



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

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## SPECIAL INQUIRY

Alleged Attempts by Sandia National  
Laboratories to Influence Congress and  
Federal Officials on a Contract Extension

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DOE/IG-0927

November 2014

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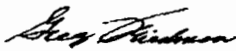
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**Department of Energy**  
Washington, DC 20585

November 7, 2014

MEMORANDUM FOR THE SECRETARY

FROM:   
Gregory H. Friedman  
Inspector General

SUBJECT: INFORMATION: Special Inquiry on "Alleged Attempts by Sandia National Laboratories to Influence Congress and Federal Officials on a Contract Extension"

BACKGROUND

The Department of Energy's Sandia National Laboratories (SNL) is a Government-owned, contractor-operated laboratory that is part of the National Nuclear Security Administration's (NNSA) nuclear weapons complex. In 1993, the Management and Operating (M&O) contract was competitively awarded to Sandia Corporation, a wholly owned subsidiary of Martin Marietta. In 1995, Martin Marietta and Lockheed Corporation merged to form the Lockheed Martin Corporation (LMC). In 1998, the Department noncompetitively extended the SNL contract. The contract was set to expire on September 30, 2012, but it was extended for 12 months with two 3-month option periods, which extended the contract for an additional 6 months beyond the September 30, 2013 expiration date. On March 17, 2014, the Department announced that it was moving forward with a noncompetitive extension for a period of 2 years with an option for a third year while NNSA prepared for a full and open competition.

Prompted by an Office of Inspector General inspection report on *Concerns with Consulting Contract Administration at Various Department Sites* (DOE/IG-0889, June 2013), the NNSA's Sandia Field Office conducted a preliminary review of documentation from 2009 through 2011 regarding consultant activities between Heather Wilson, LLC (the principal of which is a former member of the U.S. House of Representatives) and SNL. On March 27, 2013, the Sandia Field Office alleged that SNL impermissibly attempted to influence an extension to the Sandia Corporation contract and engaged Ms. Wilson in these activities.

Given the seriousness of this allegation, the Office of Inspector General initiated a Special Inquiry into the facts and circumstances surrounding the allegation.

RESULTS OF SPECIAL INQUIRY

Our inspection substantiated the allegation. We found that SNL used Federal contract funds to engage in activities that were intended to influence the extension of Sandia Corporation's contract with the Department—a contract then valued at about \$2.4 billion per year. In particular, SNL developed and executed a plan that involved meeting with and attempting to

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influence Federal and Congressional officials to provide assistance in obtaining a noncompetitive extension of its contract with the Department. We determined that these activities appeared to have violated United States Code (U.S.C.) and Federal Acquisition Regulation (FAR) provisions prohibiting the use of Federal funds to influence members of Congress or Federal officials with regard to an extension of a contract. We also concluded that such activities were impermissible under a provision of the Sandia Corporation M&O contract, which prohibits the contractor from making interface with any Federal, state, municipal or local legislators, or legislative personnel for the purpose of obtaining or retaining business for Sandia Corporation.

#### Prohibitions Related to Influencing and Attempts to Influence

Title 31 U.S.C. § 1352, *Limitation on use of appropriated funds to influence certain Federal contracting and financial transactions*, stated in pertinent part, (a)(1) that none of the funds appropriated may be expended to the recipient of a Federal contract to pay any person for influencing or attempting to influence an officer or employee of any agency or a member of Congress in connection with...the extension of any Federal contract. In addition, FAR 31.205-22, *Lobbying and political activity costs*, states that "costs associated with the following activities are unallowable: Section (6)—costs incurred in attempting to improperly influence, either directly or indirectly, an employee or officer of the Executive Branch of the Federal government to give consideration to or act regarding a regulatory or contract matter." Further, Sandia Corporation SF 6432-CO, *Standard Terms and Conditions for Consultants and Other Professional Provider Services*, contains a clause on *Prohibited Activities* that states, in part, that the contractor shall not have any interface with any present or potential Federal, state, municipal, or local government customers or commercial customers, or Federal, state, municipal or local legislators or legislative personnel for the purpose of obtaining or retaining business for Sandia Corporation.

#### Strategy to Obtain a Contract Extension

In 2009, SNL formed an in-house Contract Strategy Team and utilized consultants in the development of a plan to secure a noncompetitive extension of the Sandia Corporation contract with the Department. Available documentation confirmed that an essential element of this plan was to influence members of Congress and Federal officials to prevent the need for a competitive process as a means to achieve the desired contract extension. In our view, these actions were in conflict with applicable statutory and regulatory requirements. As best we could determine, these efforts were funded through the contract instrument, thus the costs were borne by the U.S. taxpayers.

