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

Audit Report

Fiscal Year 2011 Audit of the Work Performed Under the Work for Others Program at the Lawrence Berkeley National Laboratory

OAS-L-13-10

June 2013

Department of Energy
Washington, DC 20585

June 24, 2013

MEMORANDUM FOR THE MANAGER, BERKLEY SITE OFFICE

FROM: Rickey R. Hass
Deputy Inspector General
for Audits and Inspections
Office of Inspector General

SUBJECT: INFORMATION: Audit Report on "Fiscal Year 2011 Audit of the Work Performed Under the Work for Others Program at the Lawrence Berkeley National Laboratory"

BACKGROUND

The attached report presents the results of the audit of Lawrence Berkeley National Laboratory's (Berkeley) Work for Others (WFO) Program. The Office of Inspector General contracted with an independent certified public accounting firm, KPMG, LLC (KPMG) to determine whether Berkeley met the internal control and compliance requirements established by the Department of Energy (Department) to achieve the current goals and objectives of the WFO Program.

Pursuant to the *Atomic Energy Act of 1954*, as amended, and the *Economy Act of 1932*, the Department provides research and technical assistance to other Federal agencies on a reimbursable, full cost recovery basis through the WFO Program. For the vast majority of WFO technical projects, Department officials furnish administrative project oversight while the actual detailed scientific or technical work is completed by the Department's management and operating contractors. The WFO agreements are a mechanism through which Federal entities and industry can utilize expertise and facilities at Berkeley, a Federally Funded Research and Development Center.

RESULTS OF AUDIT

KPMG concluded that, except for the finding noted below and detailed in the attached report, Berkeley implemented internal controls and compliance procedures in Fiscal Year (FY) 2011 that met the Department's WFO Program requirements, as stated in Department regulations, guidance, and applicable contract provisions. Specifically, KPMG found that costs relating to Berkeley's WFO support organization, the Office of Sponsored Projects and Industry Partnerships (OSPIP), were included in the general and administration cost pool that is allocated to both WFO projects and other Department projects on an organization-wide basis, rather than using an allocation base that bears a more direct causal beneficial relationship to the support organization's costs. KPMG estimated that if the Department implemented a separate indirect rate for this support organization, the annual savings would be approximately $400,000. KPMG recommended that Berkeley remove the OSPIP costs from the general and administration indirect cost pool and establish a separate cost pool for allocating those costs to WFO projects and other projects supported by the OSPIP on a base that has a more direct causal beneficial relationship to the OSPIP functions. KPMG also stated that the Berkeley Site Office should consider the cost-benefit of implementing the recommendation.

Further, KPMG noted that corrective action from a September 2010 Berkeley Internal Audit Division Time and Effort Reporting audit related to the accuracy of labor distribution to WFO and the Department's non-WFO projects had not been implemented as of October 31, 2012. This would have affected the accuracy of time charged to WFOs during FY 2011. Because a revised implementation timeline has been agreed to by Berkeley, KPMG did not repeat that finding and recommendation in the report.

Berkeley officials explained that all WFO agreements are added to Berkeley's funding and support the Department's mission. In addition, Berkeley stated that the indirect pool is composed of a variety of functions, all of which provide a differential benefit to each project. These functions are available to all projects and, in aggregate, the benefit to each is equitable. KPMG recognized Berkeley's position that the current allocation method results in an immaterial inequitable distribution of WFO support costs between WFO and other Department projects. Nevertheless, the cost of implementing a separate indirect rate for the WFO support costs would be a one-time development cost.

RECOMMENDATION

We recommend that the Manager, Berkeley Site Office, ensure that Berkeley consider the cost-benefit of removing the OSPIP costs from the general and administration indirect cost pool and establish a separate indirect cost pool for allocating those costs to WFO projects and other projects supported by the OSPIP on a base that has a more direct causal beneficial relationship to the OSPIP functions.

