



U.S. Department of Energy
Office of Inspector General
Office of Inspections and Special Inquiries

Inspection Report

Acquisition of Protective Force Weapons by Sandia National Laboratory, New Mexico

DOE/IG-0715

January 2006



Department of Energy

Washington, DC 20585

January 12, 2006

MEMORANDUM FOR THE SECRETARY

FROM:  Gregory H. Friedman
Inspector General

SUBJECT: INFORMATION: Inspection Report on “Acquisition of Protective Force Weapons by Sandia National Laboratory, New Mexico”

BACKGROUND

Sandia National Laboratory, New Mexico, which is located on Kirtland Air Force Base, applies advanced science and engineering to help the U.S. and its allies detect, repel, defeat, or mitigate national security threats. Sandia Laboratory is operated for the Department of Energy by Sandia Corporation, a subsidiary of Lockheed Martin Corporation.

In 2004, Sandia Laboratory’s protective force used a sole source procurement to order 20 Milkor MGL Mk-1 6-shot 40mm grenade launchers, associated special tool kits, and initial spares at a total cost of \$102,600. The launchers were intended to replace the protective force’s existing single-shot grenade launchers. Milkor Marketing (Pty) Ltd., the manufacturer of the new grenade launchers, is headquartered in the Republic of South Africa. In November 2004, U.S. Customs and Border Protection (Customs) detained and eventually seized the 20 Milkor grenade launchers, special tool kits, and initial spares at a port of entry in Los Angeles, California, for violation of U.S. import regulations.

The Office of Inspector General received an allegation that the Department’s Sandia Site Office refused to use its authority to obtain release of the Milkor grenade launchers from Customs. Based on this information, we initiated an inspection to review the facts and circumstances surrounding the procurement of the grenade launchers. Our review did not include an evaluation of the necessity for the 20 new grenade launchers.

RESULTS OF INSPECTION

We did not find evidence to support the allegation that the Sandia Site Office was unresponsive to Sandia Laboratory in connection with its attempts to obtain release of the Milkor grenade launchers from Customs’ seizure. However, we found that the Laboratory violated Federal and Department procurement and security policies in the acquisition of the grenade launchers. Specifically:

- The Milkor grenade launchers were not on the Department’s standardized firearms list. Sandia Laboratory ordered the grenade launchers without the required approval to deviate from this list.
- Contrary to Federal and Department “Buy American” policy, Sandia Laboratory’s protective force ordered the 20 South African-made 6-shot 40mm grenade launchers without attempting to determine whether an American-made product was available. Our



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research determined that such a weapon was available from at least one U.S. manufacturer.

- The purchase of the grenade launchers did not comply with Sandia Laboratory's procurement policy pertaining to sole source procurements.

We determined that Customs seized the grenade launchers because Sandia Corporation was not authorized to import the grenade launchers. Although Sandia Laboratory is a Government-owned/contractor-operated facility, Sandia Corporation could not legally purchase the South African grenade launchers without import exemptions through the Department of State or the Department of Defense. The failure to obtain the required import exemptions, as well as the violations of standardized firearms policy, "Buy American" policy, and sole source procurement policy, triggered a number of wasteful activities by Federal, contractor, and congressional staff. This included futile attempts to gain release of the weapons from Customs. Further, the series of actions prevented the protective force from obtaining equipment in a timely manner that was reportedly needed to meet operational requirements.

We made several recommendations to the Manager of the Sandia Site Office to address our findings.

MANAGEMENT REACTION

In comments on a draft of this report, management agreed with the report recommendations and identified corrective actions that have been or are being taken. In its comments, management also stated that after we brought the American-made grenade launcher to its attention, the Sandia Site Office contacted the vendor of the weapon for additional information. Management stated that a report supplied by the vendor did not contain any information to support that a 40mm grenade launcher capable of safely handling high explosive munitions was available through this company and that the ability to be able to safely fire high explosive munitions "is the attribute that sets the South African made Milkor weapon [apart] from the others."

We found management's comments on the report recommendations to be responsive. With regard to management's comment about the ability of the 40mm grenade launchers to handle high explosive munitions, we note that none of the documentation we reviewed or the people we interviewed during our inspection indicated that the high explosive munitions criterion was a factor in the weapon procurement. However, when we followed up with the manufacturer of the American-made 40mm grenade launcher, as well as its distributor, we were told that the weapon has always been rated for high explosive grenades. Our fundamental concern, however, was that Sandia Laboratory had not attempted to determine whether an American-made product was available prior to procuring a non-American product.

