



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

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# SPECIAL INQUIRY

Alleged Attempts by Sandia National  
Laboratories to Influence Congress and  
Federal Officials on a Contract Extension

DOE/IG-0927

November 2014

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**Department of Energy**  
Washington, DC 20585

November 7, 2014

MEMORANDUM FOR THE SECRETARY

FROM:

  
Gregory H. Friedman  
Inspector General

SUBJECT:

INFORMATION: Special Inquiry on "Alleged Attempts by Sandia National Laboratories to Influence Congress and Federal Officials on a Contract Extension"

BACKGROUND

The Department of Energy's Sandia National Laboratories (SNL) is a Government-owned, contractor-operated laboratory that is part of the National Nuclear Security Administration's (NNSA) nuclear weapons complex. In 1993, the Management and Operating (M&O) contract was competitively awarded to Sandia Corporation, a wholly owned subsidiary of Martin Marietta. In 1995, Martin Marietta and Lockheed Corporation merged to form the Lockheed Martin Corporation (LMC). In 1998, the Department noncompetitively extended the SNL contract. The contract was set to expire on September 30, 2012, but it was extended for 12 months with two 3-month option periods, which extended the contract for an additional 6 months beyond the September 30, 2013 expiration date. On March 17, 2014, the Department announced that it was moving forward with a noncompetitive extension for a period of 2 years with an option for a third year while NNSA prepared for a full and open competition.

Prompted by an Office of Inspector General inspection report on *Concerns with Consulting Contract Administration at Various Department Sites* (DOE/IG-0889, June 2013), the NNSA's Sandia Field Office conducted a preliminary review of documentation from 2009 through 2011 regarding consultant activities between Heather Wilson, LLC (the principal of which is a former member of the U.S. House of Representatives) and SNL. On March 27, 2013, the Sandia Field Office alleged that SNL impermissibly attempted to influence an extension to the Sandia Corporation contract and engaged Ms. Wilson in these activities.

Given the seriousness of this allegation, the Office of Inspector General initiated a Special Inquiry into the facts and circumstances surrounding the allegation.

RESULTS OF SPECIAL INQUIRY

Our inspection substantiated the allegation. We found that SNL used Federal contract funds to engage in activities that were intended to influence the extension of Sandia Corporation's contract with the Department—a contract then valued at about \$2.4 billion per year. In particular, SNL developed and executed a plan that involved meeting with and attempting to influence Federal and Congressional officials to provide assistance in obtaining a noncompetitive extension of its contract with the Department. We determined that these activities appeared to

have violated United States Code (U.S.C.) and Federal Acquisition Regulation (FAR) provisions prohibiting the use of Federal funds to influence members of Congress or Federal officials with regard to an extension of a contract. We also concluded that such activities were impermissible under a provision of the Sandia Corporation M&O contract, which prohibits the contractor from making interface with any Federal, state, municipal or local legislators, or legislative personnel for the purpose of obtaining or retaining business for Sandia Corporation.

#### Prohibitions Related to Influencing and Attempts to Influence

Title 31 U.S.C. § 1352, *Limitation on use of appropriated funds to influence certain Federal contracting and financial transactions*, stated in pertinent part, (a)(1) that none of the funds appropriated may be expended to the recipient of a Federal contract to pay any person for influencing or attempting to influence an officer or employee of any agency or a member of Congress in connection with...the extension of any Federal contract. In addition, FAR 31.205-22, *Lobbying and political activity costs*, states that "costs associated with the following activities are unallowable: Section (6)—costs incurred in attempting to improperly influence, either directly or indirectly, an employee or officer of the Executive Branch of the Federal government to give consideration to or act regarding a regulatory or contract matter." Further, Sandia Corporation SF 6432-CO, *Standard Terms and Conditions for Consultants and Other Professional Provider Services*, contains a clause on *Prohibited Activities* that states, in part, that the contractor shall not have any interface with any present or potential Federal, state, municipal, or local government customers or commercial customers, or Federal, state, municipal or local legislators or legislative personnel for the purpose of obtaining or retaining business for Sandia Corporation.