MANAGEMENT COMMENTS AND AUDITOR RESPONSE

The Berkeley Site Office did not agree with the finding and recommendation made in the report, as they believe that the current allocation method complies with Cost Accounting Standards. We note, however, that it is important to consider the proper allocation of the WFO support costs because the Department's WFO Program regulations and guidance requires that the WFO projects bear the full cost of operating that program.

PERFORMANCE AUDIT

KPMG conducted the performance audit in accordance with *Government Auditing Standards* issued by the Comptroller General of the United States and the Office of Inspector General Audit Manual as appropriate. *Government Auditing Standards* require that KPMG plan and perform the audit to obtain sufficient, appropriate evidence to provide a reasonable basis for our findings and conclusions based on the audit objective.

The Office of Inspector General monitored the progress of the audit and reviewed the report and related documentation. Our review disclosed no instances in which KPMG, did not comply, in all material respects, with the audit requirements. KPMG is responsible for the attached report dated June 6, 2013, and the conclusions expressed in the report.

Attachment

cc: Acting Under Secretary for Science
Acting Director, Office of Science
Deputy Secretary
Chief of Staff

Performance Audit

Fiscal Year 2011 Audit of the Work Performed Under the Work for Others Program

For the U.S. Department of Energy Office of the Inspector General

Auditee: Lawrence Berkeley National Laboratory

As of Date: June 6, 2013

KPMG LLP
1801 K. Street, NW
Washington, DC 20006

Table of Contents

EXECUTIVE SUMMARY

KPMG LLP
Suite 12000
1801 K Street, NW
Washington, DC 20006

June 6, 2013

Mr. Mark Mickelsen
Contracting Officer's Representative
U.S. Department of Energy
Office of Inspector General
1617 Cole Boulevard
Golden, CO 08401

Dear Mr. Mickelsen:

This report presents the results of our audit of Lawrence Berkeley National Laboratory's (LBNL) (hereinafter referred to as Auditee or LBNL) Fiscal Year (FY) 2011 Work for Others (WFO) Program, conducted to address the performance audit objective described below. Our work was performed during the period June 15, 2012 to June 6, 2013, and our results, reported herein, are as of June 6, 2013. Our on-site work was conducted from June 15, 2012 through October 31, 2012.

We conducted this performance audit in accordance with *Government Auditing Standards* issued by the Comptroller General of the United States and the U.S. Department of Energy (DOE) Office of Inspector General Audit Manual as appropriate. *Government Auditing Standards* require that we plan and perform the audit to obtain sufficient, appropriate evidence to provide a reasonable basis for our findings and conclusions based on our audit objective. We believe that the evidence obtained provides a reasonable basis for our findings and recommendations based on our audit objective.

The objective of our performance audit was to determine if LBNL's WFO Program, in effect for FY 2011, met the internal control and compliance requirements established by DOE that are identified within:

- DOE Order 481.1c;
- DOE Guide 481.1-1;
- Contract Clauses;
- DOE Acquisition Regulations (DEAR), as applicable, including DEAR 970.5217-1; and,
- Additional guidance issued by DOE/NNSA regarding the WFO Program.

These requirements and guidance are intended to ensure that the goals and objectives of DOE's WFO Program are met.

We identified LBNL's key controls related to WFO projects, determined if LBNL's indirect cost structure was consistent with WFO objectives of ensuring 100 percent cost recovery, and selected a statistical sample of 20 WFO projects that received new funding in FY 2011 for testing of key internal control and compliance attributes identified in the applicable DOE guidance.

As our performance audit report further describes, we identified the following finding as a result of the work performed:

KPMG

- Costs relating to LBNL's WFO support department were included in the general and administration cost pool that is allocated to both WFO projects and other DOE projects on an organization-wide basis, rather than using an allocation base that bears a more direct causal beneficial relationship to the support department's costs. We estimated that the annual savings to DOE by implementing a separate indirect rate for this support department would be approximately $400,000.

Further, we noted that corrective action from a September 2010 LBNL Internal Audit Division Time and Effort Reporting audit related to the accuracy of labor distribution to WFO and DOE's non-WFO projects had not been implemented as of October 31, 2012, which would have affected the accuracy of time charged to WFOs during FY 2011. Because a revised implementation timeline has been agreed to by LBNL, we did not repeat that finding and recommendation in this report.