As early as March 2009, SNL began formulating a contract extension strategy. In an *M&O Contract Strategy* presentation dated March 16, 2009, the effort was to "approach the new administration with a defined capture strategy to extend the LMC ownership of Sandia Corporation at the conclusion of the current contract term for an additional 7 years with award term potential of an additional 12 years." The strategy also noted, "Failing success...then support LMC to win a competition including attempting to influence the evaluation criteria in the RFP [Request for Proposal]." The stated challenge of the strategy was "over the next 12 months

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campaign aggressively (Administration and Congress) to convince [the then Secretary of Energy] Secretary Chu to extend the M&O contract and retain the LM [Lockheed Martin Corporation]/Sandia team."

SNL utilized three consultants to provide advice and guidance in the development of the contract strategy. One consultant's advice suggested that LMC should aggressively lobby Congress and influence chairs and members of key committees (but keep a low profile); meet with the New Mexico Congressional delegation who "should let Chu know (by direct contact) that [the delegation] expects a contract extension and will follow the matter with personal interest"; have Sandia vice presidents influence Chu's key advisors; and contact a former U.S. Senator, a former NNSA Administrator and a former Governor of New Mexico.

Finally, SNL developed a "Contact Plan" that listed individuals who had "influence on [the] decision," such as political officials and staffers, and those individuals who were "required to make extend/compete decision," such as Department and NNSA officials. According to an SNL official, the next step was to "map contacts" and develop a contact sequence and schedule, including SNL and LMC actions.

In our view, the plan developed by the SNL Contract Strategy Team represented an apparent violation of 31 U.S.C. § 1352, *Limitation on use of appropriated funds to influence certain Federal contracting and financial transactions*. In this case, appropriated funds were used to pay the recipients of a Federal contract, both SNL employees and consultants, salaries and fees for developing a plan intended to result in influencing or attempting to influence an officer or employee of the Department or a member of Congress in connection with the extension of the SNL contract.

#### Execution of Strategy to Obtain a Contract Extension

Our review established that SNL actually took action to implement portions of the Contract Strategy Team's plan. Specifically, SNL documentation revealed that after the development of the Contact Plan, the Laboratory held numerous meetings/strategy sessions, prepared documentation, and participated in e-mail discussions that indicated a desire to influence Federal officials as well as members of Congress in the decision about whether to competitively award the new Sandia Corporation contract. These discussions indicated that SNL employees, funded directly or indirectly with Federal resources, were actively engaged in implementing the plan of the Contract Strategy Team and closely coordinated with LMC officials during this effort.

For example, SNL employees who were funded under the Sandia Corporation M&O contract were actively engaged in the implementation of the plan to influence members of Congress and Federal officials. In an e-mail dated July 6, 2009, a senior member of the SNL Contract Strategy Team expressed concern that SNL's Contract Strategy was stalled and that the Laboratory needed the support of the then NNSA Administrator to advise the then Secretary of Energy on the benefit of extending the contract noncompetitively. An SNL consultant suggested that SNL start working the "edges," like key members of Congress, that SNL's message "to these people" should be that competition was not in the best interest of the Government, and that SNL should ask them to call then Secretary Chu and tell him that a re-compete at SNL was not needed.

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The evidence indicated that SNL and LMC officials had conversations with members of Congress and Federal officials to convince the Department, NNSA and Congress of the merits of contract extension without competition. Documentation from one meeting indicated that a senior SNL official met with a member of the New Mexico Congressional delegation and engaged in discussions on the merits of a contract extension without competition; conducting an aggressive campaign to avoid an RFP process; and informing the Secretary of Energy that the nation would be better served by preserving the SNL/LMC team. Senior SNL and LMC officials also met with the NNSA Administrator. The first meeting took place on September 3, 2009. According to SNL documentation, this meeting was "to initiate discussions on the future of the Lockheed Martin/Sandia relationship and their desire to retain the same team for the future M&O contract that has performed so successfully over the past 16 years." According to notes from the SNL Contract Strategy Team, the NNSA Administrator had "easy access to Secretary Chu and Dan Poneman [Deputy Secretary of Energy] in the DOE front office and . . . has no problem interfacing with Congress and committees on the matter of a Sandia contract extension." The evidence also indicated that the successor to laboratory leaders initially involved with the Contract Strategy Team continued to participate in the implementation of the Contract Strategy.

