

U.S. DEPARTMENT OF ENERGY  
OFFICE OF INSPECTOR GENERAL

CONSULTANT SUBCONTRACTING AT THE  
IDAHO NATIONAL ENGINEERING LABORATORY

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CONSULTANT SUBCONTRACTING AT THE  
IDAHO NATIONAL ENGINEERING LABORATORY

TABLE OF CONTENTS

	Page
SUMMARY .....	1
PART I – APPROACH AND OVERVIEW .....	2
Introduction .....	2
Scope and Methodology .....	2
Background .....	3
Observations and Conclusions .....	3
PART II – FINDINGS AND RECOMMENDATIONS .....	5
1.    Awarding of Consultant Subcontracts .....	5
2.    Consultant Subcontracts for Department Headquarters .....	13
PART III – MANAGEMENT AND AUDITOR COMMENTS .....	17

U.S. DEPARTMENT OF ENERGY  
OFFICE OF INSPECTOR GENERAL  
OFFICE OF AUDITS

AUDIT OF CONSULTANT SUBCONTRACTING AT THE  
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SUMMARY

The Department of Energy (Department), Idaho Operations Office (ID) is responsible for ensuring that its management and operating (M&O) contractors subcontract consultant services in a manner most advantageous to the Department. The objectives of the audit were to determine whether consultant subcontracts were competitively and objectively awarded and whether these subcontracts supported the Idaho National Engineering Laboratory's (INEL) mission.

The audit showed that M&O contractors generally did not award consultant subcontracts competitively and objectively. Also, many of the subcontracts were awarded to former INEL employees, increasing the potential for conflicts of interest. These problems occurred because M&O contractors' internal controls did not ensure that sole source procurements were adequately justified and that potential conflicts of interest were avoided. By not competing consultant subcontracts the Department may not have obtained the most economical consultant services. Further, the fundamental fairness upon which such subcontracts were awarded to former employees was questionable.

Additionally, one INEL M&O contractor was subcontracting consultant support services directly for Department Headquarters. This occurred because Headquarters elements and the M&O contractor did not follow Department guidance prohibiting subcontractual support from an M&O contractor directly to Headquarters. As a result, the M&O contractor acted as a procurement agent for Headquarters enabling Headquarters to avoid the more stringent requirements of the Department's procurement process.

ID concurred with the findings and agreed to carry out the corrective actions recommended in the report.

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PART I

APPROACH AND OVERVIEW

## INTRODUCTION

Department policy is to have its M&O contractors procure consultant services in a manner most advantageous to the Department. ID is responsible for ensuring that its M&O contractors follow this policy. The purpose of this audit was to evaluate the economy and effectiveness of the award and administration of consultant subcontracts at INEL. Specifically, the audit objectives were to determine whether consultant subcontracts were competitively and objectively awarded, and whether these subcontracts supported INEL's mission.

## SCOPE AND METHODOLOGY

The audit was conducted at INEL from April 1994 through January 1995. Audit work was performed at the ID contracting office; EG&G Idaho, Inc. (EG&G) procurement office; MK-Ferguson of Idaho Company (MK-FIC) procurement office; and, Department Headquarters procurement office.

To accomplish the audit objectives, we interviewed key personnel at all management levels and reviewed:

- o Federal and Departmental regulations, Department memoranda, as well as M&O contractor policies and procedures for subcontracting;
- o prior reviews and reports performed by ID concerning subcontracting; and,
- o consultant subcontract files regarding the scope of work, period of performance, dollar amount, extent of competition, period of performance, justifications for sole sourcing, and modifications to the original subcontracts.

The audit was conducted in accordance with generally accepted Government auditing standards for performance audits and included tests of internal controls and compliance with laws and regulations, to the extent necessary, to satisfy the objective of the audit. Accordingly, we assessed the significant internal controls with respect to the subcontracting process including identification and review of internal controls in the selection and administration of consultant subcontracts. We performed limited tests on computer generated information and relied on this information to provide the universe of consultant subcontracts. Because our review was limited, it would not necessarily have disclosed all internal control deficiencies that may have existed at the time of our audit.

