



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

Inspection Report

Verification of Lawrence Berkeley
National Laboratory's Contract Workers'
Eligibility to Work in the U.S.



Department of Energy
Washington, DC 20585

April 15, 2011

MEMORANDUM FOR THE SECRETARY

FROM: 
Gregory H. Friedman
Inspector General

SUBJECT: INFORMATION: Inspection Report on "Verification of Lawrence Berkeley National Laboratory's Contract Workers' Eligibility to Work in the U.S."

BACKGROUND

The Department of Energy's Lawrence Berkeley National Laboratory (Berkeley) is a research laboratory managed by the Department's Berkeley Site Office (Site Office). Berkeley, operated under contract by the University of California, conducts unclassified research across a wide range of scientific disciplines, employing approximately 4,200 scientists, engineers, support staff and students. In addition to its Fiscal Year 2010 budget of approximately \$707 million, Berkeley received an additional \$104 million in funding from the American Recovery and Reinvestment Act of 2009 (Recovery Act). Much of this funding is being used in combination with Department funds to complete infrastructure upgrades through the use of contractors and subcontractors, resulting in temporary workers gaining access to the Berkeley site.

The Immigration Reform and Control Act of 1986 (the Act) makes it illegal for employers to knowingly hire and continue to employ individuals who are not eligible to work (unauthorized workers) in the United States (U.S.). To comply with the Act, employers must complete an Employment Eligibility Verification Form (Form I-9) for each employee at the time of hiring. Because of potential security concerns associated with unauthorized workers, we initiated this inspection to determine whether contractors who were awarded contracts for infrastructure upgrades at Berkeley, including their subcontractors, verified the employment eligibility of their employees in accordance with Federal requirements prior to those employees accessing the site.

RESULTS OF INSPECTION

We found that not all of Berkeley's subcontractors ensured that individuals they employed to work on the site were initially eligible or maintained authorization to work in the U.S. throughout the term of their employment. Some contractors created required Form I-9s only after we requested them, and others asserted that they had purged their employees' forms from personnel files or had neglected to update and re-verify supporting documents (such as work authorizations and visas). In addition, some contractors failed to record required key employment eligibility elements. Based on our detailed review of 236 Form I-9s collected from 19 subcontractors that were involved in infrastructure upgrades at Berkeley, we discovered that:

- Sixteen Form I-9s were missing or could not be produced;

- Fourteen were dated on or after our request for information indicating that the Form I-9s may not have been prepared prior to the employee arriving at Berkeley;
- Twenty-seven had supporting documents that were expired; that is, documents that had not been updated and re-verified as required to ensure continued employment eligibility; and,
- Thirty-two were missing required key employment eligibility elements, such as expiration dates for documents that establish identity and/or employment authorization, or required documentation such as a Social Security card, driver's license or permanent resident card.

Although available for voluntary use by all employers since 2007, we also found that none of the 19 Berkeley subcontractors included in our review used the U.S. Government's E-Verify system to supplement the Form I-9 employee eligibility determination process. Use of the electronic verification system did not become mandatory for Federal agencies and entities with government sponsored Federal contracts until September 2009, when Executive Order 13465 (*Economy and Efficiency in Government Procurement through Compliance with Certain Immigration and Nationality Act Provisions and Use of an Electronic Employment Eligibility Verification System*) was implemented. The E-Verify system serves to strengthen the Form I-9 process by allowing employers to verify that the eligibility information employees provide is valid and/or that documents presented are genuine. Even though Executive Order 13465 was implemented in September 2009, none of the contracts we examined contained a requirement to use E-Verify. It is important to note that the contracts in our review were issued prior to the implementation date; however, Berkeley had not modified those contracts to incorporate the E-Verify requirement even when its use became mandatory. While the Site Office ultimately modified Berkeley's contract to require E-Verify use, it did not do so until a planned contract modification, some five months after the Executive Order was issued.