Attachment

cc: Deputy Secretary
Administrator, National Nuclear Security Administration
Chief of Staff
Manager, Sandia Site Office
Director, Office of Security and Safety Performance Assurance
Director, Policy and Internal Controls Management (NA-66)
Director, Office of Internal Review (CF-1.2)

ACQUISITION OF PROTECTIVE FORCE WEAPONS BY SANDIA NATIONAL LABORATORY, NEW MEXICO

TABLE OF CONTENTS

OVERVIEW

Introduction and Objectives	1
Observations and Conclusions	1

DETAILS OF FINDINGS

Site Office Support	3
Standard Firearms	3
Buy American Policy	4
Sole Source Procurement	5

RECOMMENDATIONS

6

MANAGEMENT COMMENTS

6

INSPECTOR COMMENTS

7

APPENDICES

A. Scope and Methodology	8
B. Management Comments	9

Overview

INTRODUCTION AND OBJECTIVES

Sandia National Laboratory, New Mexico (Sandia Laboratory), is a Department of Energy (DOE) research and development facility operated by Sandia Corporation. Located on Kirtland Air Force Base in Albuquerque, New Mexico, Sandia Laboratory applies advanced science and engineering to help the U.S. and its allies detect, repel, defeat, or mitigate national security threats.

In June 2004, Sandia Laboratory's protective force used a sole source procurement to order eight Milkor MGL Mk-1 6-shot 40mm grenade launchers, associated special tool kits, and initial spares from Milkor USA, an exclusive vendor in the U.S. for this grenade launcher. Subsequent revisions to the original order brought the number of launchers to 20 and the total cost of the procurement to \$102,600. The launchers were intended to replace the protective force's existing M203 single-shot 40mm grenade launchers. Milkor Marketing (Pty) Ltd., the manufacturer of the new grenade launchers, is headquartered in Pretoria, Republic of South Africa. In November 2004, U.S. Customs and Border Protection (Customs) detained and eventually seized the 20 Milkor grenade launchers, special tool kits, and initial spares at a port of entry in Los Angeles, California, for violation of U.S. import regulations.

The Office of Inspector General received an allegation that the National Nuclear Security Administration's (NNSA's) Sandia Site Office refused to use its authority to obtain release of the Milkor grenade launchers from Customs. Therefore, we initiated an inspection to review the facts and circumstances surrounding the procurement of the grenade launchers.

OBSERVATIONS AND CONCLUSIONS

We did not find evidence that the Sandia Site Office was unresponsive to Sandia Laboratory in connection with its attempts to obtain release of the Milkor grenade launchers from Customs' seizure. However, we did find that Sandia Laboratory violated Federal and DOE procurement and security policies in the acquisition of the grenade launchers. Specifically, we found that:

- The Milkor grenade launchers were not on DOE's standardized firearms list, and Sandia Laboratory's protective force ordered the grenade launchers without the required approval to deviate from this list.

-
- Contrary to Federal and DOE “Buy American” policy, Sandia Laboratory’s protective force ordered the South African-made 6-shot 40mm grenade launchers without attempting to determine whether an American-made product was available. Our preliminary research determined that there was at least one American-made 6-shot 40mm grenade launcher available.
 - The purchase of the grenade launchers did not comply with Sandia Laboratory’s procurement policy pertaining to sole source procurements.

We determined that Customs seized the grenade launchers because Sandia Corporation was not authorized to import the grenade launchers. Although Sandia Laboratory is a Government-owned/contractor-operated facility, Sandia Corporation could not legally purchase the South African grenade launchers without import exemptions through the Department of State or the Department of Defense. The failure to obtain the required import exemptions, as well as the violations of standardized firearms policy, “Buy American” policy, and sole source procurement policy, triggered a number of wasteful activities by Federal, contractor, and congressional staff, to include futile attempts to gain release of the weapons from Customs, and prevented the protective force from obtaining equipment in a timely manner that was reportedly needed to meet increased operational requirements.