Based upon the performance audit procedures performed and the results obtained, we have met our audit objective. We conclude that, except for the finding noted above and detailed in this report, LBNL implemented internal controls and compliance procedures in FY 2011 that met DOE's WFO Program requirements, as stated in DOE regulations, guidance, and applicable contract provisions.

This performance audit did not constitute an audit of financial statements in accordance with auditing standards generally accepted in the United States of America and *Government Auditing Standards*. KPMG was not engaged to, and did not render an opinion on the Auditee's overall internal controls.

Sincerely,

KPMG LLP

BACKGROUND

Program Overview

The U.S. Department of Energy (DOE), and its semi autonomous National Nuclear Security Administration (NNSA) provide research and technical assistance to other Federal agencies on a reimbursable, full cost recovery basis, through the Work for Other (WFO) Program. Pursuant to DOE's Work Order No. 2012-10 (Contract No. DE-AT01-07IG01539), dated June 15, 2012, KPMG was engaged to conduct a performance audit of Lawrence Berkeley National Laboratory's (LBNL or the Auditee) WFO Program. This audit was focused on determining whether LBNL met the internal control and compliance requirements established by DOE to achieve the current goals and objectives of the WFO Program.

Auditee Overview

LBNL was founded in 1931, and is a member of the national laboratory system supported by the DOE through its Office of Science. It is managed by the University of California (UC) and is charged with conducting unclassified research across a wide range of scientific disciplines.

WFO agreements are a mechanism through which industry can utilize expertise and facilities at DOE laboratories, such as LBNL. A company may sponsor LBNL scientists to conduct research in a specific area if researchers can be identified with appropriate and unique capabilities, as well as interest and availability. The unique equipment and specialized expertise at LBNL provides research opportunities that may not be available elsewhere. Section 31 of the contract between DOE and the UC specifically addresses WFO projects, and it authorizes UC to perform work for non-DOE entities, as long as compliance is assured with applicable laws, regulations, and DOE policies. Under a WFO arrangement, the commercial sponsor pays 100 percent of the cost of the work performed by LBNL. UC has assigned responsibility for the WFO program to the LBNL Office of Sponsored Projects and Industry Partnerships (OSPIP), which submits all WFO proposals and accepts/manages WFO Program awards from non-DOE sponsors.

The WFO activities have comprised between 11.6 percent and 16.9 percent of LBNL's funding and costs, annually, for each of the past three years, as summarized below:

Funding by Year (*000's*)			
	2009	**2010**	**2011**
WFO	$105,290	$127,926	$122,334
Lab total	$908,237	$846,917	$760,992
Percentage	*11.6%*	*15.1%*	*16.1%*

Costs by Year (*000's*)			
	2009	**2010**	**2011**
WFO	$109,358	$129,167	$127,653
Lab total	$647,749	$811,062	$836,095
Percentage	*16.9%*	*15.9%*	*15.3%*

OBJECTIVE, SCOPE, AND METHODOLOGY

Objective

The objective of our performance audit was to determine if LBNL's WFO Program, in effect for Fiscal Year (FY) 2011, met the internal control and compliance requirements established by DOE that are identified within:

- DOE Order 481.1c;
- DOE Guide 481.1-1;
- Contract Clauses;
- DOE Acquisition Regulations (DEAR), as applicable, including DEAR 970.5217-1; and,
- Additional guidance issued by DOE/NNSA regarding the WFO Program.

These requirements and guidance are intended to ensure that the goals and objectives of DOE's WFO Program are met.

Scope

As requested by DOE, the scope of this performance audit was restricted to WFO projects that received new funding between October 1, 2010 and September 30, 2011.

We conducted this performance audit in accordance with *Government Auditing Standards* issued by the Comptroller General of the United States and the DOE Office of Inspector General Audit Manual as appropriate. *Government Auditing Standards* require that we plan and perform the audit to obtain sufficient, appropriate evidence to provide a reasonable basis for our findings and conclusions based on our audit objective. We believe that the evidence obtained provides a reasonable basis for our findings and recommendations based on our audit objective.