Finally, SNL employees who were funded under the Sandia Corporation M&O contract were actively engaged with LMC in the implementation of the plan to influence members of Congress and Federal officials. Documentation gathered during our review indicated that SNL officials met with the Lockheed Martin Electronic Systems management and the Lockheed Martin Washington Operations team to engage their support for SNL's strategy. Documentation also indicated that SNL officials communicated with LMC on influencing the Department's decision on a contract extension, stating "we believe it is best for LM, Sandia and the nation to work together towards influencing DOE to retain this team." In addition, documentation showed that a senior member of the Contract Strategy Team was informed that an LMC leader had sent a memorandum to then Secretary Chu stating that LMC wanted to have the contract extended with the same terms and conditions. A member of the Contract Strategy Team responded by stating that, "if the answer [from the Secretary] was not in the affirmative, then Lockheed Martin/Sandia should seriously consider initiating some heavy Congressional support."

We found that actions taken by Sandia officials and their consultants constituted implementation of the plan developed by the SNL Contract Strategy Team. These actions represented the culmination of the plan to influence members of Congress and Federal officials, an apparent violation of 31 U.S.C. § 1352, *Limitation on use of appropriated funds to influence certain Federal contracting and financial transactions*, and FAR 31.205-22, *Lobbying and political activity costs*. In this case, appropriated funds were used to pay the recipients of a Federal contract (SNL employees) salaries for influencing or attempting to influence an officer or employee of the Department or a member of Congress in connection with the extension of the SNL contract.

#### Possible Influence of Congress Using Written Matter

We also noted that, in addition to the appearance of attempts to influence members of Congress and Federal officials with regard to a contract extension, SNL provided the New Mexico Congressional Delegation with information that raised a concern about lobbying. Specifically,

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each year the New Mexico Congressional Delegation requested that SNL provide them with information on ongoing and future national security and science research. Included in this package was a "Next Steps" or "What Could Congress Do" section, which sometimes included funding requests or expressed an opinion on a Congressional matter. In 2009, a Department Federal official expressed concern that such action might be construed as lobbying. The official believed that this information might unduly influence Congress in its decisionmaking, and therefore violated prohibitions against lobbying with appropriated moneys. However, SNL disregarded these concerns and continued to include suggestions to Congress.

#### Contributing Factors and Path Forward

Clearly, SNL officials were committed to the notion that the SNL/LMC relationship should continue into the future and that this should be accomplished without the benefit of competition. This appeared to be the underlying rationale for the actions identified in this report. SNL, however, rejected this conclusion. SNL took the position that FAR 35.017, *Federally Funded Research and Development Centers*, allowed SNL to undertake these activities in order to be prepared to demonstrate to Department/NNSA that SNL was fulfilling the Department's needs. SNL indicated that these were typical activities for any contractor intent on continuing a relationship with its sponsor, especially a long-term relationship, and that SNL was preparing to demonstrate that it deserved a full 5-year extension as permitted by the FAR. Also, SNL indicated that, in accordance with prime contract clause I-8, FAR 52.203-12, *Limitations on Payments to Influence Certain Federal Transactions*, Subsection C, and prior to a formal solicitation for competition, SNL prepared information and met with NNSA personnel because SNL felt it necessary for the Department and NNSA to make an informed decision on a contract extension. SNL argued that its actions to obtain a contract extension were based on "the merits of the matter," and that SNL costs associated with such activities were allowable.

In contrast, we find that the position and actions taken by SNL to develop and execute the contract extension plan to be highly problematic. Given the specific prohibitions against such activity, we believe that the use of Federal funds for the development of a plan to influence members of Congress and Federal officials to, in essence, prevent competition was inexplicable and unjustified. SNL was cognizant of problems with using Federal funds for similar purposes. In fact, the documentation confirms that Sandia's own Legal Counsel recognized in 2004 that as a Federally Funded Research and Development Center SNL was required to operate with objectivity and full disclosure to the sponsoring agency. When considering the question of whether a cost would be allowable when SNL assisted LMC in matters of competition, the Legal Counsel warned that, "Neither Sandia nor NNSA could tolerate even the suspicion that Sandia was assisting in the competition at prime contract expense." SNL may have felt empowered to use Federal funds for such purposes because it had participated in such activities in the past. Notably, we located an e-mail dated May 20, 2010, in which an SNL official wrote, "In terms of precedent, we used operating costs in the same way in securing the extensions in [1998] and 2003." This official also stated that, "In 2003 there was a Sandia team formed to secure the extension and we worked closely with LMC."

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We recognize that LMC, as a for-profit entity, has a corporate interest in the future of the SNL contract. However, the use of Federal funds to advance that interest through actions designed to encourage a noncompetitive contract extension was, in our view, prohibited by Sandia Corporation's contract and Federal law and regulations.