Had E-Verify been voluntarily used, Berkeley's contractors likely would have identified a number of other anomalies that we discovered during our testing. For example, we identified eight Form I-9s containing duplicate Social Security numbers, the use of Social Security numbers that belonged to deceased individuals, or the use of Social Security numbers that had yet to be assigned. As we observed in our report on similar employment verification problems at the Department's Y-12 facility in Oak Ridge, Tennessee, [*Environmental Cleanup Projects Funded by the Recovery Act at the Y-12 National Security Complex*](#) (OAS-RA-L-11-02, December 2010), the use of E-Verify is considered a highly useful tool. And, as pointed out by the Department of Homeland Security, its utility is confirmed by the fact that about three percent of the workers checked through the system cannot be confirmed as eligible for employment in the U.S. We referred the possible misuse of Social Security numbers to officials with the Social Security Administration and the Department of Homeland Security, U.S. Immigration and Customs Enforcement, for appropriate action. We also informed Berkeley officials of this issue during the course of our inspection.

These problems occurred, in part, because Berkeley contractors did not place sufficient emphasis on ensuring that their employment verification activities complied with Federal law. In addition,

current Department policy does not require Department site security offices to verify, or even to confirm on a sample basis, the employment eligibility of contract workers before site access is allowed. As a consequence, unauthorized workers may have inappropriately gained access to Federally-funded facilities and could have displaced U.S. citizens or other authorized workers from jobs. While the displacement of legitimate workers may seem unlikely, the incidents identified during the Berkeley inspection related to the use of questionable Social Security numbers make this a real concern. If so, it would have undermined one of the primary objectives of the Recovery Act, namely to stimulate job creation for U.S. citizens and other eligible workers.

As noted previously, and as more fully discussed in the reports listed in Appendix 1, we identified concerns with regard to employment verification at another Department site where some contractor employees were allowed access to work areas without proper and/or complete verification of eligibility. Also, the U.S. Government Accountability Office has issued reports concerning employment verification problems within the Federal system.

To address the conditions described in this report, we made recommendations to the Site Office. These recommendations were designed to improve verification of employment eligibility at Berkeley while ensuring that contract workers currently on-site have the required Form I-9s on file and that employment eligibility information has been verified by the employers through the E-Verify system.

Also, considering the weaknesses identified during this inspection and the results of the prior reviews, we recommended that the Department, on a corporate basis: (i) determine whether similar problems exist at other facilities within its complex; and, (ii) ensure that appropriate corrective actions consistent with existing Federal guidelines are promptly adopted.

MANAGEMENT REACTION

The Department and the Berkeley Site Office concurred with the findings and recommendations contained in our inspection. Specifically, the Berkeley Site Office stated that it had either completed or had ongoing actions to: (1) incorporate the employment verification clause into contracts requiring applicable subcontractors to furnish documentation verifying that they and their eligible lower-tier subcontractors have enrolled in the E-Verify system; (2) incorporate performance measures related to employment verification; and, (3) integrate a new element in the labor compliance software program which requires subcontractors entering payroll to check a box for each employee validating that a Form I-9 is on file for that employee.

The Department stated that it had ongoing actions to coordinate with the Chief Health, Safety and Security Officer, Office of Health, Safety and Security to determine whether problems identified in our inspection exist throughout the Department's complex and to take appropriate corrective actions to ensure appropriate compliance with applicable federal statutes and regulations.

The Department and the Berkeley Site office actions are responsive to our recommendations.

Attachment

cc: Deputy Secretary
Associate Deputy Secretary
Under Secretary for Science
Chief of Staff
Director, Office of Science
Director, Office of Management
Chief Health, Safety and Security Officer, Office of Health, Safety and Security
Manager, Berkeley Site Office

REPORT ON VERIFICATION OF LAWRENCE BERKELEY NATIONAL LABORATORY'S CONTRACT WORKERS' ELIGIBILITY TO WORK IN THE U.S.

TABLE OF CONTENTS

Contract Worker Eligibility

Details of Finding 1

Recommendations 6

Management and Inspector Comments 7

Appendices

1. Prior Reports 8

2. Objective, Scope and Methodology 9

3. Management Comments 10

VERIFICATION OF LAWRENCE BERKELEY NATIONAL LABORATORY'S CONTRACT WORKERS' ELIGIBILITY TO WORK IN THE U.S.

EMPLOYMENT VERIFICATION

The *Immigration Reform and Control Act of 1986* (the Act) requires that employers complete an *Employment Eligibility Verification Form* (Form I-9) for each employee at the time of hiring. In addition, the employers must examine and record specific evidence of identity and employment authorization, such as a driver's license, Social Security card or a passport provided by the employee. After examining the supporting documents, employers must attest that the individual is authorized to work in the United States (U.S.). If the supporting documents have expiration dates, employers must update and re-verify their employees' Form I-9 on or before the expiration date.