#### Strategy to Obtain a Contract Extension

In 2009, SNL formed an in-house Contract Strategy Team and utilized consultants in the development of a plan to secure a noncompetitive extension of the Sandia Corporation contract with the Department. Available documentation confirmed that an essential element of this plan was to influence members of Congress and Federal officials to prevent the need for a competitive process as a means to achieve the desired contract extension. In our view, these actions were in conflict with applicable statutory and regulatory requirements. As best we could determine, these efforts were funded through the contract instrument, thus the costs were borne by the U.S. taxpayers.

As early as March 2009, SNL began formulating a contract extension strategy. In an *M&O Contract Strategy* presentation dated March 16, 2009, the effort was to "approach the new administration with a defined capture strategy to extend the LMC ownership of Sandia Corporation at the conclusion of the current contract term for an additional 7 years with award term potential of an additional 12 years." The strategy also noted, "Failing success...then support LMC to win a competition including attempting to influence the evaluation criteria in the RFP [Request for Proposal]." The stated challenge of the strategy was "over the next 12 months campaign aggressively (Administration and Congress) to convince [the then Secretary of Energy] Secretary Chu to extend the M&O contract and retain the LM [Lockheed Martin Corporation]/Sandia team."

SNL utilized three consultants to provide advice and guidance in the development of the contract strategy. One consultant's advice suggested that LMC should aggressively lobby Congress and

influence chairs and members of key committees (but keep a low profile); meet with the New Mexico Congressional delegation who "should let Chu know (by direct contact) that [the delegation] expects a contract extension and will follow the matter with personal interest"; have Sandia vice presidents influence Chu's key advisors; and contact a former U.S. Senator, a former NNSA Administrator and a former Governor of New Mexico.

Finally, SNL developed a "Contact Plan" that listed individuals who had "influence on [the] decision," such as political officials and staffers, and those individuals who were "required to make extend/compete decision," such as Department and NNSA officials. According to an SNL official, the next step was to "map contacts" and develop a contact sequence and schedule, including SNL and LMC actions.

In our view, the plan developed by the SNL Contract Strategy Team represented an apparent violation of 31 U.S.C. § 1352, *Limitation on use of appropriated funds to influence certain Federal contracting and financial transactions*. In this case, appropriated funds were used to pay the recipients of a Federal contract, both SNL employees and consultants, salaries and fees for developing a plan intended to result in influencing or attempting to influence an officer or employee of the Department or a member of Congress in connection with the extension of the SNL contract.

#### Execution of Strategy to Obtain a Contract Extension

Our review established that SNL actually took action to implement portions of the Contract Strategy Team's plan. Specifically, SNL documentation revealed that after the development of the Contact Plan, the Laboratory held numerous meetings/strategy sessions, prepared documentation, and participated in e-mail discussions that indicated a desire to influence Federal officials as well as members of Congress in the decision about whether to competitively award the new Sandia Corporation contract. These discussions indicated that SNL employees, funded directly or indirectly with Federal resources, were actively engaged in implementing the plan of the Contract Strategy Team and closely coordinated with LMC officials during this effort.

For example, SNL employees who were funded under the Sandia Corporation M&O contract were actively engaged in the implementation of the plan to influence members of Congress and Federal officials. In an e-mail dated July 6, 2009, a senior member of the SNL Contract Strategy Team expressed concern that SNL's Contract Strategy was stalled and that the Laboratory needed the support of the then NNSA Administrator to advise the then Secretary of Energy on the benefit of extending the contract noncompetitively. An SNL consultant suggested that SNL start working the "edges," like key members of Congress, that SNL's message "to these people" should be that competition was not in the best interest of the Government, and that SNL should ask them to call then Secretary Chu and tell him that a re-compete at SNL was not needed.

The evidence indicated that SNL and LMC officials had conversations with members of Congress and Federal officials to convince the Department, NNSA and Congress of the merits of contract extension without competition. Documentation from one meeting indicated that a senior SNL official met with a member of the New Mexico Congressional delegation and engaged in discussions on the merits of a contract extension without competition; conducting an aggressive campaign to avoid an RFP process; and informing the Secretary of Energy that the nation would be better served by preserving the SNL/LMC team. Senior SNL and LMC officials also met

with the NNSA Administrator. The first meeting took place on September 3, 2009. According to SNL documentation, this meeting was "to initiate discussions on the future of the Lockheed Martin/Sandia relationship and their desire to retain the same team for the future M&O contract that has performed so successfully over the past 16 years." According to notes from the SNL Contract Strategy Team, the NNSA Administrator had "easy access to Secretary Chu and Dan Poneman [Deputy Secretary of Energy] in the DOE front office and . . . has no problem interfacing with Congress and committees on the matter of a Sandia contract extension." The evidence also indicated that the successor to laboratory leaders initially involved with the Contract Strategy Team continued to participate in the implementation of the Contract Strategy.