We made several recommendations designed to assist management in preventing any future use of Federal funds to influence members of Congress and Federal officials with regard to Federal contracting actions. Specifically:

1. Develop policy guidance on the type of information a Laboratory can provide under FAR 52.203-12, *Limitation on Payments to Influence Certain Federal Transactions*, and FAR 31.205-22, *Lobbying and political activity costs*;
2. Determine whether a violation of Sandia Corporation SF 6432-CO, *Standard Terms and Conditions for Consultants and Other Professional Provider Services*, occurred, and take appropriate steps to ensure SNL contractors do not interface with any present or potential Federal, state, municipal, or local government customers or commercial customers, or Federal, state, municipal, or local legislators or legislative personnel for the purpose of obtaining or retaining business for Sandia Corporation;
3. Determine the allowability of salaries paid to SNL employees who participated in the activities of the SNL Contract Strategy Team, and recover any costs determined to be unallowable;
4. Determine the allowability of fees paid to consultants who participated in the activities of the SNL Contract Strategy Team, and recover any costs determined to be unallowable; and
5. Determine whether adjustments to previously awarded performance fees are appropriate to address the administration and management issues we observed relative to the activities of the SNL Contract Strategy Team.

#### MANAGEMENT REACTION

Management concurred with the report's findings and identified planned actions to address our recommendations. We consider management's comments responsive to the report's recommendations.

Management's comments are included in Appendix 3.

Attachment

cc: Deputy Secretary  
Under Secretary for Nuclear Security  
Chief of Staff

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**SPECIAL INQUIRY ON ALLEGED ATTEMPTS BY SANDIA  
NATIONAL LABORATORIES TO INFLUENCE CONGRESS  
AND FEDERAL OFFICIALS ON A CONTRACT EXTENSION**

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**TABLE OF CONTENTS**

**Special Inquiry Report**

Details of Finding.....1  
Recommendations.....16  
Management Response and Inspector Comments.....17

**Appendices**

1. Objective, Scope and Methodology.....18  
2. Prior Report .....20  
3. Management Comments.....21



## **ALLEGED ATTEMPTS BY SANDIA NATIONAL LABORATORIES TO INFLUENCE CONGRESS AND FEDERAL OFFICIALS ON A CONTRACT EXTENSION**

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### **IMPROPER INFLUENCE**

Our inspection substantiated the allegation that Sandia National Laboratories (SNL) engaged in activities that were intended to influence an extension to the Sandia Corporation contract. Such activities appeared to have violated United States Code (U.S.C.) and Federal Acquisition Regulation (FAR) provisions prohibiting the use of Federal funds to influence members of Congress or Federal officials with regard to an extension of a contract. We also determined that these activities were impermissible under a provision of the Sandia Corporation Management and Operating (M&O) contract which prohibits the contractor from interfacing with any Federal, state, municipal or local legislators or legislative personnel for the purpose of obtaining or retaining business for Sandia Corporation.

#### **Prohibitions Related to Influencing and Attempts to Influence**

The following laws and regulations pertain to the issue of influencing members of Congress or Federal officials with regard to an extension of a contract:

- Title 31 U.S.C. § 1352, *Limitation on use of appropriated funds to influence certain Federal contracting and financial transactions*, states in pertinent part, (a)(1) that, "none of the funds appropriated may be expended by the recipient of a Federal contract to pay any person for influencing or attempting to influence an officer or employee of any agency or a member of Congress in connection with...the extension of any Federal contract."
- FAR 52.203-12, *Limitation on Payments to Influence Certain Federal Transactions*, mimics 31 U.S.C. §1352. It further defined "influencing or attempting to influence" as "making, with the intent to influence, any communication to or appearance before an officer or employee of any agency or member of Congress in connection with any covered Federal action, which includes extending any Federal contract." Part (c) of the FAR cited, *Exceptions (1) Agency and legislative liaison by Contractor employees*, (iii) allows the contractor to provide, prior to formal solicitation of any covered Federal action, any **information** (emphasis added) not specifically requested but necessary for an agency to make an informed decision about initiation of a covered Federal action.
- FAR 31.205-22, *Lobbying and political activity costs*, states that, "costs associated with the following activities are unallowable: (6) Costs incurred in attempting to improperly influence, either directly or indirectly, an employee or officer of the Executive branch of the Federal government to give consideration to or act regarding a regulatory or contract matter." Subpart 3.401 defined "improper influence" as "any

influence that induces or tends to induce a Government employee or officer to give consideration or to act regarding a Government contract on any basis other than the merits of the matter."