## BACKGROUND

Prior to Fiscal Year 1995, the INEL was managed by five M&O contractors. At the beginning of Fiscal Year 1995, these five M&O contracts were consolidated into one M&O contract which was awarded to Lockheed Martin Idaho Technologies (LMIT). When LMIT

took over management of the INEL, it assumed the procurement procedures of the former M&O contractors. At the time of the audit, LMIT was in the process of implementing its own guidance on consultant subcontracts.

Consultants are subcontractors who provide views or opinions on problems or questions but neither perform nor supervise the performance of operating functions. Ordinarily, consultants are experts in their field. Their expertise may be based on broad administrative, professional, or technical experience which enables the consultant to furnish advice which is considered valuable.

Of the five former M&O contractors, only three had subcontracting authority. During Fiscal Year 1993 and the first half of Fiscal Year 1994, these three M&O contractors awarded 263 consultant subcontracts costing more than \$6.3 million. Two (MK-FIC and EG&G) of these three M&O contractors were included in our audit. We reviewed a sample of 50 consultant subcontracts with a total cost of approximately \$1.9 million. Of this amount, \$254,000 was for six MK-FIC subcontracts, while the remaining \$1.65 million was for 44 EG&G subcontracts.

#### OBSERVATIONS AND CONCLUSIONS

During the audit, we noted that ID had taken several positive actions with respect to consultant subcontracting, including the use of Contractor Purchasing Systems Reviews to candidly review the M&O contractors' procurement systems. In addition, the contracting officer at ID took action to reduce the number of subcontracts awarded to support Headquarters elements. This effort resulted in the termination of INEL support for Headquarters Technical Safety Appraisal Teams.

Our audit showed, however, that the M&O contractor and ID needed to take additional steps to improve consultant subcontracting practices and oversight. We found that M&O contractors usually awarded consultant subcontracts noncompetitively and nonobjectively. Specifically, 36 of the subcontracts reviewed were sole sourced. In addition, 15 were awarded to former INEL employees. Awarding these subcontracts to former employees increases the potential for conflicts of interest. This occurred because the internal control systems of the M&O contractors did not ensure that sole source procurements were adequately justified and that potential conflicts of interest were avoided or mitigated. By not competing its subcontracts the Department may not have obtained the most economical consultant services. In addition, the number of consultant subcontracts awarded to former employees questions the fundamental fairness upon which the subcontracts were awarded.

We recommended that ID and the M&O contractor ensure that consultant subcontracts are awarded more competitively and additional scrutiny is given to subcontracts awarded to former employees. While our audit was in progress, LMIT implemented procedures to require a higher level of approval for consultant subcontracts awarded to former employees. Specifically, LMIT now

requires approval at the Vice-President level before a consultant subcontract award can be made to a former employee.

The audit also showed that a former M&O contractor subcontracted for consultant services that directly supported Headquarters. This occurred because various Headquarters elements ignored Department guidance prohibiting subcontractual support from an M&O contractor and the contractor was willing to process the consultant service requests. In effect, the M&O contractor became a procurement agent for Headquarters. Thus, Headquarters avoided the more stringent requirements of the Department's procurement process. The 14 instances where this occurred cost the Department at least \$90,000 more to procure the services because of charges that the M&O contractor applied. We recommended that ID monitor LMIT's subcontracting to ensure that consultant subcontracts are not awarded to support Headquarters elements. As mentioned earlier, ID has taken action to reduce the number of consultants its M&O contractors procure to support Headquarters.

In our opinion, the findings in this report disclosed material internal control weaknesses that the Department should consider when preparing its year-end assurance memorandum.

## PART II

### FINDINGS AND RECOMMENDATIONS

#### 1. Awarding of Consultant Subcontracts

##### FINDING

Department regulations require subcontracts to be awarded in the manner most advantageous to the Government to ensure fair and effective competition, and to avoid even the appearance of conflicts of interest. However, we found that M&O contractors sole sourced 72 percent of consultant subcontracts costing more than \$1.5 million. Further, 30 percent of the subcontracts, costing more than \$535,000, were to former INEL employees which may appear to have potential conflicts of interest. This occurred because the M&O contractor and ID did not establish adequate internal controls to ensure that sole source procurements were justified and that the appearance of conflicts of interest was avoided. Specifically, M&O contractors' procedures did not require subcontract administrators to adequately stimulate competition and did not ensure that sole source justifications were adequate. In addition, although the potential for conflicts of interest is greater in subcontracts issued to former INEL employees, the M&O contractor and ID did not review the conflict of interest certifications with any additional scrutiny. As a result, the Department may not have obtained the most economical services possible, and the fundamental fairness upon which consultant subcontracts were awarded was questionable.