Details of Findings

SITE OFFICE SUPPORT

We did not find evidence that the Sandia Site Office was unresponsive to Sandia Laboratory in connection with its attempts to obtain release of the Milkor grenade launchers from Customs' seizure. We identified telephone conversations, letters, meetings, electronic mail, and informal discussions showing that the Sandia Site Office communicated with Customs officials, as well as U. S. Department of Justice/Bureau of Alcohol, Tobacco, Firearms, and Explosives officials, seeking to obtain release of the grenade launchers. The Sandia Site Office explained to these officials that the grenade launchers were purchased using appropriated funds, that Sandia Laboratory was a Government-owned/contractor-operated facility, and that Sandia Corporation would not be the ultimate consignee for the grenade launchers, but to no avail. Further, we interviewed the individual who raised the allegation to the Office of Inspector General, and the individual no longer believed that the Sandia Site Office had been unresponsive.

STANDARD FIREARMS

We found that the Milkor grenade launchers were not on DOE's standardized firearms list, and Sandia Laboratory's protective force ordered the grenade launchers without the required approval to deviate from this list. DOE Manual 473.2-2, PROTECTIVE FORCE PROGRAM MANUAL, states that "standardization of firearms is required to . . . enhance inter site assistance." The manual provides a list of standard firearms and states that "Procurement of PF [protective force] firearms must involve" these firearm systems. The list includes the M203 single-shot 40mm grenade launcher that Sandia Laboratory already had; but it does not include the Milkor MGL Mk-1 6-shot grenade launcher.

The manual also states that "Deviations from or additions to this list must be approved by the Director, SO [Office of Security], or the Director of Defense Nuclear Security, NNSA, as applicable." Further, DOE Order 473.2, PROTECTIVE FORCE PROGRAM, states that "Deviations (i.e., variances, waivers, and exceptions) from the requirements prescribed in this Order and DOE M 473.2-2, PROTECTIVE FORCE PROGRAM MANUAL, must be processed in accordance with DOE O 470.1, SAFEGUARDS AND SECURITY PROGRAM." DOE O 470.1 requires the submission of a Deviation Request, which cites the directive being deviated from, the impacted entity, the justification for the request, and a description of the effectiveness of the alternative being proposed.

Sandia Laboratory did not obtain the required approval to deviate from the standardized list. On February 27, 2004, the protective force requested Sandia Site Office approval for the procurement of

the Milkor MGL Mk-1 grenade launchers. On June 2, 2004, Sandia Site Office approved this request. However, the approval of the Director of Defense Nuclear Security was not sought, and documentation required to support a deviation was never prepared.

BUY AMERICAN POLICY

We found that, contrary to Federal and DOE “Buy American” policy, Sandia Laboratory’s protective force ordered the South African-made 6-shot 40mm grenade launchers without attempting to determine whether an American-made product was available.

The protective force supported its request to purchase the South African grenade launchers by citing increased requirements under DOE’s Design Basis Threat document and that Milkor’s 6-shot revolver type design allowed for high rates of fire and ranges beyond the reach of hand grenades. During our inspection, a Sandia Laboratory protective force manager told us that the South African grenade launcher was the only 6-shot grenade launcher in the world.

Federal Acquisition Regulation, 48 Code of Federal Regulations (CFR), Subpart 25.1, “Buy American Act – Supplies,” Section 25.102, “Policy,” implements the Buy American Act. It states that “Except as provided in 25.103, acquire only domestic end products for public use inside the United States.” Section 25.103 only allows the Contracting Officer to acquire a foreign end product without regard to the restrictions of the Buy American Act when the head of the agency makes a determination that domestic preference would be inconsistent with the public interest or when the contracting officer makes a determination that the product is not available or that the cost is unreasonable. DOE policy in 48 CFR 925.102 further specifies: “. . . provided such determination is factually supported in writing.”

We determined that Sandia Laboratory ordered the 20 South African-made grenade launchers without: (1) a written determination by a head of agency that the purchase was in the public interest; or (2) a determination by the contracting officer that the product was not available or that the cost was unreasonable. Further, while Sandia Laboratory had not attempted to identify whether a U.S. made 6-shot 40mm grenade launcher existed, our preliminary research determined that a 6-shot 40mm grenade launcher with a high rate of fire and an ability to handle ranges beyond the reach of hand grenades (which were the reasons cited by Sandia Laboratory for needing the Milkor 6-shot grenade launcher) was manufactured in the U.S. When we discussed this

weapon with Sandia Site Office and Sandia Laboratory personnel, they said they were previously unaware of the weapon's existence.