Not all of Lawrence Berkeley National Laboratory's (Berkeley) subcontractors ensured that individuals they employed to work on the site were initially eligible or maintained authorization to work in the U.S. throughout the term of their employment. For example, we found that certain contractors were only able to provide required Form I-9s that were completed after we requested them. Others did not maintain completed verification forms as required and told us that they purged them from their employees' personnel files. We also observed that others neglected to update and re-verify supporting documents (such as, work authorizations and visas). In addition, while some contractors actually created the Form I-9s as required, they failed to document required key employment eligibility elements.

Based on our detailed review of 236 Form I-9s collected from 19 subcontractors who were involved in infrastructure upgrades at Berkeley, we discovered that:

- Fourteen were dated on or after our request for information and sixteen were missing or could not be produced;
- Twenty-seven had supporting documents that were expired; that is, documents that had not been updated and re-verified as required to ensure continued employment eligibility; and,
- Thirty-two were missing required key employment eligibility elements, such as expiration dates for documents that establish identity and/or employment authorization, or required documentation such as a Social Security card, driver's license or permanent resident card.

The following discussion provides the details of the weaknesses identified.

Missing Form I-9s

Of the 236 Form I-9s we received from the 19 subcontractors, 14 were dated on or after our request for information. We noted that Section 1, *Employee Information and Verification*, of Form I-9 must be completed no later than the time of hire and that the employer is responsible for ensuring that the Form is timely and properly completed. When we requested Form I-9s that were completed prior to our request for employees who had already gained access to Berkeley, we were told by one subcontractor that the older forms could not be located while another subcontractor stated that the forms were "buried" in employee files in various locations and would be difficult to locate.

In addition, of the Form I-9s we requested from the 19 subcontractors, 16 were missing. One subcontractor indicated it could not locate 13 forms, while the second subcontractor stated that it had purged all employee files over a decade ago, thus it did not have the forms for 3 of its employees who were hired prior to the file destruction even though the individuals were still employed. The Form I-9 instruction requires that employers retain completed forms for 3 years after the date of hire or 1 year after the date employment ends, whichever is later. For example, if an employee retires after 15 years of employment, the Form I-9 must be retained for the 15 years, plus 1 year after the employment ends, for a total of 16 years.

Updating and Re-verification of Form I-9s

Our testing revealed that 27 Form I-9s had expired supporting documents; that is, required documents were not updated and re-verified to ensure continued employment eligibility. Specifically, of the 236 Form I-9s we received from the subcontractors, 27 had expired documentation, such as a permanent resident card, which establishes identity and employment authorization. In the case of one subcontractor who had 25 employees working at Berkeley, 7 of 25 Form I-9s listed documents that had expired. Another subcontractor provided 10 Form I-9s, six of which listed documents that had expired. We noted that Section 3, *Updating and Reverification*, of the Form I-9 requires employers to record

updated and re-verified information for employees whose authorization documents have expiration dates. The Form I-9 also states that "Employers must reverify employment authorization of their employees on or before the work authorization expiration date recorded in Section 1 (if any)." Of the seven subcontractors we contacted, four were able to provide us with updated and re-verified employment eligibility documents after we notified them of the issue. However, two subcontractors were not able to obtain the documents for all of their employees. For example, one subcontractor informed us that it could not provide updated information for some of its employees because the employees no longer worked for the subcontractor. Another subcontractor never responded to our questions and requests for updated and re-verified documents.

When questioned regarding the expired documents, a subcontractor stated that it knew it should have updated the forms. A different subcontractor indicated it just did not update the information as it should have.

Incomplete Form I-9s

Required key employment eligibility elements were missing from 32 Form I-9s, including expiration dates for documents that establish identity and/or employment authorization, or required documentation such as a Social Security card, driver's license or permanent resident card. Specifically:

- Eighteen had no evidence of identity and/or employment authorization documents, such as a Social Security card;
- Eight had no expiration dates as required for documents that establish identity and/or employment authorization; and,
- Six did not identify whether the employee was a citizen of the U.S., a noncitizen national of the U.S., a lawful permanent resident of the U.S., or an alien authorized to work in the U.S.

