such work are necessary to meet the requirements of Section 801 of the National Defense Authorization Act for Fiscal Year 2008. While DOE does not believe Section 801 applies to reimbursable activities performed by DOE and its contractors, we are committed to reaching agreement on additional work requirements prior to the performance of any work, DOD shall reimburse costs associated with meeting any DOD requirements beyond those required in the contract.

If you require any additional information, please contact [REDACTED]

Sincerely,

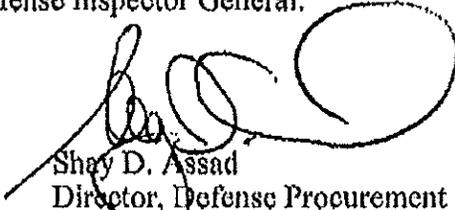
Edward R. Simpson  
Senior Procurement Executive  
Office of Procurement and  
Assistance Management

David O. Boyd  
Senior Procurement Executive  
National Nuclear Security  
Administration

## Appendix I. Section 801 Waiver

**Determination in Accordance with Section 801 of the National Defense Authorization Act for Fiscal Year 2008 (NDAA 2008) by the Under Secretary of Defense for Acquisition, Technology, and Logistics [USD(AT&L)] as Delegated to the Director, Defense Procurement and Acquisition Policy, to Continue to Procure Property and Services Through the Department of Energy (DoE) in support of Department of Defense (DoD) components.**

- Public Law 110-181, section 801, "Internal Controls for Procurements on Behalf of the Department of Defense by Certain Non-Defense Agencies," at subsection (b)(1) allows an acquisition official of the Department of Defense to place an order, make a purchase, or otherwise procure property or services for the Department of Defense in excess of the simplified acquisition threshold (typically \$100,000) through a non-defense agency only if the head of the non-defense agency has certified that the agency will comply with defense procurement requirements for the fiscal year.
- The Department of Defense Inspector General (DoDIG) recently expressed concerns regarding the Department of Energy (DoE) procedures when contracting on behalf of the DoD. DoE provided information in response to DoDIG concerns and is cooperating with the on-going audit. Although DoE has provided DoD a certification for FY 2010, in accordance with the requirements of section 801 (b)(1) of the NDAA 2008, it is my determination that the certification is not fully compliant with statutory requirements. Notwithstanding, the Department needs to continue to procure supplies and services through DoE. Therefore, pending a final written audit recommendation from the DoD Inspector General, it is my determination that it is necessary and in the interest of the DoD to continue to procure property and services through the DoE. I authorize all DoD components to utilize the assisted acquisition services of the DoE for the procurement of essential mission related requirements.
- This determination covers DoD requirements in fiscal year 2010 to be placed through March 31, 2010 up to a total amount of \$900 million. Each component utilizing the assisted acquisition services of DoE is directed to maintain sufficient tracking records toward the authorized ceiling and to provide monthly obligation reports to the Deputy Director, Defense Procurement and Acquisition Policy, Contract Policy and International Contracting. In addition, each component is required to ensure that all affected Department of Defense contract files are documented and available for review or audit by the Department of Defense Inspector General.

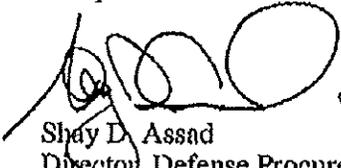


Shay D. Assad  
Director, Defense Procurement  
and Acquisition Policy

## DRAFT REPORT

**Amendment to Determination dated November 23, 2009, in Accordance with Section 801 of the National Defense Authorization Act for Fiscal Year 2008 (NDAA 2008) by the Under Secretary of Defense for Acquisition, Technology, and Logistics [USD(AT&L)] as Delegated to the Director, Defense Procurement and Acquisition Policy, to Continue to Procure Property and Services Through the Department of Energy (DoE) in support of Department of Defense (DoD) components.**

- Public Law 110-181, section 801, "Internal Controls for Procurements on Behalf of the Department of Defense by Certain Non-Defense Agencies," at subsection (b)(1) allows an acquisition official of the Department of Defense to place an order, make a purchase, or otherwise procure property or services for the Department of Defense in excess of the simplified acquisition threshold (typically \$100,000) through a non-defense agency only if the head of the non-defense agency has certified that the agency will comply with defense procurement requirements for the fiscal year.
- The Department of Defense Inspector General (DoDIG) recently provided me an interim verbal briefing on their findings of their audit conducted at multiple DoE sites. Preliminary findings provided by the DoDIG do not warrant limiting DoD's use of DoE support. Based on the requests of the components the Department needs to continue to procure supplies and services through DoE. Therefore, pending the final written audit recommendation from the DoD Inspector General, it is my determination that it is necessary and in the interest of the DoD to continue to procure property and services through the DoE. I authorize all DoD Components to utilize the assisted acquisition services and or direct support of the DoE for the procurement of essential mission related requirements only.
- This determination covers DoD requirements in fiscal year 2010 to be placed through September 30, 2010, up to a total amount of \$2.2B. Each component utilizing the assisted acquisition services or direct support of DoE is directed to maintain sufficient tracking records of amounts provided to DoE and provide them on a monthly basis to the Deputy Director, Defense Procurement and Acquisition Policy, Contract Policy and International Contracting. In addition, each component is required to ensure that all affected Department of Defense contract files are documented and available for review or audit by the Department of Defense Inspector General.

 3/30/2010  
Shay D. Assad  
Director, Defense Procurement  
and Acquisition Policy

**DRAFT REPORT**

DRAFT OF A  
PROPOSED REPORT

DEPT. OF DEFENSE  
**HOTLINE**

FOR REPORTING  
FRAUD, WASTE, AND ABUSE

800/424-9098



OR WRITE:

DEFENSE HOTLINE  
THE PENTAGON  
WASHINGTON, D.C.  
20301-1900

IDENTITIES OF WRITERS & CALLERS  
FULLY PROTECTED.

DRAFT OF A  
PROPOSED REPORT

FOR OFFICIAL USE ONLY