SOLE SOURCE PROCUREMENT

We found that the purchase of the grenade launchers did not comply with Sandia Laboratory's procurement policy pertaining to sole source procurements. According to Sandia Laboratory's Guideline for Competitive Versus Noncompetitive Purchases, a sole source procurement must be justified and meet the "three part test" as required by DOE and NNSA. The three part test includes: (1) the source is the only known source; (2) the source is able to fully meet Sandia Laboratory's actual needs; and (3) reasonable attempts to locate or develop other sources have been unsuccessful or are not feasible.

We determined that the protective force submitted a SOLE-SOURCE/SOLE-MAKE JUSTIFICATION FOR PRODUCT(S) AND SERVICE(S) containing a statement that "There is only one supplier that makes multi shot" grenade launchers. However, we determined that no attempts were made by Sandia Laboratory to locate or develop other sources for the grenade launchers. As previously stated, the Office of Inspector General was able to locate a domestic manufacturer of a 6-shot 40mm grenade launcher.

The request for approval to purchase the 20 grenade launchers also stated that "Our request is driven by a preliminary training needs analysis ..." and Sandia Laboratory "has modeled the characteristics of the weapon." However, we determined that the protective force did not conduct a preliminary training needs analysis and did not actually model the characteristics of the Milkor grenade launcher. Further, a Sandia Laboratory protective force official acknowledged that both statements in the request were "mischaracterizations" of the facts surrounding the basis for ordering the Milkor Mk-1 grenade launchers. We were told that the statements in the justification were actually meant to reference discussions by a group of "experts" sometime in 2003, but no formal analysis of training needs was conducted and no formal modeling took place.

RECOMMENDATIONS We recommend the Manager, Sandia Site Office, ensures that, for future procurements, Sandia Laboratory complies with:

1. The standardized firearms list or obtains the appropriate approvals for any deviations from it.
2. The requirements of the Buy American Act.
3. All sole source procurement requirements, including those in Sandia Laboratory's Guideline for Competitive Versus Noncompetitive Purchases.

MANAGEMENT COMMENTS In comments on a draft of this report management agreed with the report recommendations. Regarding recommendation 1, management indicated that a deviation request has now been approved. With regard to recommendation 2, management stated that the Sandia Site Office Contracting Officer will direct Sandia Laboratory to (1) review its guidelines to ensure consistency with application to commercial items and use of Buy American Act exemptions; (2) review the terms and conditions boilerplates for correctness and consistency; and, (3) provide training to Sandia Contracting Representatives to ensure complete understanding of the correct use of each contract type boilerplate. Regarding recommendation 3, management stated that the Sandia Site Office will require Sandia Laboratory to (1) provide refresher training to its procurement staff to ensure full compliance is achieved for any future sole source documentation; and, (2) revise its guideline to address how Sandia Laboratory's Contracting Representatives should handle sole source actions that are revised to include additional quantities or new supplies or services.

In its comments, management also stated that after we brought the American-made grenade launcher to its attention, the Sandia Site Office contacted the vendor of the weapon for additional information. Management stated that a report supplied by the vendor did not contain any information to support that a 40mm grenade launcher capable of safely handling high explosive munitions was available through this company and that the ability to be able to safely fire high explosive munitions "is the attribute that sets the South African made Milkor weapon [apart] from the others."

Management's comments are included in their entirety in Appendix B.

**INSPECTOR
COMMENTS**

We found management's comments on the report recommendations to be responsive. With regard to management's comment about the ability of the 40mm grenade launchers to handle high explosive munitions, we note that none of the documentation we reviewed or the people we interviewed during our inspection indicated that this was a factor in the weapon procurement. However, when we followed up with the manufacturer of the American-made 40mm grenade launcher, as well as its distributor, we were told that the weapon has always been rated for high explosive grenades and that this capability was recently demonstrated to the U.S. Marine Corps. Regardless, what is most important is that Sandia Laboratory did not attempt to determine whether an American-made product was available prior to procuring a non-American product.