##### RECOMMENDATIONS

We recommend that the Manager, Idaho Operations Office:

1. Direct LMIT to:

a. Provide training to technical representatives to familiarize them with the requirements for and benefits of competition.

b. Establish and implement procedures to ensure that consultant subcontracts are either awarded competitively or provide sufficient justification to demonstrate that all available alternatives to develop competition have been exhausted.

c. Require that if subcontract administrators receive inadequate sole source justifications, they should deny the requests or pursue further development of competition.

d. Follow newly established procedures which require a higher management approval for consultant subcontracts awarded to former ID and M&O contractor employees. In addition, when conflict of interest certifications for former employees are sent to ID, identify them as such so ID can provide additional scrutiny if necessary.

2. Require that the contracting officer ensure that consultant subcontracts are adequately competed and that awards to former ID and M&O contractor employees are free from potential conflicts of interest.

MANAGEMENT REACTION

Management concurred with the finding and agreed to implement the recommendations. Detailed management and auditor comments are provided in Part III of this report.

DETAILS OF FINDING

Department Acquisition Regulation 970.71 requires that M&O contractors award subcontracts in the manner most advantageous to the Government by ensuring adequate competition. The Department prefers competitive awarding of subcontracts because this is the best way to ensure the lowest possible cost. However, the Department allows sole sourcing if all opportunities to compete a subcontract have been exhausted and if the sole source is fully justified. In addition, Department policy discourages subcontract statements of work with overly restrictive specifications that may create a continuous and dependent arrangement with the same subcontractor.

In addition, the Department's policy requires M&O contractors to ensure that consultants are not selected on the basis of personal association or other nonobjective factors. Further, the ID contracting officer is responsible for ensuring

that potential conflicts of interest are avoided before approving conflict of interest certifications for consultant subcontracts. Conflicts of interest must be avoided in order to prevent the appearance of impropriety in procuring subcontracts.

#### NONCOMPETITIVE AND NONOBJECTIVE AWARDS

We found that M&O contractors did not competitively and objectively award consultant subcontracts. Specifically, M&O contractors did not award the subcontracts competitively and modifications restricted competition. In addition, the objectivity of consultant subcontracts' awards was in question since so many subcontracts were awarded to former INEL employees. Consultant subcontracts awarded to former employees have the potential for conflicts of interest.

##### Lack of Competition

The M&O contractor's subcontract administrators did not ensure competition for most consultant subcontract awards. We found that 36 of 50 (72 percent) consultant subcontracts reviewed, costing more than \$1.5 million, were sole sourced. Our review also showed that sole sourcing such subcontracts is not new. In fact, similar problems were disclosed in the 1990 and 1993 Contractor Purchasing Systems Reviews (CPSR). The 1990 CPSR found that nearly all of the consultant subcontract awards were sole sourced. The 1993 CPSR reported a similar finding and stated that the selection of consultants noncompetitively appeared to be a foregone conclusion. The Department's best interest may not have been served in those procurements without competition because all potential bidders were not given the opportunity to compete. Thus, other sources, having similar or better qualifications, may have been available to perform the job for less cost than the consultant to whom the subcontract was sole sourced. Not only were the original awards sole sourced, but extensive modifications of the subcontracts also restricted competition.

##### Modifications

Consultant subcontracts that we reviewed were modified in the aggregate by almost 50 percent of the subcontract's value, with no attempt to compete the additional work. Specifically, our review of one M&O contractor disclosed that 22 of 44 consultant subcontracts, with an original award value of \$1.1 million, were modified for more than \$500,000. Of these 22 subcontracts, 86 percent had been sole sourced. This large amount of modifications compounded the problem of sole sourcing subcontracts since modifications are, by definition, sole source. For example:

- o The initial award of a consultant subcontract for monitoring legislative issues on waste management was sole sourced for \$28,894. It was modified three times for an additional \$119,000 -- this was a 411 percent increase with no attempt to compete the additional work.