The Auditee is responsible for establishing and maintaining policies, procedures, systems, and internal controls to account for WFO activities. Our responsibility is to provide findings and recommendations based on the results of our performance audit.

Methodology

As part of the performance audit of LBNL's WFO program, we:

- Obtained an understanding of LBNL's WFO Program;
- Performed walk-throughs of LBNL's WFO acceptance/performance process for Federal and non-Federal entities;
- Performed a risk assessment of LBNL's WFO Program and identified significant risks;
- Identified key controls related to establishing and maintaining WFO projects;
- Determined if LBNL's indirect cost structure was consistent with WFO objectives of ensuring 100 percent cost recovery;
- Reviewed LBNL's timekeeping and labor policies relevant to WFO activities;
- Reviewed LBNL's actuarially-determined annual pensions costs to test whether those costs were accurately included in the indirect rates charged to WFO projects; and,

- Selected a statistical sample of 20 WFO projects and performed attribute testing to assess whether LBNL's controls and compliance procedures address the applicable DOE requirements, and are followed.

RESULTS

The results of our audit procedures are presented below:

1. Control Environment/Key Controls

   We performed a walkthrough of the WFO Program in place at LBNL, and identified key controls and compliance procedures within the process. Based on the identification and testing of key controls and procedures related to the WFO Program, we determined that the key WFO controls appear to be effectively designed.

   However, we did note that a corrective action from a September 2010 LBNL Internal Audit Division Time and Effort Reporting audit related to the accuracy of labor distribution to WFO and DOE's non-WFO projects was not yet implemented. The issue focused on the Berkeley Center for Structural Biology employees who were charging time to projects based on project budgets and/or available project funding, which would have affected the accuracy of time charges to WFO projects in FY 2011. The corrective action required LBNL to develop revised time charging procedures and implement revised accounting practices by early FY 2012, but this date was not met for various reasons. Based on a follow-up review by LBNL Internal Audit, and discussions with LBNL management, a revised corrective action timeline was recently agreed to, to fully correct this matter by October 1, 2013. Because corrective action has been agreed to, we did not repeat this finding and recommendation in this report.

2. Indirect Cost Allocation

   We obtained an understanding of the indirect cost allocation methodology to determine whether LBNL is fully recovering costs on its WFO projects.

   Based on test work performed, we determined that LBNL's current allocation of OSPIP costs, using a site-wide general and administrative indirect rate, may result in an inequitable distribution of these costs between the WFO Program and DOE's non-WFO projects. Based on our test work, we issued finding **2012-LBNL-WFO-01**.

   We also noted that the labor costs of resource analysts and principal investigators supporting new project proposals for the WFO Program were included in the "Organizational Burden" rate for the division that these persons were coded to, and allocated to both DOE and WFO projects in that division, using an allocation base of that division's direct labor and payroll burden. These labor costs were incurred to generate proposals for the WFO program and should have been allocated to WFO projects using a base that bears a more direct causal beneficial relationship. However, based on an analysis that LBNL prepared, which we reviewed, the proposal labor costs are estimated to be only $85,000 per year, and the cost of implementing revised time tracking procedures and developing and monitoring additional indirect rates in each of LBNL's 16 organizations in which WFO activities occur, would exceed the amount of proposal labor that should be re-allocated. Therefore, revising the allocation method would not be cost-beneficial.

Our procedures also included obtaining an understanding of the defined benefit pension plans applicable to LBNL employees engaged in the performance of WFO projects and whether the actuarially determined annual pension costs were included in the indirect rates charged to WFO projects.