Appendix A

SCOPE AND METHODOLOGY

We performed the majority of the fieldwork for this inspection between December 2004 and May 2005. We reviewed pertinent portions of the CFR and DOE orders and manuals pertaining to import policy, acquisitions, and protective force programs to determine what criteria applied to procurement policy, procurement programs, import of weapons into the U.S., and deviations from DOE standardized firearms lists.

We interviewed safeguards and security personnel, Sandia Laboratory protective force officials and procurement employees, Customs employees, and other persons familiar with acquiring South African-made grenade launchers for domestic use. We also reviewed the following documentation:

- DOE Manual 473.1-1, PHYSICAL PROTECTION PROGRAM MANUAL.
- DOE Order 473.1, PHYSICAL PROTECTION PROGRAM.
- Federal Acquisition Policy for Supplies, 48 CFR 25.102.
- Sandia National Laboratories Publication 1.3.G, GUIDELINE FOR COMPETITIVE VERSUS NONCOMPETITIVE PURCHASES.
- DOE Order 473.2, PROTECTIVE FORCE PROGRAM.
- DOE Manual 473.2-2, PROTECTIVE FORCE PROGRAM MANUAL.
- DOE Order 470.1, SAFEGUARDS AND SECURITY PROGRAM.
- Procurement, shipping, air waybills, emails, and other documentation related to Sandia Laboratory's purchase of the 20 Milkor MGL Mk-1 6-shot grenade launchers seized in November 2004 by Customs.

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

Appendix B



Department of Energy
National Nuclear Security Administration
Washington, DC 20585



MEMORANDUM FOR

Alfred K. Walter
Assistant Inspector General
for Inspections and Special Inquiries

FROM:

Richard M. Speidel *R.M. Speidel 12/16-05*
Director
Policy and Internal Controls Management

SUBJECT:

Confirmation of Comments to Draft Inspection on
Protective Force Weapons, S05IS012

The National Nuclear Security Administration (NNSA) is reiterating its appreciation to have reviewed the Inspector General's (IG) draft Inspection Report, "Acquisition of Protective Force Weapons by Sandia National Laboratory, New Mexico." This is to confirm that the revised comments provided to your office are, in fact, NNSA's position.

Should you have any questions related to this response, please let me know.



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Appendix B (continued)

The Sandia Site Office (SSO) has reviewed the U.S. Department of Energy (DOE) Office of Inspector General (IG) draft inspection report entitled “Acquisition of Protective Force Weapons by Sandia National Laboratory, New Mexico” and offers the following comments.

First Recommendation: Comply with the standardized firearms list or obtain the appropriate approvals for any deviations from it.

The SSO agrees with the IG’s recommendation for this item and is already taking action to implement it. The SSO recognizes that it did not obtain the deviation from the standardized weapons list requirements, prior to “approving” Sandia’s request, as prescribed by DOE M 473.2-2, Protective Force Program Manual. Once this noncompliant condition was brought to the attention of the SSO, a deviation request was prepared and submitted to NA-70 in March 2005. The deviation addressed all weapons and pyrotechnics deployed at both Sandia National Laboratories/New Mexico (SNL/NM) and the Tonopah Test Range (TTR) that were not listed in the DOE Manual. SSO received approval of the deviation from NA-70 in April 2005.

It is widely recognized that the standardized weapons list referenced in DOE M 473.2-2 (established in June 2000) does not accurately represent all weapons and munitions currently available and being deployed to meet the ever increasing threat. The list was originally created to assist the field with the procurement of large quantities of new firearms being deployed within the protective force community and to address standardization of training curricula. However, this portion of the policy has not kept pace with the changes to the Design Basis Threat and the required tools and technologies needed to address and defeat the defined threat. SSO and Sandia have taken what is generally considered a responsible approach for selecting and deploying firearms based on approved analysis methods and industry standards. Firearms being deployed at Sandia are selected to meet specific tactical applications and to effectively counter current adversary capabilities. SSO will continue the practice of obtaining appropriate and timely approval to deviate from the standardized weapons list prior to providing Sandia approval until such time that the list in DOE M 473.2-2 is appropriately updated. SSO will work with NA-70 and the appropriate policy elements in DOE to affect changes to the current policy so that the correct weapons inventory is identified therein with respect to the issues identified at SSO and Sandia in order to preclude a recurrence of the same concerns in the future.

Second Recommendation: Comply with the requirement of the Buy American Act (BAA).

