

U.S. DEPARTMENT OF ENERGY
OFFICE OF INSPECTOR GENERAL

AUDIT OF
CONSULTANT AGREEMENTS AT
LOS ALAMOS NATIONAL LABORATORY

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LOS ALAMOS NATIONAL LABORATORY

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U.S. DEPARTMENT OF ENERGY
OFFICE OF INSPECTOR GENERAL
OFFICE OF AUDIT SERVICES
WESTERN REGIONAL AUDIT OFFICE

AUDIT OF CONSULTANT AGREEMENTS AT
LOS ALAMOS NATIONAL LABORATORY

Audit Report Number: WR-B-96-05

February 23, 1996

SUMMARY

The Department of Energy's (Department) Albuquerque Operations Office (Albuquerque) and Los Alamos National Laboratory (Los Alamos) are responsible for acquiring consulting services in a manner most advantageous to the Government by ensuring adequate competition. Although the Department prefers competitively awarding subcontracts, including consultant agreements, to ensure the lowest possible cost, it allows sole sourcing a subcontract if the sole source is fully justified. The objective of the audit was to determine whether Los Alamos consultant agreements contained adequate sole source justifications. The audit showed that Los Alamos may not have acquired some of its consultant agreements at the lowest possible cost because it did not prepare adequate sole source justifications for 17 sole source consultant agreements valued at \$842,900.

This condition existed because: (1) requesters did not follow policies and procedures when preparing sole source justifications, (2) Los Alamos did not have an internal mechanism to reject consultant agreements that were not adequately justified, and (3) the Department did not review consultant agreements to evaluate the adequacy of sole source justifications. Without adequate justifications, the Department cannot be assured that consultant services were obtained at the lowest possible cost.

We therefore recommended that the Manager, Albuquerque Operations Office require Los Alamos to ensure proper sole source justifications and enhance internal controls over consultant agreements. Management agreed to implement the recommendations.

OFFICE OF INSPECTOR GENERAL

PART I

APPROACH AND OVERVIEW

INTRODUCTION

Los Alamos, a national laboratory managed by the University of California for the Department of Energy, is involved in multiple areas of research and development in science and nuclear technologies. In order to help accomplish its mission, Los Alamos entered into subcontracts called consultant agreements on

a fee or per diem basis. Los Alamos used these agreements to obtain the services of consultants who provided expert technical or professional advice or assistance. Los Alamos also obtained the services of borrowed personnel who were on loan from private companies and who were hired through consultant agreements. For the purpose of our audit, we considered consultants and borrowed personnel to be synonymous because they were both employed through consultant agreements.

The objective of the audit was to determine whether Los Alamosm consultant agreements contained adequate sole source justifications.

SCOPE AND METHODOLOGY

The audit was conducted at Los Alamos and Albuquerque from March to October 1995. The audit included a review of Department and Los Alamos policies and procedures pertaining to consultant agreements. The audit emphasized the polices and procedures in place during Fiscal Years 1994 and 1995. Specifically, we sampled 54 consultant agreements valued at \$1.1 million from a population of 1,796 consultant agreements valued at \$34 million.

Consistent with the audit objective, we:

- reviewed laws and regulations, applicable DOE orders, policies and procedures, memoranda, purchase orders, and correspondence concerning consultants;

- reviewed the policies and procedures of Albuquerque and Los Alamos relating to consultants; and,

- interviewed Los Alamos and Albuquerque personnel responsible for awarding, monitoring, and approving consultant agreements.

The audit was performed 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 audit objective. Accordingly, we assessed the significant internal controls with respect to the sole source justification of consultant agreements. Further, our assessment consisted of identifying and reviewing Los Alamosm and Albuquerquems management and administrative controls relating to the justification of consultant agreements. We relied on computer generated data to determine the universe of the consultant agreements. 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

As a management and operating contractor, the University of California operates Los Alamos for the Department. Because Los Alamos is involved in multiple and diverse areas of research and development, it sometimes obtains the services of consultants to accomplish its mission. Consultants are individuals who provide

views or opinions on problems or questions in their field of expertise. This expertise may be based on broad administrative, professional, or technical experience which enables the consultant to provide advice considered to be valuable.

At the time of the audit, Los Alamos employed 1,796 consultants whose agreements were valued at \$34 million. The number of consultants at Los Alamos was much higher than the combined total of 905 consultants employed by four other western national laboratories: Idaho National Engineering, Lawrence Berkeley, Lawrence Livermore, and Sandia. In addition to these consultants, Los Alamos also employed 846 guest scientists and 503 special program personnel.