Eligible employees at LBNL are covered under the UC Retirement Plan (UCRP) under clause H.41 of the DOE prime contract with UC. Clause H.41 does not specify minimum funding requirements, but does require that contributions to the plan be based on the actuarial valuation for the plan and be approved by the Regents of UC. We observed that for cost accounting purposes, LBNL considers the plan to be a defined contribution plan, although the URCP is a defined benefit plan. We determined that this classification is in accordance with Cost Accounting Standards (CAS) 412-50(a)(9), which states that a pension plan applicable to a Federally Funded Research and Development Center (FFRDC) shall be considered to be a defined-contribution pension plan. LBNL is a FFRDC and the URCP is a state pension plan. CAS 412-40 (a)(2) states that pension cost for defined benefit pension plans is the net contribution to be made for that period. We determined that LBNL's contributions to the plan made during FY 2011 were a component of the payroll burden indirect rate charged as pension cost to WFO and DOE non-WFO projects.

We determined that an actuarial valuation of the UCRP is performed annually, and that the UC Regents adjust the contribution rate based on the valuation. We noted that LBNL's portion of the UCRP plan funded percentage (actuarial value of assets divided by actuarial accrued liability) for plan years beginning July 1, 2010 and 2011 was 109 percent and 99 percent respectively, and that the UC Regents approved rate increases for plan years beginning July 1, 2011 and 2012 to maintain plan at a fully funded level.

We also determined that LBNL includes pension costs in the payroll burden rate of the class of employees comprised of those eligible for this benefit and that this rate is applied to labor costs in a consistent manner that does not differ between DOE and non-DOE projects.

3. WFO Project Sample for Internal Control and Compliance Testing

   We statistically selected 20 WFO projects that received new funding between October 1, 2010 and September 30, 2011, for testing the key internal control and compliance attributes identified in applicable DOE guidance and noted no exceptions.

Finding, Recommendation, and Berkeley Site Office Response

Our performance audit resulted in one finding, presented below. We discussed the results of the audit with LBNL management on October 30, 2012 and with the DOE Berkeley Site Office on January 31, 2013.

Finding No. 2012-LBNL-WFO-01

Criteria:

Per DOE O522.1, *Pricing of Departmental Materials and Services,* section 4.a.(1), non-DOE entities are required to be charged the full cost of materials and services provided by DOE. Full cost includes all direct costs incurred in performing work, all allocable costs, and a Federal Administrative Charge (FAC).

Cost Accounting Standards and the Federal Acquisition Regulations Part 31, require that indirect costs be accumulated in logical cost groupings and be distributed to the cost objectives that benefit from the indirect costs.

CASB Disclosure Statement, Revision 24, Effective October, 1, 2010.

Condition:

Costs incurred to support the OSPIP, the LBNL office which submits all WFO proposals and accepts/manages WFO Program awards from non-DOE sponsors, were included in the general and administrative (G&A) indirect cost pool and allocated to all projects (WFO and other DOE projects) using a value added cost input base. Because the OSPIP primarily supports the WFO Program and is separately budgeted, the OSPIP costs may be more directly allocated using a base other than the value-added cost input base.

Cause:

The OSPIP costs were included in the G&A indirect cost pool. Including all of the OSPIP costs in the G&A indirect cost pool and allocating those costs on an organization wide basis using a value added cost input base may result in a less equitable distribution of WFO-related costs.

Effect:

Based on LBNL's analysis that 45.6 percent of the OSPIP labor effort supports WFO projects, and considering the OSPIP's total FY 2011 costs $1,486,000, we estimated that during FY 2011, approximately $677,000 of OSPIP costs benefitted LBNL's WFO projects, but using the current allocation method, only $258,000 of OSPIP costs were allocated to those projects. Therefore, $419,000 of additional OSPIP costs should have been allocated to the WFO projects to recover the full costs of supporting the WFO Program. (Note that this effect is only an estimate because the dollar effect of allocating OSPIP costs using a value added cost input base versus a base, e.g., FTEs, which bears a more direct causal beneficial relationship to OSPIP costs, was beyond the scope of this audit.)

Recommendation:

We recommend that LBNL consider removing the OSPIP costs from the G&A indirect cost pool and establish a separate indirect cost pool for allocating those costs to WFO projects and other projects supported by the OSPIP on a base that has a more direct causal beneficial relationship to the OSPIP functions.