- o Another consultant subcontract, initially awarded for \$18,150, was modified four times for an additional \$29,196 -- a 160 percent increase. This subcontract, sole sourced to a former M&O contractor employee, was to provide an evaluation on nuclear facility safety issues even though nuclear facility safety reviews are routinely competed.

#### Award to Former Employees

The objectivity of consultant subcontract awards was also questionable since so many of them were awarded to former INEL employees. A potential conflict of interest occurs when a subcontract is awarded on the basis of personal association or other nonobjective factors, as may be the case when awards are made to former employees. We found that 30 percent (15 of 50) of subcontracts that were included in our review were awarded to former INEL employees. Four of these subcontracts were awarded to former ID employees, while 11 were awarded to former M&O contractor employees. These procurements could result in potential conflicts of interest as demonstrated in the following example:

An M&O contractor procurement director was sole sourced a \$150,000 consultant subcontract to begin immediately after retirement. According to the sole source justification, the procurement director wanted to avoid being affected by changes taking place in the M&O contractor's retirement benefits. When he returned to work as a consultant, his duties were the same as the duties he had before retirement.

This procurement appeared to have violated Department policy which prohibited selecting consultants on the basis of personal association or any other nonobjective factors, and also prohibited consultants from performing work of a decision making, managerial, or supervisory nature. However, ID approved the conflict of interest certification for this subcontract. The cognizant contracting officer stated that he approved it because he believed it was more economical to retain the procurement director than to hire another who would only work 15 months -- until the M&O's prime contract expired. However, the contracting officer kept no documentation of this decision.

The situation described above was not consistent with what ID decided on another similar consultant subcontract. The facts of the situation were the same. A subcontract was awarded to a former employee of the same M&O contractor's procurement office shortly after he retired. The procurement director wanted to bring him back as a consultant in order to help with the backlog of work. However, the contracting officer recognized a conflict of interest and refused to sign the conflict of interest certification which forced the M&O contractor to cancel the subcontract.

The fact that 30 percent of consultant subcontracts were awarded to former INEL employees leads us to believe that the requestor of the services and their consultants had personal

associations which may have influenced the award of many other subcontracts. All but two of these were issued without competition. Some of the consultants had worked closely with the technical representatives prior to retirement. In one example, a consultant worked in the same group as the technical representative before retirement.

Full and open competition is necessary to assure cost effectiveness and reduce the potential for favoritism and potential conflicts of interest.

#### INTERNAL CONTROL WEAKNESSES

These problems occurred because the internal controls of the M&O contractor and ID to ensure that consultant subcontracts were competitively and objectively awarded were inadequate.

##### Internal Controls of M&O Contractor

The M&O contractor has not implemented internal controls to ensure adequate competition of consultant subcontracts and to decrease potential conflicts of interest. Specifically, the requesting program's technical representatives, rather than procurement, were responsible for developing competition even though the technical representatives had no training in this area; and, justifications for sole source subcontracts were inadequate. In addition, although the potential for conflicts of interest is greater in subcontracts issued to former INEL employees, no additional scrutiny was performed by the M&O contractor.

##### Responsibility For Developing Competition

Even though M&O contractor technical representatives are not specifically trained to develop competition, they have primary responsibility for doing so. The former M&O contractors' procurement regulations and the guidance of the new M&O contractor (LMIT) did not require subcontract administrators to develop competition. Their only responsibility in the sole source justification process was to ensure that the requestor (technical representative) provided an approved and signed sole source justification before the subcontract was awarded. In fact, one subcontract administrator stated that the decision to sole source was made before the subcontract reached her desk. Instead, the technical representatives were responsible for identifying potential sources to perform the scope of work. In addition, they were required to complete a section in the sole source justification on efforts to develop competition. The technical representative's manager then decided whether the justifications were adequate. However, the technical representatives were not specifically trained in how to develop competition. Making technical representatives better aware of the procurement process would help them realize the need for competition and planning which would decrease the number of sole source subcontracts and those issued to former employees.