The *Immigration Reform and Control Act of 1986*, through the use of Form I-9, requires the employee to present one or more documents (depending on the type of documentation presented) to

establish identity and employment authorization, and that the employer must review the document(s) and record the title, number, and expiration date, if any. The employer must then sign and date the Form I-9. By signing the Form I-9, the employer attests, under penalty of perjury, that the employer has "...examined the document(s) presented by the above-named employee, that the above-listed document(s) appear to be genuine and to relate to the employee named...and that to the best of my [the employer's] knowledge the employee is authorized to work in the United States."

Although Form I-9s had missing key elements and the employer did not record the document(s) establishing identity and employment authorization, the employer still signed attesting that the listed documents appeared to be genuine and that the employee was authorized to work in the U.S. However, without the required documents and the key employment eligibility elements, it is unclear what basis was used by the employers to attest to the fact that the employee was authorized to work in the U.S.

E-Verify System

Although available for voluntary use by all employers since 2007, we also discovered that none of the 19 Berkeley subcontractors we reviewed used the E-Verify system to supplement the Form I-9 employee eligibility determination process. Use of the electronic verification system did not become mandatory for Federal agencies and entities with Federal contracts until September 2009, when Executive Order 13465 (*Economy and Efficiency in Government Procurement through Compliance with Certain Immigration and Nationality Act Provisions and Use of an Electronic Employment Eligibility Verification System*) was implemented. The E-Verify system serves to strengthen the Form I-9 process by allowing employers to verify that the eligibility information employees provide is valid and/or that documents presented are genuine. Even though the Executive Order was implemented in September 2009, the contracts we examined did not contain a requirement to use E-Verify because the contracts were issued prior to the implementation date. Also, instead of instituting the E-Verify requirement for contracts awarded on or after September 8, 2009, Berkeley selected February 1, 2010, as the E-Verify implementation date. Thus, only contracts awarded on or after February 1, 2010, were required to participate in E-Verify. When questioned regarding the 5 month gap, a Berkeley official stated

that the February 1, 2010, date was selected based upon the modification date of the prime contract between Berkeley and the Berkeley Site Office, which was signed December 18, 2009. The official said Berkeley had no plans to implement the E-Verify requirements for contracts awarded and/or signed before February 1, 2010. The official also stated that if a contract is modified, expires, and/or renewed after February 1, 2010, then Berkeley would implement the E-Verify requirement into the contract.

Had E-Verify been voluntarily used, Berkeley's contractors likely would have identified a number of other anomalies that we discovered during our testing. For example, based on our review of a judgmental sample of 40 Social Security numbers from the incomplete and/or incorrect Form I-9s, we identified eight Form I-9s containing duplicate Social Security numbers, the use of Social Security numbers that belonged to deceased individuals or the use of Social Security numbers that had yet to be assigned. As we observed in our report on similar employment verification problems at the Department of Energy's (Department) Y-12 facility in Oak Ridge, Tennessee, [*Environmental Cleanup Projects Funded by the Recovery Act at the Y-12 National Security Complex*](#) (OAS-RA-L-11-02, December 2010), the use of E-Verify is considered a highly useful tool, and as pointed out by the Department of Homeland Security, about three percent of the workers checked through the system cannot be confirmed as eligible for employment in the U.S. We took action to refer the possible misuse of Social Security numbers to officials with the Social Security Administration's Office of Inspector General and the Department of Homeland Security, U.S. Immigration and Customs Enforcement, for appropriate action. We also provided Berkeley officials with a draft of this report for review and comment.

**CONTRIBUTING
FACTORS AND
IMPACT**

The problems we identified in this report occurred, in part, because Berkeley subcontractors did not place sufficient emphasis on ensuring that their employment verification activities complied with Federal law. As a consequence, unauthorized workers may have inappropriately gained access to Federally-funded facilities and could have displaced U.S. citizens or other authorized workers from jobs. Notably, about \$29 million of the \$65 million dedicated to the contracts we reviewed were provided through the *American*

Recovery and Reinvestment Act of 2009 (Recovery Act) where one of the primary purposes of the Recovery Act was to stimulate the economy and provide employment for citizens and other eligible workers. Further, of the \$29 million in Recovery Act funds, \$2.7 million was received by subcontractors included in our review.