Finally, SNL employees who were funded under the Sandia Corporation M&O contract were actively engaged with LMC in the implementation of the plan to influence members of Congress and Federal officials. Documentation gathered during our review indicated that SNL officials met with the Lockheed Martin Electronic Systems management and the Lockheed Martin Washington Operations team to engage their support for SNL's strategy. Documentation also indicated that SNL officials communicated with LMC on influencing the Department's decision on a contract extension, stating "we believe it is best for LM, Sandia and the nation to work together towards influencing DOE to retain this team." In addition, documentation showed that a senior member of the Contract Strategy Team was informed that an LMC leader had sent a memorandum to then Secretary Chu stating that LMC wanted to have the contract extended with the same terms and conditions. A member of the Contract Strategy Team responded by stating that, "if the answer [from the Secretary] was not in the affirmative, then Lockheed Martin/Sandia should seriously consider initiating some heavy Congressional support."

We found that actions taken by Sandia officials and their consultants constituted implementation of the plan developed by the SNL Contract Strategy Team. These actions represented the culmination of the plan to influence members of Congress and Federal officials, an apparent violation of 31 U.S.C. § 1352, *Limitation on use of appropriated funds to influence certain Federal contracting and financial transactions*, and FAR 31.205-22, *Lobbying and political activity costs*. In this case, appropriated funds were used to pay the recipients of a Federal contract (SNL employees) salaries for influencing or attempting to influence an officer or employee of the Department or a member of Congress in connection with the extension of the SNL contract.

#### Possible Influence of Congress Using Written Matter

We also noted that, in addition to the appearance of attempts to influence members of Congress and Federal officials with regard to a contract extension, SNL provided the New Mexico Congressional Delegation with information that raised a concern about lobbying. Specifically, each year the New Mexico Congressional Delegation requested that SNL provide them with information on ongoing and future national security and science research. Included in this package was a "Next Steps" or "What Could Congress Do" section, which sometimes included funding requests or expressed an opinion on a Congressional matter. In 2009, a Department Federal official expressed concern that such action might be construed as lobbying. The official believed that this information might unduly influence Congress in its decisionmaking, and therefore violated prohibitions against lobbying with appropriated moneys. However, SNL disregarded these concerns and continued to include suggestions to Congress.

### Contributing Factors and Path Forward

Clearly, SNL officials were committed to the notion that the SNL/LMC relationship should continue into the future and that this should be accomplished without the benefit of competition. This appeared to be the underlying rationale for the actions identified in this report. SNL, however, rejected this conclusion. SNL took the position that FAR 35.017, *Federally Funded Research and Development Centers*, allowed SNL to undertake these activities in order to be prepared to demonstrate to Department/NNSA that SNL was fulfilling the Department's needs. SNL indicated that these were typical activities for any contractor intent on continuing a relationship with its sponsor, especially a long-term relationship, and that SNL was preparing to demonstrate that it deserved a full 5-year extension as permitted by the FAR. Also, SNL indicated that, in accordance with prime contract clause I-8, FAR 52.203-12, *Limitations on Payments to Influence Certain Federal Transactions*, Subsection C, and prior to a formal solicitation for competition, SNL prepared information and met with NNSA personnel because SNL felt it necessary for the Department and NNSA to make an informed decision on a contract extension. SNL argued that its actions to obtain a contract extension were based on "the merits of the matter," and that SNL costs associated with such activities were allowable.