OBSERVATIONS AND CONCLUSIONS

The audit showed that the Department had mechanisms to monitor Los Alamos consultant agreements. The Albuquerque Operations Office, for example, performed regular Contractor Purchasing System Reviews and regular surveillance reviews. In addition, the Los Alamos Area Office was responsible for approving all consultant fees in excess of \$500 a day. However, this review did not include the evaluation of sole source justifications.

We also found that Los Alamos proposed several quality improvements relating to its consultant agreements. These changes included: (1) placing the standard consulting agreement contract clauses on the Internet, (2) eliminating irrelevant clauses from the consultant agreements, and (3) placing the request forms on-line via Los Alamos internal computer network. Procurement personnel stated that these changes, when fully implemented, would streamline the awards process and reduce the processing time from about six weeks to 48 hours.

The audit disclosed that despite these efforts Los Alamos did not adequately justify 17 consultant agreements valued at \$842,900. We therefore recommended that Albuquerque require Los Alamos to ensure proper sole source justifications and to enhance internal controls over consultant agreements.

The Office of Inspector General identified similar problems with sole sourcing in a previous audit report (Subcontracting For Environmental Services At Los Alamos National Laboratory) issued in September 1994. That audit showed that Los Alamos did not adequately justify its sole source environmental subcontracts. Specifically, the audit noted that the sole source justifications did not include the required documentation and merely stated that the subcontractor was uniquely qualified.

The finding in this report disclosed material internal control weaknesses that management should consider when preparing its yearend assurance memorandum on internal controls.

PART II

FINDING AND RECOMMENDATIONS

AUDIT OF CONSULTANT AGREEMENTS AT
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FINDING

Department regulations state that purchases, which include consulting agreements, be acquired in a manner most advantageous to the Government by ensuring competition. These agreements may be sole sourced, if the sole source is fully justified. In contrast to these regulations, our review found that Los Alamos did not adequately justify 17 sole source consultant agreements valued at \$842,900. This condition occurred because: (1) requesters did not follow policies and procedures when preparing sole source justifications, (2) Los Alamos did not have an internal control mechanism to reject agreements that were not adequately justified, and (3) the Department did not review the adequacy of sole source justifications. Without adequate justifications, the Department may not have obtained consultant services at the lowest possible cost.

RECOMMENDATIONS

We recommend that the Manager, Albuquerque Operations Office:

1. Require Los Alamos to ensure that requesters prepare sole source justifications in accordance with policies and procedures.
2. Require Los Alamos to establish an internal control mechanism to reject consultant agreements that are not fully justified.
3. Require the Los Alamos Area Office to periodically review consultant agreements to evaluate the adequacy of sole source justifications.

MANAGEMENT REACTION

Management agreed 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 Regulations require management and operating contractors to award consultant agreements in the manner most advantageous to the Government by ensuring competition. Although the Department prefers competitively awarding these agreements to ensure the lowest possible cost, it allows sole sourcing if the sole source is fully justified. The regulations also require that the contractor's purchasing system establish a dollar value above which the basis for each non-competitive purchase is clearly documented. This documentation must include a justification prepared by the requesting organization and approved at appropriate levels in the contractor's purchasing organization.

The University of California Standard Practices also contain requirements for sole source justifications. Specifically, the standard practices require a justification for all sole source purchases over \$25,000. Further, the standard practices state that a sole source justification must include: (1) a statement of work, (2) a description of the capabilities required to perform the task, (3) the manner in which potential sources were identified, evaluated, and rejected (these techniques could include market research and market survey), and (4) a reason why the recommended individual was uniquely qualified and was the only person who could meet the minimum programmatic needs of the Laboratory. The standard practices also specifically state that a sole source acquisition cannot be justified based only on the contention that the selected consultant was uniquely qualified; the standard practices point out that this contention must be supported by facts, not by opinions or assumptions.

The Los Alamos Consultant Contracting Services Desk Guide states that sole source justifications must explain the unique qualifications or experience required and indicate why a particular individual is the only one qualified to perform the services. In order to substantiate the uniqueness of a consultant's expertise, the justification must describe the consultant's skills and credentials as well as the results of a search for comparable talent.

SOLE SOURCING OF CONSULTANT AGREEMENTS

The audit showed that Los Alamos did not prepare adequate sole source justifications. We reviewed 54 consultant agreements valued at \$1.1 million and found that 17, valued at \$842,900, required a sole source justification because they were over the stipulated \$25,000 threshold. Three of these agreements had no justifications and 14 had justifications that were inadequate. The inadequate justifications did not contain detailed statements of work or a description of the capabilities required to perform the task. In addition, the justifications did not identify potential sources, give reasons for the consultant's being uniquely qualified to perform the services, and did not provide documentation explaining why the consultant was the only one who could meet the Laboratory's programmatic needs.