The DOE Berkeley Site Office should consider the cost-benefit of implementing this recommendation, in its oversight of LBNL.

Berkeley Site Office Response:

The Berkeley Site Office's complete response is included as Appendix B to this report.

In summary, the Berkeley Site Office does not agree with the finding and recommendation. The Berkeley Site Office indicated that it believes that the current allocation method complies with Cost Accounting Standards (CAS). In particular, the Berkeley Site Office believes that the OSPIP costs meet the definition of G&A costs, as defined in CAS 410, *Allocation of Business Unit General and Administration Expenses to Final Cost Objectives*. As such, inclusion of the OSPIP costs within the single G&A pool is appropriate. The Berkeley Site Office also indicates that WFO activities conducted by LBNL are complementary to, and provide benefit to, the DOE programs funding work at the Laboratory. Because there is no clear mechanism to quantify the relative benefits to DOE and WFO sponsors and because OSPIP costs are similar in nature to other G&A costs, the Berkeley Site Office believes that these support costs should be recovered through the G&A rate.

Auditor Response:

We recognize that the WFO Program is complementary to DOE mission. We also understand that the OSPIP primarily serves the WFO Program and other partner organizations – which is a programmatic support function, not the general management and administration of LBNL as a whole. Because DOE's WFO Program regulations and guidance requires that the WFO projects bear the full cost of operating that program, it is important to consider the proper allocation of the OSPIP costs.

CAS 410-30(6) states "G&A expense does not include those management expenses whose beneficial or causal relationship to cost objectives can be more directly measured by a base other than a cost input base representing the total activity of a business unit during a cost accounting period". The review of time spent by the OSPIP team performed by LBNL shows that 46% of OSPIP time is spent on the WFO Program with the remaining time distributed across other DOE work including User Agreements, CRADA, and Gifts, and other DOE laboratories.

Additionally, CAS 9903.305, *Materiality*, describes criterion to be considered when determining whether amounts are material or immaterial. CAS 305(a) states that regarding the absolute dollar amount involved, "The larger the dollar amount, the more likely it will be material." Further, CAS 305(d) states "Changes in accounting treatment will have more impact if they influence the distribution of costs between Government and non-Government cost objectives than if all cost objectives have Government financial support." Specifically, under the current allocation method, WFO projects received $419,000 less in allocated OSPIP costs, which also means the DOE projects have absorbed this cost, as shown in LBNL's analysis.

The WFO Program regulations and guidance requires that WFO projects bear the full cost of the program. OSPIP costs could be allocated on a base that bears a more direct causal beneficial relationship through a separate indirect cost rate. Further, the cost of implementing an separate indirect rate for OSPIP costs would be a one-time development cost of approximately $25,000 (based on an estimate made by LBNL), and then an ongoing cost of approximately $13,000 per year, based on LBNL's estimate of 140 hours needed to formulate and monitor the additional indirect rate during the year. As a result, implementing this recommendation could result in a potential savings to DOE of approximately $400,000 per year, assuming that the WFO activity remains at similar levels in future years. Therefore, our finding remains for DOE's consideration in its oversight of LBNL.

Conclusion

Based upon the performance audit procedures performed and the results obtained, we have met our audit objective. We concluded that, except for the finding noted above and detailed in this report, LBNL implemented internal controls and compliance procedures in FY 2011 that met DOE's WFO Program requirements, as stated in DOE regulations, guidance, and applicable contract provisions.