##### Inadequate Sole Source Justifications

Justifications for sole source consultant subcontracts were inadequate. We found that 20 of 36 subcontracts worth \$827,000 had inadequate sole source justifications because they did not adequately address or entirely ignored the "efforts to develop competition" section of the justification. For example:

- o Two sole source justifications for construction consultants stated the consultants were the only individuals the requesting technical representative knew -- both former M&O employees -- who were qualified to perform the scope of work. However, several other firms routinely provided similar services to the INEL and could have been solicited.
- o One sole source subcontract for monitoring legislative issues on waste management had a statement of work that was so narrowly defined that it excluded competition by intentionally describing a particular consultant's work experience. Department policy discourages statements of work with overly restrictive specifications that create a continuous and dependent arrangement with the contractor. However, this statement of work not only hindered competition when the subcontract was originally awarded, but it also created a continuous and dependent arrangement with the consultant, who has consulted for the M&O for nine years under three subcontracts.
- o One sole source justification stated that the requirement to develop competition was not applicable to a consulting subcontract for warehouse property management. This subcontract was awarded to a former ID employee.

Furthermore, the justifications for not competing the modifications were inadequate. Most justifications for modifications simply stated that the modification work was related to the original scope of work. They did not justify why the additional work specified in the modification could not be competed.

#### Former INEL Employees

Because technical representatives were not trained in developing competition, they usually suggested people that they were already familiar with, including former INEL employees. Originally, the M&O contractor procedures did not require any additional scrutiny, such as obtaining a higher level of management approval, when a consultant subcontract was awarded to a former INEL employee. However, while our audit was in progress, LMIT implemented procedures requiring higher level approval of subcontracts awarded to former employees. Specifically, LMIT now requires approval at the Vice-President level before a consultant subcontract can be awarded to a former employee.

ID has not implemented internal controls to ensure adequate competition of consultant subcontracts and to decrease potential conflicts of interest. Even though the last two CPSRs found that consultant subcontracts were not being adequately competed, ID did not ensure that the M&O corrected the situation by implementing an effective internal control system. Specifically, the 1990 and 1993 CPSRs found that justifications for consultant subcontracts were inadequate. The 1990 CPSR stated that many subcontracts had questionable sole source justifications. The 1993 CPSR stated that subcontracts were usually issued without adequate documented analysis. However, ID did not ensure that this situation was corrected.

In addition, ID generally did not perform close scrutiny of potential conflicts of interest on consultant subcontracts awarded to former INEL employees. This occurred because the cognizant contracting officer was not routinely informed when a subcontract was to be awarded to a former INEL employee. In fact, we found only four instances where the contracting officer provided additional scrutiny to a proposed award. In three cases it happened because the contracting officer apparently knew, through other means, that awards were proposed for former INEL employees. None of the remaining subcontracts awarded to former employees were challenged by ID because the contracting officer did not know of the potential conflicts of interest.

#### SERVICES MAY BE UNECONOMICAL AND UNFAIR

As a result, the M&O contractors' consultant subcontracts were not procured in the manner most advantageous to the Government. The Department did not receive the benefits available from competition when the M&O contractors awarded sole source subcontracts without giving all potential bidders an opportunity to compete. Other subcontractors may have been available to perform required tasks more efficiently or effectively than the sole source subcontractor selected. Although we cannot estimate the extent of potential overpricing that may be associated with the lack of competition, we believe that the amount may have been material.

In addition, when subcontracts are sole sourced to former employees without adequate scrutiny for potential conflicts of interest, the fundamental fairness upon which subcontracts are awarded is in question.