One example of an inadequate sole source justification was as follows: Diversity Strategic Planning-Consultant Expertise and Input. The areas of Expertise are: actually aware of diversity/competitive business practices, experience developing TQM programs, familiarity with Los Alamos National Laboratory, the community and DOE practices, exceptions and specifications. The justification, however, did not include a detailed description of the work to be performed, capabilities required to perform the task, other potential sources, and an explanation why the consultant was the only one who could meet the Laboratory's programmatic needs.

SOLE SOURCE JUSTIFICATIONS

The requesters did not follow Los Alamos own policies and procedures because they considered the process for a sole source justification to be cumbersome. Another contributing factor was the lack of an internal control mechanism within the Office of Procurement to reject consultant agreements that were not adequately justified. Although procurement personnel indicated that they challenged agreements that had inadequate justifications or no justifications, we did not see any evidence that this practice had taken place. We discussed this issue with Department officials during the audit. They stated that Los Alamos needed to institute a mechanism to reject consultant agreements which were not adequately justified.

Also, the Los Alamos Area Office did not review the adequacy of sole source justifications. Area Office personnel stated that only one individual reviewed consultant agreements and that the review pertained to conflict of interest issues and was restricted to consultant agreements exceeding \$500 per day. Moreover, Area Office personnel acknowledged that inadequate sole source justifications were a continuing problem at Los Alamos.

LOWEST POSSIBLE COST

As a result of inadequate or missing sole source justifications, Los Alamos consultant agreements may not have been procured at the lowest possible cost. Specifically, the Department did not receive the benefits available from competition when Los Alamos awarded sole source consultant agreements without ensuring that potential bidders had an opportunity to compete. Thus, the Department did not know whether other consultants may have been available to perform the required tasks at a lower cost than the sole source consultant who was selected.

PART III

MANAGEMENT AND AUDITOR COMMENTS

The Manager, Albuquerque Operations Office concurred with the finding and recommendations. Management's comments and our responses are included below.

Management Comments. Management concurred with recommendation 1 to require Los Alamos to ensure that requesters prepare sole source justifications in accordance with policies and procedures. According to management's response, Los Alamos policy requires revision to adequately address sole sourcing. By the end of March 1996, Los Alamos will submit to the Department for approval a revision to its standard practice manual addressing sole source issues.

Auditor comments. Management's comments are responsive to the recommendation.

Management Comments. Management concurred with recommendation 2 to require Los Alamos to establish an internal control mechanism to reject consultant agreements that are not

fully justified. Los Alamos will institute a laboratory-wide training program to educate the technical representatives who prepare the justifications. This will enable Los Alamos to address inadequate justifications at the source. The Department will evaluate Los Alamos success at rejecting inadequately justified consultant agreements during its annual review.

Auditor comments. Management's comments are responsive to the recommendation.

Management comments. Management concurred with recommendation 3 to require the Los Alamos Area Office to periodically review consultant agreements to evaluate the adequacy of sole source justifications. By July 31, 1996, Los Alamos will review a representative sample of consultant agreements issued after the implementation of the new procedures discussed above. The Area Office will continue to review the consultant agreements periodically. This will primarily be accomplished during the annual review as well as through day-to-day fee approvals for consultant agreements over \$500.

Auditor comments. Management's comments are responsive to the recommendation.

Additional Comments. Management did not agree with the report statement that without adequate sole source justifications, the Department cannot be assured that consultant services were obtained at the lowest possible cost. According to management's response, costs are evaluated as a separate action from sole source justifications. A consultant's proposed daily fee is reviewed and a determination is made as to whether it is fair and reasonable by using cost and price analysis. A consultant's current salary, other private sector consulting contracts, or a comparison with consultant fees for the same or similar expertise determine the negotiating position. Management believes this process has provided sound rationale for negotiating lower daily fees in cases where the consultant was not able to justify a proposed fee.

Auditor Comments. Department regulations require management and operating contractors to award consultant agreements in the manner most advantageous to the Government by ensuring competition. Although the Department prefers competitively awarding these agreements to ensure the lowest possible cost, it allows sole sourcing if the sole source is fully justified. Because of inadequate or missing sole source justifications, we could not determine if consultants were competitively (which includes consultant fees) obtained at the lowest possible cost. Moreover, our review of the files did not show that cost and price analysis was performed.

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