In addition, Sandia Corporation SF 6432-CO, *Standard Terms and Conditions for Consultants and Other Professional Provider Services*, contains a clause on Prohibited Activities which states, in part, that the contractor shall not have any interface with any present or potential Federal, state, municipal, or local government customers or commercial customers, or Federal, state, municipal or local legislators or legislative personnel for the purpose of obtaining or retaining business for Sandia Corporation.

### **Strategy to Obtain a Contract Extension**

We found that as early as March 2009, SNL had formed a Contract Strategy Team and utilized consultants to develop a plan to influence members of Congress and Federal officials with a goal of securing a noncompetitive extension of the Sandia Corporation contract with the Department.

Specifically, in an *M&O Contract Strategy* presentation dated March 16, 2009, the contract extension strategy was presented under Plan A and Plan B, as follows:

- Plan A, *New Administration*, the strategy was to "Approach the new administration with a defined capture strategy to extend the LMC [Lockheed Martin Corporation] ownership of Sandia Corporation at the conclusion of the current contract term for an additional 7 years with award term potential of an additional 12 years."
- Plan B, *Competition*, the strategy was, "Failing success with Plan A then support LMC to win a competition including attempting to influence the evaluation criteria in the RFP [Request for Proposal]."

The stated challenge of the strategy was "over the next 12 months campaign aggressively (Administration and Congress) to convince [the then] Secretary Chu to extend the M&O contract and retain the LM [Lockheed Martin Corporation]/Sandia team."

We also noted that the *M&O Contract Strategy* contained a number of *Principles for Preserving the LM/Sandia Relationship*, including the maintenance of mission focus and laboratory stability, as well as the dedication of the "parent" to national service, performance excellence and a reasonable fee structure. The *M&O Contract Strategy* also contained *Key Talking Points*. For example, under a section titled "Competition will be Disruptive," it was stated that competition will:

- Be a serious distraction to Sandia management and mission focus;
- Be costly and disruptive to the Department/National Nuclear Security Administration (NNSA); and
- Lead to significant increase in fee expectations.

The *M&O Contract Strategy* stated that the "Period of Influence" is **now** [emphasis added], and that, "The LM/Sandia Team must convince a new President, freshman NM [New Mexico] delegation, Democratic Congress, new DOE Secretary, new NNSA administration, new E&W [Energy and Water] Appropriations Committee Chair that the value and contribution of the team merits a contract extension."

The presentation proposed starting the campaign immediately with the "current administration" to extend the M&O contract. To accomplish the strategy, the Contract Strategy Team hoped to identify the Department/NNSA decision makers and develop a "chain-of-command" contact plan. In addition, the Team wanted to determine a Congressional strategy, identify Congressional decision makers and develop a Contact Plan to gain support for the extension strategy.

(b)(6) (b)(7)(C) Sandia's (b)(6) (b)(7)(C) (b)(6) (b)(7)(C) at the time the strategy was developed, told us that the goal and scope of this strategy was to analyze FAR and Department of Energy Acquisition Regulation requirements and Department policy, and look at other criteria to report to the then Secretary and answer questions in an effort to gain a contract extension. (b)(6) (b)(7)(C) said that the Team was formed to evaluate past performance, that the SNL/LMC team had 18 years of achievements, and that they were looking for an acceptable path forward for SNL and the Department. (b)(6) (b)(7)(C) also said that SNL wanted to study reducing costs, improve on past performance, key on past successes, and evaluate competitors if the contract was put out for bid.

(b)(6) (b)(7)(C) expressed (b)(6) (b)(7) belief that there was nothing wrong with proposing efficiencies in the conduct of SNL's business. We agree with this position; however, we found that the goal and scope of the strategy went far beyond an evaluation of past performance and an analysis of FAR/Department of Energy Acquisition Regulation requirements and Department policy. In fact, the strategy developed into a plan to influence members of Congress and Federal officials with regard to a noncompetitive extension of the Sandia Corporation contract.

### Use of Consultants to Provide Advice and Guidance

We determined that SNL utilized three consultants already under contract to provide advice and guidance in the development of the contract strategy: Heather Wilson, LLC (HWC) (the principal of which, Ms. Heather Wilson, was a former member of the U.S. House of Representatives);<sup>1</sup> Mr. Everet H. Beckner (Former Deputy Administrator for NNSA and one-time Vice President of Lockheed Martin);<sup>2</sup> and (b)(6) (b)(7)(C) NNSA Site Office official).<sup>3</sup>

#### Heather Wilson, LLC: Advice and Guidance

We found that on March 31, 2009, (b)(6) (b)(7)(C) (b)(6) (b)(7)(C) Sandia Corporation, both members of

<sup>1</sup> Under the consulting agreement with SNL, HWC was paid \$226,378. This amount was determined to be unallowable as a result of deliverable and invoice issues identified in OIG Report number DOE/IG-0889, dated June 2013. The full amount was recovered by the Department.