#### 2. Consultant Subcontracts for Department Headquarters

##### FINDING

Department guidance prohibits Headquarters elements from directing M&O contractors to subcontract support services directly for Headquarters in order to avoid Department competition requirements. However, 14 of 44 (32 percent) consultant subcontracts worth \$688,000 awarded by one former INEL M&O contractor provided support services directly to Department Headquarters. This occurred because Headquarters organizations disregarded Department policy, and ID, as well as the former M&O

contractor, continued to process these requests. As a result, Headquarters elements used M&O contractors as a mere procurement agent and bypassed normal Department procurement controls and safeguards. Furthermore, for the 14 subcontracts included in our sample, the M&O contractor added approximately \$90,000 to process the subcontracts for Headquarters.

#### RECOMMENDATIONS

We recommend that the Manager, Idaho Operations Office monitor LMIT's procurement process to ensure that consultant subcontracts are not awarded for Headquarters elements by:

1. performing a "for cause" review under the guidelines established by the Business Management Pilot Oversight program; and,
2. including this issue in the annual review of LMIT's procurement under the Business Management Pilot Oversight program.

#### MANAGEMENT REACTION

Management concurred with the finding and agreed to implement the recommendations. Detailed management and auditor comments are provided in Part III of this report.

#### DETAILS OF FINDING

In June 1993, the Office of Assistant Secretary for Human Resources and Administration issued a memorandum reminding all Department elements that subcontractual support from an M&O contractor to Headquarters is prohibited. According to the memorandum, this type of arrangement places an M&O into the role of a mere procurement office and avoids the safeguards provided by the normal Department procurement process. The memorandum pointed out that M&O contractors may only award subcontracts to meet their own support needs, not the needs of Headquarters. Additionally, Operations Offices with responsibility for an M&O contractor should not process any such request from a Headquarters organization. Furthermore, Department Order 5000.1B, Institutional Planning by Multi-Program Laboratories, states that M&O contractors should not perform work assignments if these assignments are not part of their approved mission and they represent Headquarters attempts to obtain subcontractual support. In addition, Department Order 4200.1C, Competition in Contracting, states that under no circumstances may Departmental personnel direct work to or accept work from M&O contractors for the purpose of avoiding the requirements of competition.

#### HEADQUARTERS DIRECTED PROCUREMENTS

Contrary to Department guidance, Headquarters elements obtained consultant subcontract services from an INEL M&O contractor. In our sample of consultant subcontracts awarded by one former M&O subcontractor, we found 14 of 44 (32 percent) subcontracts, worth \$688,000, that were support services directly

to Headquarters elements. Even though the M&O contractor should only process and acquire subcontracts that support its mission requirements, none of the 14 subcontracts were for local mission requirements. For example:

- o One consultant was paid \$80,000 to prepare classified reports for Department Headquarters on the nuclear readiness of China and the former Soviet Union. This work was performed in Washington, D.C., and was clearly not part of the INEL's mission.

- o Two consultants were paid \$49,000 to help Headquarters write the Defense Programs Operations Manual. The consultants worked in Washington, D.C., and the work was not part of the M&O contractor's mission.

- o One consultant was paid \$116,000 to assist Headquarters develop a systems approach to training Department employees. One goal of this program was to improve the Department's oversight of M&O contractors. This was clearly not part of the M&O contractor's mission.

- o Three consultants were paid \$60,000 to participate in Headquarters administered appraisals at various Department sites. One was a Defense Programs assessment of the Pantex facility. The second was an appraisal of nuclear criticality safety at Lawrence Livermore National Laboratory. The third was an appraisal of organization and administration at Savannah River. The primary function the M&O contractor performed was to procure the consultants for Headquarters. The work was not in support of the M&O contractor's mission.

Discussions with Department management revealed that the three appraisal subcontracts were a small part of a widespread problem with support provided for Headquarters appraisals and inspections. In fact, through discussions with Headquarters management, we were told that all Technical Safety Appraisal teams and Tiger Team reviews, where outside experts were brought in to participate, were procured through M&O subcontracts to support Headquarters.

#### DEPARTMENT GUIDANCE WAS CIRCUMVENTED

Subcontracts were awarded to directly support Headquarters because these organizations disregarded Department guidance which prohibited this, and the M&O contractor circumvented the guidance in order to continue procuring consultant subcontractors for Headquarters.