In contrast, we find that the position and actions taken by SNL to develop and execute the contract extension plan to be highly problematic. Given the specific prohibitions against such activity, we believe that the use of Federal funds for the development of a plan to influence members of Congress and Federal officials to, in essence, prevent competition was inexplicable and unjustified. SNL was cognizant of problems with using Federal funds for similar purposes. In fact, the documentation confirms that Sandia's own Legal Counsel recognized in 2004 that as a Federally Funded Research and Development Center SNL was required to operate with objectivity and full disclosure to the sponsoring agency. When considering the question of whether a cost would be allowable when SNL assisted LMC in matters of competition, the Legal Counsel warned that, "Neither Sandia nor NNSA could tolerate even the suspicion that Sandia was assisting in the competition at prime contract expense." SNL may have felt empowered to use Federal funds for such purposes because it had participated in such activities in the past. Notably, we located an e-mail dated May 20, 2010, in which an SNL official wrote, "In terms of precedent, we used operating costs in the same way in securing the extensions in [1998] and 2003." This official also stated that, "In 2003 there was a Sandia team formed to secure the extension and we worked closely with LMC."

We recognize that LMC, as a for-profit entity, has a corporate interest in the future of the SNL contract. However, the use of Federal funds to advance that interest through actions designed to encourage a noncompetitive contract extension was, in our view, prohibited by Sandia Corporation's contract and Federal law and regulations.

We made several recommendations designed to assist management in preventing any future use of Federal funds to influence members of Congress and Federal officials with regard to Federal contracting actions. Specifically:

1. Develop policy guidance on the type of information a Laboratory can provide under FAR 52.203-12, *Limitation on Payments to Influence Certain Federal Transactions*, and FAR 31.205-22, *Lobbying and political activity costs*;

2. Determine whether a violation of Sandia Corporation SF 6432-CO, *Standard Terms and Conditions for Consultants and Other Professional Provider Services*, occurred, and take appropriate steps to ensure SNL contractors do not interface with any present or potential Federal, state, municipal, or local government customers or commercial customers, or Federal, state, municipal, or local legislators or legislative personnel for the purpose of obtaining or retaining business for Sandia Corporation;
3. Determine the allowability of salaries paid to SNL employees who participated in the activities of the SNL Contract Strategy Team, and recover any costs determined to be unallowable;
4. Determine the allowability of fees paid to consultants who participated in the activities of the SNL Contract Strategy Team, and recover any costs determined to be unallowable; and
5. Determine whether adjustments to previously awarded performance fees are appropriate to address the administration and management issues we observed relative to the activities of the SNL Contract Strategy Team.

#### MANAGEMENT REACTION

Management concurred with the report's findings and identified planned actions to address our recommendations. We consider management's comments responsive to the report's recommendations.

Management's comments are included in the attachment.

Attachment

cc: Deputy Secretary  
Under Secretary for Nuclear Security  
Chief of Staff

## MANAGEMENT COMMENTS



**Department of Energy**  
Under Secretary for Nuclear Security  
Administrator, National Nuclear Security Administration  
Washington, DC 20585



October 14, 2014

MEMORANDUM FOR GREGORY H. FRIEDMAN  
INSPECTOR GENERAL

FROM: FRANK G. KLOTZ *FK* 10/14/14

SUBJECT: Response to the Office of Inspector General Draft Report Titled  
*"Alleged Attempts by Sandia National Laboratories to Influence  
Congress and Federal Officials on a Contract Extension"*  
(Project No. S13IS011 / IDRMS No. 2014-02033)

Thank you for the opportunity to review and comment on the subject draft report. The National Nuclear Security Administration (NNSA) appreciates the Office of Inspector General's (OIG) efforts in conducting this independent inquiry of the concerns raised by the Sandia Field Office. We have reviewed the report and agree with its finding and recommendations.

As you know, NNSA was made aware of a related issue from a previous OIG report. Accordingly, the Sandia Field Office conducted a review of fees paid to a consultant named in this report and determined them to be unallowable under the contract. As a result, Sandia National Laboratories (SNL) reimbursed NNSA \$226,378 in April 2013. Additionally, a team of contracting, legal, and financial experts has been identified to conduct a review of salaries paid to SNL employees and fees paid by SNL to other consultants who participated in the activities of the SNL Contract Strategy Team. This group will determine the extent of unallowable costs, and NNSA will recover additional costs as appropriate. Further, once the evaluations are complete, NNSA will determine if any adjustment to performance fees is warranted based on the administration and management issues addressed in this report relative to the activities of the Contract Strategy Team.