<sup>2</sup> Mr. Beckner's consulting agreement with SNL had a ceiling price of \$25,000 over the contract strategy period. (b)(6) (b)(7)(C) consulting agreement with SNL had a ceiling price of \$300,000 over the contract strategy period.

the Contract Strategy Team, met with HWC, to discuss the contract strategy. Our review of notes from this meeting recorded by (b)(6) (b)(7)(C) revealed that HWC provided a number of suggestions and raised several questions, including:

- Lockheed Martin should aggressively lobby Congress, but keep a low profile.
- Who in Lockheed Martin have relationships with and can influence chairs and members of key committees?
- Meet with Pete Domenici [former U.S. Senator of New Mexico] to seek his advice on strategy and request his help in getting Bennett [U.S. Senator of Colorado] and Bingaman [former U.S. Senator of New Mexico] and their colleagues to be assertive with the Department.
- We need to meet with [the New Mexico Congressional] delegation. Bingaman should let Chu [then Secretary of Energy] know (by direct contact) that he expects a contract extension and will follow the matter with personal interest.
- Meet with Richardson [then Governor of New Mexico] and get him to call Chu or Rahm Emanuel [former White House Chief of Staff] and assert the State's desire to keep the Lockheed Martin/Sandia Team in place and extend the contract.
- Chu's staff must speak with him on the [positives] of extension—work key influencers. Which Sandia Vice Presidents could influence Chu's key advisors? [Develop a] Point of Contact strategy.
- Do we know any of Chu's colleagues at LBNL [Lawrence Berkeley National Laboratory] who would advocate for the Lockheed Martin/Sandia team?
- Linton Brooks [former Administrator, NNSA] and Everet Beckner [former Deputy Administrator for NNSA and Vice President of Lockheed Martin] should be contacted for advice and insights into means of influencing the NNSA.
- (b)(6) (b)(7)(C) [redacted] Lockheed Martin] should speak with Chu "friends and family"—timing will be important.

(b)(6) (b)(7)(C) [redacted] told us that Sandia was asking for insight from its consultants on those whom the Secretary relied on to get a greater historical perspective about the Department. (b)(6) (b)(7)(C) [redacted] said that this was the period that followed competitions at Los Alamos National Laboratory and Lawrence Livermore National Laboratory, so there was an emphasis on making informed decisions. (b)(6) (b)(7)(C) [redacted] said conversations were held with HWC for advice with regard to what LMC needed to do for the Department and NNSA to extend the Sandia Corporation contract.

**Everet H. Beckner: Advice and Guidance**

The Contract Strategy Team also utilized the services of Mr. Beckner. The Statement of Work under a Standard Purchase Order issued to Mr. Beckner initially stated that the consultant was to "Provide advice in the development of LM/Sandia strategies for the future M&O contract extension initiative." The period of performance was to begin on April 17, 2009, and end on February 1, 2012. The Statement of Work was then changed to state that, at the direction of the Sandia Delegated Representative, the Consultant was to provide consulting and advisory services to (b)(6) (b)(7)(C) to include providing mentoring to (b)(6) (b)(7)(C) "(solely) using historical knowledge to assist with M&O contract renewal strategies."

Mr. Beckner told us that he could only recall two meetings with SNL/LMC personnel. Initially he did not believe that he was providing advice to SNL employees concerning contract extension strategy, but rather believed that the discussions were solely with LMC personnel. Mr. Beckner stated that the goal for the Contract Strategy Team was to assist LMC on their strategy to retain the contract. His role was to provide guidance on NNSA priorities if the contract was recompleted.

(b)(6) (b)(7)(C) : **Advice and Guidance**

In addition, the March 16, 2009, *M&O Contract Strategy* presentation listed (b)(6) (b)(7)(C) former NNSA Site Office official, as a consultant and member of the Contract Strategy Team. The Statement of Work under a Standard Purchase Order issued to (b)(6) (b)(7)(C) stated that, "At the direction of the Sandia Delegated Representative, the Consultant shall provide SNL with advice and guidance regarding matters of corporate strategy." In addition, the Consultant was to participate in on-site meetings. The period of performance was from August 24, 2009, to August 23, 2012.