In addition, current Department policy does not require Department site security offices to verify, or even to confirm on a sample basis, the employment eligibility of contract workers before site access is allowed. Considering the weaknesses identified during this inspection and the results of the prior reviews listed in Appendix 1, we believe that the Office of Management, in coordination with the Office of Health, Safety and Security, should determine whether similar problems exist at other facilities within the Department's complex, and ensure that appropriate corrective actions consistent with existing Federal guidelines are promptly adopted.

RECOMMENDATIONS

As noted previously and as more fully discussed in the reports listed in Appendix 1, the Office of Inspector General has identified concerns with regard to employment verification at Department sites where some contractor employees were allowed access to work areas without proper and/or complete verification of eligibility. In addition, the U.S. Government Accountability Office has issued reports concerning employment verification problems within the Federal system. To help address the problems we identified at Berkeley, we recommend that the Manager, Berkeley Site Office:

1. Direct Berkeley to establish a process, including internal controls, to ensure that all contractors and subcontractors follow applicable laws and regulations concerning employment verifications;
2. Establish performance measures related to employment verification by contractors and subcontractors at the Berkeley site, and monitor as appropriate; and,
3. Ensure that contract workers currently on the Berkeley site have the required Form I-9s on file and that employment eligibility information has been verified by the employers through the E-Verify system.

Considering the weaknesses identified during this inspection and the results of the prior reviews listed in Appendix 1, we

recommend that the Director, Office of Management, in coordination with the Chief Health, Safety and Security Officer, Office of Health, Safety and Security:

1. Determine whether similar problems exist at other facilities within the Department's complex; and,
2. Ensure that appropriate corrective actions consistent with existing Federal guidelines are promptly adopted.

**MANAGEMENT
AND INSPECTOR
COMMENTS**

The Department and the Berkeley Site Office concurred with the findings and recommendations contained in our inspection. Specifically, the Berkeley Site Office stated that it had either completed or had ongoing actions to: (1) incorporate the employment verification clause into contracts requiring applicable subcontractors to furnish documentation verifying that they and their eligible lower-tier subcontractors have enrolled in the E-Verify system; (2) incorporate performance measures related to employment verification; and, (3) integrate a new element in the labor compliance software program which requires subcontractors entering payroll to check a box for each employee validating that a Form I-9 is on file for that employee.

The Department stated that it had ongoing actions to coordinate with the Chief Health, Safety and Security Officer, Office of Health, Safety, and Security to determine whether problems identified in our inspection exist throughout the Department's complex and to take appropriate corrective actions to ensure appropriate compliance with applicable federal statues and regulations.

We consider management's comments and corrective actions planned and/or taken responsive to our recommendations.

Management's comments are included in their entirety in Appendix 3.

PRIOR REPORTS

The following Department of Energy (DOE) Office of Inspector General (OIG) reports are related to employment verification:

- [*Environmental Cleanup Projects Funded by the Recovery Act at the Y-12 National Security Complex*](#) (OAS-RA-L-11-02, December 2010). The report concluded that Y-12 had not included the Employment Eligibility Verification clause in the Recovery Act subcontracts that were reviewed. Y-12's prime contract with the Department of Energy required the flow-down of the clause into all subcontracts with a value of more than \$3,000 issued or modified after December 2009. However, Y-12 did not flow down the clause to its subcontractors until September 2010.
- [*Employment Verification at Savannah River Site*](#) (INS-O-10-01, November 2009). This report found that subcontractors at the Savannah River Site did not verify the employment status of their employees in accordance with Federal requirements. Specifically, subcontractors failed to utilize the Form I-9 to determine worker eligibility and some Form I-9s were missing key elements.

The following Government Accountability Office (GAO) reports are related to employment verification:

- [*Federal Agencies Have Taken Steps to Improve E-Verify, but Significant Challenges Remain*](#) (GAO-11-146, December 2010). This report concluded that the Department of Homeland Security's U.S. Citizenship and Immigration Services (USCIS) has taken several steps to improve the accuracy of the E-Verify system. As a result, E-Verify can immediately confirm about 97.4 percent of almost 8.2 million newly hired employees in as work authorized during fiscal year 2009. However, challenges such as vulnerability to identity theft and employer fraud still remained.
- [*Improved Agency Coordination Needed for Social Security Card Enhancement Efforts*](#) (GAO-06-303, March 2006). The report found that the Social Security Administration's (SSA) slow action to form an interagency task force may have limited Social Security card enhancement efforts to protect against theft and counterfeiting. The report recommended that the SSA and the Department of Homeland Security work together to resolve Social Security card weaknesses in proving employment eligibility.
- [*Weaknesses Hinder Employment Verification and Worksite Enforcement Efforts*](#) (GAO-05-813, August 2005). This report found that the Department of Homeland Security had not established a target timeframe for completing the review of the Form I-9 process. The report also concluded that the Basic Pilot Program, a voluntary program through which participating employers electronically verify employees' work eligibility, had potential to help enhance the verification process and reduce document fraud. However, weaknesses in the program have impacted the program's success.

Appendix 2

OBJECTIVE

The objective of this inspection was to determine if contractors, including subcontractors, at the Lawrence Berkeley National Laboratory (Berkeley) site verified the employment eligibility of their employees in accordance with Federal requirements prior to those employees accessing the site.

SCOPE AND METHODOLOGY

We conducted our inspection between February and October 2010. We interviewed Berkeley and Berkeley Site Office officials regarding temporary labor and employment verification. As part of this inspection, officials at Berkeley strongly supported our efforts with the data collection from all levels of contractors.

In addition, we interviewed contractors and subcontractor officials. As part of our inspection, we reviewed and analyzed Federal policies, procedures, and records involving employment verification. Documentation reviewed for this inspection included:

- Form I-9, *Employment Eligibility Verification*, for 4 prime contractors and 19 subcontractors working on infrastructure projects;
- A judgmental sample of 304 Form I-9s for temporary workers who performed work at the Berkeley site from Fiscal Year 2008 to June 2010;
- FAR 52.222-54, *Federal Acquisition, Regulation Employment Eligibility Verification*;
- Executive Order 13465; and,
- The *Immigration Reform and Control Act of 1986*.

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



Department of Energy

Washington, DC 20585

March 21, 2011

MEMORANDUM FOR SANDRA D. BRUCE
ASSISTANT INSPECTOR GENERAL
FOR INSPECTIONS
OFFICE OF INSPECTOR GENERAL

FROM: INGRID KOLB
DIRECTOR
OFFICE OF MANAGEMENT

A handwritten signature in black ink that reads "Ingrid Kolb".

SUBJECT: Draft Report on "Verification of Lawrence Berkeley National Laboratory's Contract Workers' Eligibility to Work in the U.S."

This memorandum responds to your March 3, 2011, memorandum requesting comments on the subject draft report. We appreciate the opportunity to provide comments. The draft report found that not all of Lawrence Berkeley National Laboratory's subcontractors ensured that individuals they employed to work on the site were initially eligible or maintained authorization to work in the U.S. throughout the term of their employment.

The report's first three recommendations were directed to the Berkeley Site Office, which is responding directly to you on those recommendations. The last two recommendations in the report were directed to the Office of Management. Below is our response to each of those two recommendations.

Recommendation 4 - Determine whether similar problems exist at other facilities within the Department's complex.

Management Comment - Concur. The Office of Management will coordinate with the Chief Health, Safety and Security Officer, Office of Health, Safety and Security to determine whether problems identified in the draft report exist throughout the Department's complex.

Recommendation 5 - Ensure that appropriate corrective actions consistent with existing Federal guidelines are promptly adopted.

Management Comment - Concur. For any problems identified within the Department, the Office of Management will coordinate with the Chief Health, Safety and Security Officer, Office of Health, Safety and Security to take appropriate corrective actions to ensure appropriate compliance with applicable federal statutes and regulations.



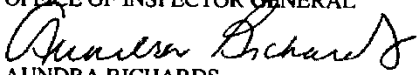
Printed with soy ink on recycled paper



Department of Energy
Office of Science
Berkeley Site Office
Lawrence Berkeley National Laboratory
1 Cyclotron Road, MS 90-1023
Berkeley, California 94720

MAR 24 2011

MEMORANDUM FOR: SANDRA D. BRUCE
ASSISTANT INSPECTOR GENERAL
FOR INSPECTIONS
OFFICE OF INSPECTOR GENERAL

FROM: 
AUNDRA RICHARDS
SITE OFFICE MANAGER

SUBJECT: Draft Report on "Verification of Lawrence Berkeley National
Laboratory's Contract Workers' Eligibility to Work in the U.S."