APPENDIX A

List of Projects Tested

Sample Item	Award	Sponsor Name	Sponsor Description	Division	Action Date	Short Description	Amount Funded
1	LB04-000645	CALIFORNIA ENERGY COMMISSION	State & Local Govt	EE	10/26/2010	AMEND	$ 6,750,000
2	WF008442	CALIFORNIA ENERGY COMMISSION	State & Local Govt	EE	9/2/2011	NEW	4,911,721
3	LB07003161	NH-I NATL HUMAN GENOME RESEARCH INSTITUTE	Federal-NIH	LS	4/8/2011	AMEND	3,137,419
4	WF008299	SEMATECH INC	US Non Profit Organiz	MS	8/12/2011	NEW	2,007,770
5	WF008063	DHS SCI & TECH CBRN CTR MEASURES	Fed-DHS	EE	4/21/2011	NEW	1,580,000
6	WF006645	NIH NATL HUMAN GENOME RESEARCH INSTITUTE	Federal-NIH	GN	7/28/2011	AMEND	1,122,379
7	WF005718	UC LOS ANGELES	US Universities	LS	11/19/2010	AMEND	985,412
8	LB09004567	NIH HEART, LUNG & BLOOD, NATL INST	Federal-NIH	GN	3/30/2011	AMEND	735,495
9	LB08005006	SEMATECH INC	US Non Profit Organiz	MS	10/5/2010	AMEND	697,410
10	WF006912	NIH BIOMEDICAL IMAGING & BIOENGINEERING	Federal-NIH	LS	3/28/2011	NEW	624,751
11	WF007027	PALO ALTO RESEARCH CENTER (PARC)	US Private Industry	ES	4/19/2011	NEW	599,993
12	WF006836	BP CORP NORTH AMERICA INC (UK)	Foreign	ES	5/12/2011	AMEND	529,993
13	WF005499A	NIH NATL CANCER INSTITUTE (NCI)	Federal-NIH	LS	7/27/2011	AMEND	463,287
14	WF008259	TRANE US INC	Foreign	EE	5/24/2011	NEW	400,000
15	WF007740	UES 1NC	US Small Private Indus	LS	10/29/2010	NEW	342,270
16	WF007564	NASA LYNDON B. JOHNSON CENTER	Other Federal	LS	1/4/2011	NEW	300,000
17	WF006878	UC TOBACCO-RELATED DISEASE RESEARCH PGM	US Universities	LS	10/15/2010	NEW	211,621
18	WF008074	SONOMA COUNTY WATER AGENCY	State & Local Govt	ES	7/19/2011	NEW	125,185
19	WF006672	DOW CHEMICAL COMPANY	US Private Industry	AL	7/15/2011	AMEND	80,000
20	WF008003	EUROPEAN COUNCIL FOR AN ENERGY EFFICIENT	Foreign	EE	4/26/2011	NEW	23,575
						Total	$ 25,628,281

APPENDIX B

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

APR 23 2013

MEMORANDUM FOR: DAVID SEDILLO
WESTERN AUDIT DIVISION DIRECTOR

FROM: Aundra Richards
AUNDRA RICHARDS
MANAGER
BERKELEY SITE OFFICE

SUBJECT: Management Response to DRAFT Audit Report on "Fiscal Year 2011 Work Performed Under the Work for Others Program"

The purpose of this memorandum is to provide a response to the April 2013 Inspector General (IG) issued DRAFT audit report on "Fiscal Year 2011 Work Performed Under the Work for Others Program" (OAS-M-13-XX). The report recommended that the Manager, Berkeley Site Office, ensure that LBNL consider the cost benefit of removing the OSPIP costs from the G&A indirect cost pool and establish a separate indirect cost pool for allocating those costs to WFO projects and other projects supported by the OSPIP on a base that has a more direct casual beneficial relationship to the OSPIP functions.

Please find attached the Berkeley Site Office response to the IG issued DRAFT report.

If you have any questions regarding the attached, please contact Jacolyn Byrd at (510) 486-4358 or jacolyn.byrd@bso.science.doe.gov .

cc:
Kelley Boyle, IG-323.5
Jacolyn Byrd, BSO
Spencer Peterson, BSO

Attached:
Management Response

APPENDIX B

The Department of Energy (DOE) has reviewed the draft report and does not agree with the finding and associated recommendation related to LBNL's cost allocation method for the Office of Sponsored Projects and Industry Partnerships (OSPIP). DOE believes the current allocation method (as part of the G&A cost pool) used by LBNL is valid and in compliance with Cost Accounting Standards. DOE will not request LBNL to make a change.