(b)(6) (b)(7)(C) told us that initially (b)(6) (b)(7)(C) did not know that (b)(6) (b)(7)(C) part of the "Strategy Team" yet (b)(6) (b)(7)(C) stated that (b)(6) (b)(7)(C) was part of a "Contract Support Team." (b)(6) (b)(7)(C) stated that (b)(6) (b)(7)(C) "supplied answers" to questions regarding "contract reform" activities, specifically around 2009. (b)(6) (b)(7)(C) also (b)(6) (b)(7)(C) said that (b)(6) (b)(7)(C) worked infrequently with (b)(6) (b)(7)(C) stated that he did not know the "goal" of the Strategy Team, but said it was probably to get a new contract. (b)(6) (b)(7)(C) stated that (b)(6) (b)(7)(C) believed that the "critical actions" the Strategy Team performed to achieve their goals were mainly to produce a brochure to document the accomplishments that Sandia had achieved.

**Contact Plan**

SNL then developed a "Contact Plan" that listed individuals who had "influence on [the] decision" such as politicians and staffers, and those individuals who were "required to make extend/compete decision," such as Department and NNSA officials. In an e-mail dated March 31, 2009, (b)(6) (b)(7)(C) wrote (b)(6) (b)(7)(C) and also a member of the Contract Strategy Team to inform (b)(6) (b)(7)(C) that the HWC advice and insights were excellent and that the next step was

to "map contacts" and develop a contact sequence and schedule, including SNL and LMC actionees. As part of the strategy to extend the contract, SNL created a Contact Plan (see Figure 1).

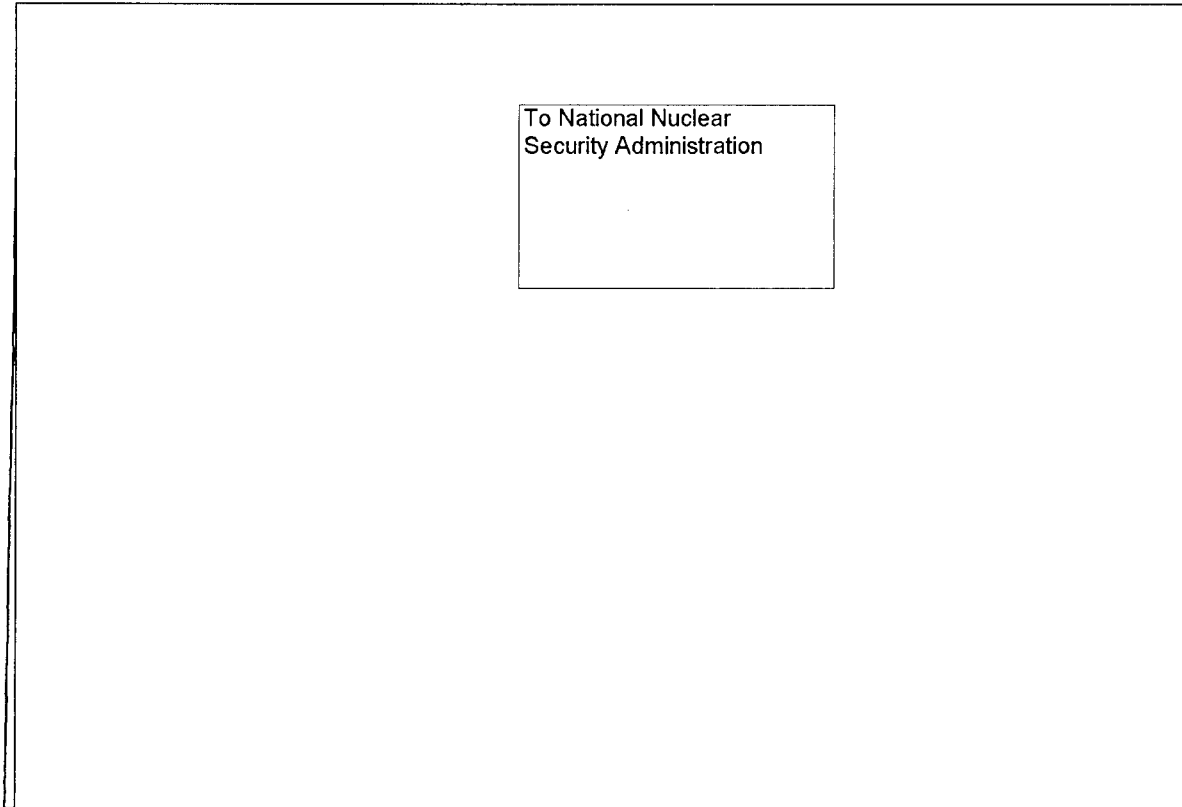


Figure 1: SNL Contact Plan

As is evident, then Secretary of Energy, Steven Chu, was considered to be the key player in the Sandia Corporation contract extension effort.