This memorandum responds to your March 7, 2011, memorandum requesting comments on the subject draft report. The Berkeley Site Office (BSO) appreciates the opportunity to review the report and provide comments. Below is the BSO response to each of the three recommendations.

Recommendation 1: Direct Berkeley to establish a process, including internal controls, to ensure that all contractors and subcontractors follow applicable laws and regulations concerning employment verifications.

Management Response: Concur

Management Response: The University of California, Lawrence Berkeley National Laboratory (LBNL) has established a process, including internal controls, to ensure that all contractors and subcontractors follow applicable laws and regulations concerning employment verifications.

Background:

Effective 2/1/10, the Procurement Department at LBNL has incorporated the FAR 52.222-54 clause in its sets of Subcontract General Provisions and updated their Buyer Instructions to reflect the new requirements. They also included in the body of its

subcontracts an Article titled *E-Verify Program Enrollment Verification*, requiring applicable subcontractors to furnish documentation verifying that they and their eligible lower-tier subcontractors had enrolled in the e-verify system. This Article was included consistent with the verification guidance provided in the *E-Verify Supplemental Guide for Federal Contractors*. Since the audit took place during the initial stages of implementation at LBNL, the sample selected may not have included the required flow-down provision.

Recommendation 2: Establish performance measures related to employment verification by contractors and subcontractors at the Berkeley site, and monitor as appropriate.

Management Response: Concur

Management Response: Performance measures will be incorporated into the Balance Scorecard assessment checklist. Additionally, BSO will request that this be added to the LBNL Fiscal Year 2012 Risk Assessment.

Recommendation 3: Ensure that contract workers currently on the Berkeley site have the required Form I-9s on file and that employment eligibility information has been verified by the employers through the E-Verify system.

Management Response: Concur

Management Response: LBNL requires that contract workers currently on the Berkeley site have the required Form I-9s on file and that employment eligibility information has been verified by the employers through the E-Verify system.

Background:

The Laboratory tracks Davis-Bacon certified payroll submissions under construction subcontracts through a commercial labor compliance software program. Recently, the program has been changed to add a validation requirement for the I-9 form. All construction subcontractors entering payroll must check a box for each employee entered in the system to assert that an I-9 form is on file for that employee.

However, in the *E-Verify Supplemental Guide for Federal Contractors* issued by the Department of Homeland Security, U.S. Citizenship and Immigration Services, Section 6.2 – *Prime Contractor and Subcontractor Obligations* states, "The prime contractor should provide general oversight to subcontractors to ensure that they meet the E-Verify requirement". The section also states that, "Prime contractors are not responsible for verifying the subcontractors' individual employees."

CUSTOMER RESPONSE FORM

The Office of Inspector General has a continuing interest in improving the usefulness of its products. We wish to make our reports as responsive as possible to our customers' requirements, and, therefore, ask that you consider sharing your thoughts with us. On the back of this form, you may suggest improvements to enhance the effectiveness of future reports. Please include answers to the following questions if they are applicable to you:

1. What additional background information about the selection, scheduling, scope, or procedures of the inspection would have been helpful to the reader in understanding this report?
2. What additional information related to findings and recommendations could have been included in the report to assist management in implementing corrective actions?
3. What format, stylistic, or organizational changes might have made this report's overall message more clear to the reader?
4. What additional actions could the Office of Inspector General have taken on the issues discussed in this report which would have been helpful?
5. Please include your name and telephone number so that we may contact you should we have any questions about your comments.

Name _____ Date _____

Telephone _____ Organization _____

When you have completed this form, you may telefax it to the Office of Inspector General at (202) 586-0948, or you may mail it to:

Office of Inspector General (IG-1)
Department of Energy
Washington, DC 20585

ATTN: Customer Relations

If you wish to discuss this report or your comments with a staff member of the Office of Inspector General, please contact Felicia Jones at (202) 253-2162.

This page intentionally left blank.

The Office of Inspector General wants to make the distribution of its reports as customer friendly and cost effective as possible. Therefore, this report will be available electronically through the Internet at the following address:

U.S. Department of Energy Office of Inspector General Home Page
<http://www.ig.energy.gov>

Your comments would be appreciated and can be provided on the Customer Response Form.