#### Headquarters Disregarded Department Guidance

Department Headquarters obtained support from the M&O contractor for the sake of expediency. Three of the six Headquarters program managers interviewed said they obtained subcontractual support from M&O contractors because it was easier to obtain. Further, they said that obtaining consultants through

Headquarters procurement was too time consuming. The other three program managers said that they continue to obtain consultant services from M&O contractors because they have always done so.

In addition, budgetary reductions in support service contracts have also caused Headquarters elements to increase their reliance on M&O contractor consultants. The Department recently announced that the Department has cut commercial support service contracts by \$300 million. However, one Headquarters program manager said his group simply increased its reliance on M&O subcontractors even though it costs more to do so. This is possible because consultant subcontracts obtained through the M&O are not included in the commercial support service contracts budget.

#### M&O Contractors Circumvented Guidance

The M&O contractor circumvented Department guidance by interpreting the guidance in such a manner that it could continue to process consultant subcontract requests for Headquarters. This interpretation prohibited support for Headquarters if the consultants receive day-to-day directions from Headquarters. If, instead, the M&O contractor directed the work of the consultant then the subcontract was not considered direct support for Headquarters. The M&O contractor simply acted as an intermediary between the Headquarters elements and the consultant so that the consultant reports to the M&O rather than Headquarters. However, this interpretation did not change the fact that the work was still performed for Headquarters in Washington, D.C. When we asked Headquarters procurement about the validity of this practice, they acknowledged that it was inappropriate.

The interpretation also allowed the M&O contractor to acquire more work. For example, Headquarters elements offered funding to the M&O who could provide the consultant services. If one M&O or its operations office was not willing to find a way to award the consultant subcontracts then Headquarters would find other M&O contractors who would. In fact, one Headquarters program manager said that he established a way to acquire subcontracts with three different M&O contractors at different sites so that if one would not procure the subcontracts then he would ask another M&O contractor to do it.

ID's involvement was generally limited to acting as an intermediary between Headquarters and the M&O contractor for such activities as transferring funds and resolution of problems. However, ID has taken action to reduce the number of subcontracts which are awarded to support Headquarters elements. This effort resulted in the termination of INEL support for Headquarters Technical Safety Appraisals Teams, one of the examples presented earlier in this report.

#### FEDERAL SAFEGUARDS BYPASSED AND INCREASED COSTS

As a result, Headquarters elements were able to avoid the more stringent requirements provided by the normal Departmental procurement process including requirements for competition. By

acquiring consultant subcontracts from an M&O contractor, Headquarters elements placed the M&O contractor into the role of a competing procurement office.

Furthermore, the cost of acquiring services through the M&O was higher than it would have been if Headquarters procurement was used. We estimated that it cost the Department at least \$90,000 more for the 14 consultant subcontracts in our sample because of additional charges for overhead and administrative support. Further, we projected that there were more than 30 additional consultant subcontracts to support Headquarters that did not appear in our sample.

### PART III

#### MANAGEMENT AND AUDITOR COMMENTS

In responding to the Initial Draft Report, Management concurred with the findings and agreed to implement the recommendations. Management and auditor comments on specific recommendations follow.

##### FINDING 1. Awarding of Consultant Subcontracts

###### Recommendation 1(a)

Management Comments. Management concurred, stating that LMIT will conduct an ongoing program of communication and training with the technical program organizations. This initiative includes the discussion of competition and company procedures associated therewith. The topic of competition will continue to be a central theme in that training effort.

Management further stated that consultant services are utilized to satisfy unique requirements which the M&O contractor does not have in-house capability to perform. The very nature of these unusual requirements produces a situation where unique capabilities and qualifications are essential for the needs to be satisfied. Frequently, a specific consultant is the singular resource of expertise to meet the unusual service needs.

Auditor's Comments. Management comments and actions are responsive to the recommendation. However, we want to emphasize that even though sometimes it may be necessary to sole-source consultant subcontracts, sole sourcing should not occur 72 percent of the time, as we found in our audit. This high rate of non-competitive consultant subcontracts was not entirely because of "unique capabilities" or "singular resource of expertise" as ID's comments would suggest. On the contrary, in many cases it was because the requesting program knew someone who could perform the work but did not know of or fully consider requirements for competition.