A review of the applicable Cost Accounting Standards found that:

1. The OSPIP costs meet the definition of G&A costs as defined in paragraph 30(a)6) of Cost Accounting Standard (CAS) 410 entitled, Allocation of Business Unit General and Administration Expenses to Final Cost Objectives. The costs associated with OSPIP functions benefit LBNL's entire portfolio of scientific work and are similar in nature to other G&A costs. In our discussion with the auditors on April 12, 2012, the auditors stated that they took no exception to the costs being classified as G&A costs. The issue is that the auditors recommend a different allocation base for the OSPIP costs. By using a different allocation base for one element of the G&A pool violates CAS 410 and CAS 402.

2. CAS 410-40 states that G&A costs shall be grouped in a separate indirect cost pool and allocated to final cost objectives. CAS requires the use of a single G&A pool and by creating a new G&A pool for OSPIP would violate the very foundation of G&A. G&A costs are administrative in nature and although some final cost objectives may receive more or less benefit, the nature of G&A costs is that the costs benefit the entire organization. Therefore, the costs are best allocated using one of the required allocation bases set forth in CAS 410-40(b)(1).

3. CAS 402-40 states that all costs incurred for the same purpose, in like circumstances, shall be treated in the same manner. Treating the OSPIP costs differently than like support costs, as recommended by the auditors, would violated CAS 402.

Further, it is not apparent from the audit report that there is a clear understanding that the WFO activities conducted by LBNL also provide benefit to the DOE programs funding work at the Laboratory. This benefit derives from the requirement that all WFO projects must be complementary to the DOE mission. This creates a close connection between the work being performed for WFO sponsors and DOE programs. For example, many researchers support both DOE and WFO sponsors due to the synergy between the mission needs of both parties. Further, the funding provided by WFO customers helps maintain and strengthen the Laboratory core capabilities that enable LBNL to better serve the Department's missions. So, DOE benefits in multiple ways from the WFO activities at the Laboratory. There is no clear mechanism to quantify the relative benefits to DOE and WFO sponsors. This highlights the need for these costs to be recovered through the G&A rate since one of the fundamental principles of activities accumulated in the G&A cost pool is the lack of a clearly defined beneficiary.

The auditors appear to be singling out the OSPIP costs as they believe the support costs are disproportionate to other types of support costs. However, singling out a single G&A cost due to its dollar amount violates CAS 410 and 402. This principle is clearly articulated by the Federal Circuit decision in *Aydin Corporation (West) v. Windall (Fed Cir No. 94-1441, August 10, 1995),* in which the Court decided that a single item of cost in the G&A pool could not be treated differently merely because of the dollar amount. The Court stated:

APPENDIX B

On the present record, this court sees no distinction between the SOLAR II sales commission costs and Aydin's sales commission costs other than dollar amount. CAS 402 requires similar treatment for similar costs....By singling out the SOLAR II costs for exclusion from the G & A expense pool, the Government imposed a requirement on the contractor that conflicts with the requirements of CAS 402. Cf. Reynolds Metals Co., 64 B.C.A. (CCH) ¶ 4,312, at 20,856 (1964). Regardless of the definition of "all such costs" (which conceivably could embrace all selling expenses, all sales commissions, or even all foreign sales commissions), **the Government may not define "costs" so narrowly as to capture only one isolated cost item, even where that cost item is disproportionately large.** Had the SOLAR II sales commission costs been incurred in different circumstances or for different purposes than the sales commission costs Aydin incurred for its other contracts, then direct assignment of the SOLAR II sales commission costs to the SOLAR II contract may have complied with CAS 402. See 4 C.F.R. § 402.60(b)(1), (2) (1987); see also Boeing Co. v. United States, 862 F.2d 290, 293 (Fed.Cir.1988). (emphasis added)

IG Report No. OAS-L-13-10

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 applicable to you:

1. What additional background information about the selection, scheduling, scope, or procedures of the audit or 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 that 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 our office at (202) 253-2162.