We take this issue seriously and are committed to implementing corrective actions and taking preventive measures to ensure this does not recur. The attachment to this memorandum provides the specific planned actions and timelines for addressing each of the OIG's recommendations. We appreciate the auditors' efforts in independently evaluating the issues raised by NNSA. If you have any questions regarding this response, please contact Dean Childs, Director, Audit Coordination and Internal Affairs, at (301) 903-1341.

Attachment





## Attachment

Special Inquiry Report on Alleged Attempts by Sandia National Laboratories to Influence Congress and Federal Officials on a Contract Extension

The OIG submitted the following recommendations to the National Nuclear Security Administration (NNSA):

**Recommendation 1:** Develop policy guidance on the type of information a Laboratory can provide under FAR 52-203-12, *Limitation on Payments to Influence Certain Federal Transactions*, and FAR 31.205-22, *Lobbying and political activity costs*.

**Management Response: Concur**

NNSA's Senior Procurement Executive will develop guidance to clarify the regulations set forth in FAR 52-203-12, *Limitation on Payment to Influence Certain Federal Transaction* and FAR 31.205-22, *Lobby and political activity cost*. The estimated completion date for this action is January 15, 2015.

**Recommendation 2:** Determine if a violation of Sandia Corporation SF 6432-CO, *Standard Terms and Conditions for Consultants and Other Professional Provider Services*, occurred and take appropriate steps to ensure SNL contractors do not interface with any present or potential Federal, state, municipal, or local government customers or commercial customers, or Federal, state, municipal or local legislators or legislative personnel for the purpose of obtaining or retaining business for Sandia Corporation.

**Management Response: Concur**

The Head of the Contracting Activity (HCA) along with the Sandia Field Office will conduct a review to determine if a violation of Sandia Corporation SF6432-CO, *Standard Terms and Conditions for Consultants and Other Professional Provider Service*, occurred and will take appropriate steps to ensure SNL contractors do not interface with any present or potential Federal, state, municipal, or local government customers or commercial customers, or Federal, state, municipal or local legislators or legislative personnel for the purpose of obtaining or retaining business for Sandia Corporation. The estimated completion date for this action is February 10, 2015.

**Recommendation 3:** Determine the allowability of salaries paid to SNL employees who participated in the activities of the SNL Contract Strategy Team, and recover any costs determined to be unallowable.

**Management Response: Concur**

Representatives of the HCA, the Sandia Field Office, and the Financial Review and Performance Assessment Division have been identified to conduct a review to determine the allowability of

salaries paid to SNL employees who participated in the activities of the SNL Contract Strategy Team. If costs are determined to be unallowable under the SNL contract, NNSA will recover such costs. The estimated completion date for this action is February 10, 2015.

**Recommendation 4:** Determine the allowability of fees paid to consultants who participated in the activities of the SNL Contract Strategy, and recover any costs determined to be unallowable.

**Management Response: Concur**

The Sandia Field Office conducted a review of fees paid to a consultant named in this report and, as a result, SNL reimbursed NNSA \$226,378 in April 2013. Representatives of the HCA, the Sandia Field Office, and the Financial Review and Performance Assessment Division have been identified to conduct a review to determine the allowability of fees paid by SNL to other consultants who participated in the activities of the SNL Contract Strategy Team. If costs are determined to be unallowable under the SNL contract, NNSA will recover such costs. The estimated completion date for this action is February 10, 2015.

**Recommendation 5:** Determine whether adjustments to previously awarded performance fees are appropriate to address the administration and management issues we observed relative to the activities of the Contract Strategy Team.

**Management Response: Concur**

The HCA along with the Sandia Field Office will evaluate the outcome of the reviews conducted to determine allowability of salaries and/or fees paid by SNL for activities of the SNL Contract Strategy Team to determine if any adjustment to performance fees is warranted based on the administration and management issues addressed in this report relative to the activities of the Contract Strategy Team. The NNSA will determine whether it is in its best interest to reduce current-year performance fees or adjust previously awarded performance fees per the OIG recommendation. The estimated completion date for this action is March 2, 2015.