###### Recommendation 1(b)

Management Comments. Management concurred, stating that the

requirements for non-competitive justification documentation are established in the LMIT's standard practices according to dollar thresholds, i.e., the higher the dollar value, the more extensive the justification requirements. The procurement standard practices require reviews at several organization levels, depending on the anticipated acquisition amount. Also, the procurement standard practices provide for the involvement of several parties in the review of sole source justifications depending on the dollar value of the action. The review may involve the Competition Advocate, Department Manager, Procurement Director, ID Procurement Support Division (PSD), PSD Contracting Officer, as well as the subcontract administrator. Denial of inadequate sole source acquisitions and the pursuit of competition are integral to the current LMIT procurement procedures. LMIT will follow its procurement standard practices for consulting subcontract services awarded on a non-competitive basis. In accordance with these standard practices, competition will be appropriately maximized. Also, the standard practices provide adequate direction regarding development of competition.

Auditor's Comments. Management comments and actions are responsive to the recommendation. It is true that the Contractor's policies and procedures require all of the items mentioned above. However, former M&O contractors did not apply their procedures in a consistent manner.

#### Recommendation 1(c)

Management Comments. Management concurred, stating that this subject will be included in the annual Business Management Oversight Program (BMOP) scheduled to be performed in February 1996. However, in support of its past practices, management stated that the adequacy of the non-competitive justification is a matter of judgement and includes elements such as (a) appreciation of the specific program need, (b) awareness of potential resources in-house and in the marketplace, and (c) an assessment of the unique and exclusive capabilities of the recommended non-competitive source. This judgement is made on the basis of the best information available at the time, and the reviewer's best judgement, given the facts available.

Auditor's Comments. Management comments and actions are responsive to the recommendation.

#### Recommendation 1(d)

Management Comments. Management concurred, stating that on occasion there is a need to acquire the services of a former INEL employee. The standard requirements for documentation have been constant in the procurement organization (e.g., non-competitive justification, work statements, cost estimates, requisitions, etc.) However, management approval requirements have been revised at times. The prior M&O contractor (EG&G) was not always consistent in approval requirements by higher management. While management approvals were dynamic, standard review requirements by Procurement remained constant. These requirements for review and approval gave no preference to personal associations and

provided that the approval to proceed on a non-competitive basis be made on the merits of the exclusive ability of the consultant to perform the work. Moreover, since award of LMIT's contract in October 1994, approval of consultant services that exceed \$30,000 must be approved by the Human Resources Vice-President, LMIT General Counsel, Lockheed Martin Corporation, and the ID Contracting Officer. As discussed above, a process is in place which provides for higher level management review and approval (including LMIT and ID) for subcontracts with former INEL employees. LMIT will direct attention toward a policy for former ID employees, as well as highlight organizational conflicts of interest certifications of former INEL employees when the certifications are transmitted to ID for approval.

Auditor's Comments. Management comments and actions are responsive to the recommendation.

#### Recommendation 2

Management Comments. Management concurred, stating that it is not considered a matter of unfairness to suppliers in the marketplace that the services of a former INEL employee are procured for certain assistance. While this may be a competitive advantage, it is not an unfair competitive advantage. ID, in order to ascertain that LMIT's procurement of consultant subcontracts are adequately competed and that potential conflicts of interest are mitigated, will include this issue in the annual BMOP review. The BMOP review is scheduled to be performed in February 1996.

Auditor's Comments. Management comments and actions are responsive to the recommendation.

### FINDING 2. Consultant Subcontracts for Department Headquarters

#### Recommendation 1

Management Comments. Management concurred, stating that ID will perform a "for cause" review of LMIT's procurement of consultant subcontracts to ascertain the extent of any consultant subcontracting irregularities. The "for cause" review will be completed by December 1995.

Auditor's Comments. Management's comments and actions are responsive to the recommendation.

#### Recommendation 2

Management Comments. Management concurred, stating that the issue of awarding consultant subcontracts for Headquarters will be included in the annual review of LMIT's procurement process under the BMOP. The BMOP is scheduled for February 1996.

Auditor's Comments. Management's comments and actions are responsive to the recommendation.