The SSO agrees with the IG’s recommendation. The SSO believes Sandia appropriately included FAR 52.225-1, “Buy American Act-Supplies” clause in the purchase order but did not address or meet the requirements for exceptions to purchase a non-domestic end product as required by the prime contract (reference contract clause I-31, FAR 52.225-1 “Buy American Act-Supplies,” I-105, DEAR 970.5244-1, “Contractor Purchasing

Appendix B (continued)

System" and FAR 25.1 Buy American). Furthermore, Sandia failed to obtain a certification of Buy American from the vendor.

In reviewing this matter SSO found the following: Sandia believes that the Milkor Grenade Launchers are a commercial item and therefore, exempt from the BAA. However, the only exceptions to the BAA are outlined in FAR 25.103 and a commercial item is not a listed exclusion. Sandia based their rationale on FAR 52.244-6 "Subcontract for Commercial Items." Sandia stated that FAR 52.244-6 identifies only six FAR clauses to be included in subcontracts for commercial items and that the BAA is not one of those clauses. The SSO Contracting Officer is of the opinion that BAA is applicable in this instance because the FAR prescription for inclusion of clause 52.244-6 states, "The contracting officer shall insert the clause at 52.244-6, 'Subcontracts for Commercial Items', in solicitations and contracts other than those for commercial items." Sandia cited their Procurement Guideline 3.4.G.1 which erroneously allows the exclusion of Buy American for commercial items based on this rationale.

As a result, the SSO Contracting Officer will direct Sandia to 1) review their guidelines to ensure consistency with application to commercial items and use of BAA exemptions; 2) review the terms and conditions boilerplates for correctness and consistency; and 3) provide training to Sandia Contracting Representatives to ensure complete understanding of the correct use of each contract type boilerplate.

Third Recommendation: Comply with all sole source procurement requirements, including those in the Laboratory's guideline for Competitive versus Noncompetitive purchases.

The SSO agrees that Sandia Contracting Representative (SCR) did not fully comply with Sandia's Competitive Versus Noncompetitive Purchases Guideline. The sole source documentation did not address what attempts, if any, were made by the SCR or requester to locate or develop other sources nor did it specifically state why it was not feasible to develop or locate other sources as required by the Guideline. The SSO will require that Sandia 1) provide refresher training to their procurement staff to ensure full compliance is achieved for any future sole source documentation and 2) revise their guideline to address how SCRs should handle sole source actions that are revised to include additional quantities or new supplies or services.

Other Comments:

SSO offers the following additional information regarding the inspection as clarification to the background directly associated with the Buy American issue and indirectly with the sole source procurement issues cited in the draft IG report.

The second bulleted item under /Observations and Conclusions on Page 1 and the discussion under Buy American section on Page 4 of the draft report indicates that an American-made 6-shot grenade launcher comparable with the South African model was available at the time Sandia made their procurement of the Milkor items. After being

Appendix B (continued)

made aware of the American-made weapon by the IG during the inspection process, SSO pursued this lead, contacted the vendor on August 8, 2005 and acquired a copy of a June 1991 report regarding the American-made weapon. The vendor's cover letter accompanying the vendor report states "...we have been testing the launcher with HE munitions and recently I have demonstrated the various models to the USMC. They are in the process of conducting tests but I have no information on it as of today." The 1991 report was compiled by a Maryland based company GAYLORD, MORGAN & DUNN, LTD. The test focused only the Model L-6 37mm Multi-Shot gas gun and offers no conclusive information as to the weapon's ability to safely fire HE (High Explosive) projectiles. The ability to be able to safely fire HE munitions is the attribute that sets the South African made Milkor weapon from the others. There is no information contained in the vendor's report pertaining to or supporting the IG report reference that a comparable 40mm grenade launcher capable of meeting the specified needs (capable of safely handling HE munitions) of Sandia/NM is available through this company.

Additionally, the company provided brochures to SSO for each of its available firearms and the technical specifications listed in the brochures do not indicate which if any of the firearms have been tested and approved for HE munition.

In summary, had Sandia fully complied with their procurement guidelines to support a sole source purchase, there would not have been a misconception that the required grenade launchers were available from an American source. The inadequate documentation of Sandia's sole source justification and the SSO request for correction is addressed under SSO response to the Third Recommendation above.

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