According to (b)(6) (b)(7)(C) SNL developed an approach at the request of Mr. Tom D'Agostino [former Administrator, NNSA] and (b)(6) (b)(7)(C)

(b)(6) (b)(7)(C) NNSA]. (b)(6) (b)(7)(C) said that the information provided under this approach was based on a Department policy letter. This letter addressed the unique characteristics of the M&O contract and those of a Federally Funded Research and Development Center (FFRDC), as well as the statutory and regulatory basis for competition and the extension of M&O contracts for the operation of an FFRDC. Also, according to (b)(6) (b)(7)(C) the information gathered was not meant to influence, it was meant to educate. (b)(6) (b)(7)(C) said that SNL gathered information and provided it to LMC. (b)(6) (b)(7)(C) also said that SNL developed a contact plan—it was up to LMC to decide whether to meet with the Department/NNSA or Congress. In addition, he said that SNL did not lobby or try to influence the Department or Congress; it only provided information.

(b)(6) (b)(7)(C) told us that the Contact Plan came out of a meeting with HWC and was put together by (b)(6) (b)(7)(C) emphasized that it was never implemented. (b)(6) (b)(7)(C) stated that if LMC personnel interacted with anyone on the Contact Plan, (b)(6) (b)(7)(C) did not know of it. (b)(6) (b)(7)(C) stated that (b)(6) (b)(7)(C) for LMC, was the point person to the company. Yet, (b)(6) (b)(7)(C) told us that (b)(6) (b)(7)(C) was unaware of what tasks (b)(6) (b)(7)(C) performed.

### Execution of Strategy to Obtain a Contract Extension

SNL implemented portions of the Contract Strategy Team's plan in a manner that appeared to have violated various provisions prohibiting the use of Federal funds to influence contracting decisions. SNL documentation revealed that, after the development of the "Contact Plan," the Laboratory held numerous meetings/strategy sessions, prepared documentation and participated in e-mail discussions that indicated a desire to influence Federal officials as well as members of Congress in the decision about whether to competitively award the Sandia Corporation contract. These discussions indicated that SNL employees were actively engaged in implementing the plan of the Contract Strategy Team and that SNL employees actively coordinated with LMC officials during this effort.

Specifically, SNL employees who were funded under the Sandia Corporation M&O contract were actively engaged in the implementation of the plan to influence members of Congress and Federal officials. As noted previously, under 31 U.S.C. § 1352, none of the funds appropriated may be expended to the recipient of a Federal contract to pay any person for influencing or attempting to influence an officer or employee of any agency or a member of Congress in connection with the extension of any Federal contract.

In an e-mail to HWC dated July 6, 2009, (b)(6) (b)(7)(C) expressed (b)(6) (b)(7)(C) concern that SNL's Contract Strategy was stalled and that the Laboratory needed the support of the NNSA Administrator to advise then Secretary Chu on the benefit of extending the contract. In response, HWC suggested that SNL start working the "edges," like key members of Congress. HWC asked (b)(6) (b)(7)(C) if Waxman [member of the U.S. House of Representatives] thought highly of how [Lockheed Martin] had managed SNL and whether Senator Bingaman would weigh in and make a call to the then Secretary Chu. HWC stated that SNL's message to these people should be that competition was not in the best interest of the Government and that SNL should ask them to call then Secretary Chu and tell him that a re-compete at SNL was not needed.

The evidence indicates that SNL and LMC officials did have conversations with members of Congress and Federal officials. For example, in an August 20, 2009, e-mail from (b)(6) (b)(7)(C) to (b)(6) (b)(7)(C) provided information on the contract strategy for a meeting (b)(6) (b)(7)(C) [SNL] held with former Congressman Martin Heinrich, the following week. This information was titled *Lockheed Martin/Sandia Corp. M&O Contract Strategy* and stated that the "Current M&O contract terminates 9/30/2012, however, the Secretary of DOE has the authority to extend the LM/Sandia M&O contract." The strategy included:

- The SNL/LMC team working to convince the Department, NNSA, and Congress of the merits of contract extension without competition;
- Conducting an aggressive campaign to avoid an RFP process; and
- Informing the Secretary of Energy that the nation would be better served by preserving the SNL/LMC team.

In the August 20, 2009, e-mail response to (b)(6) (b)(7)(C) on the *Lockheed Martin/Sandia Corp. M&O Contract Strategy*, (b)(6) (b)(7)(C) responded by stating, "This is OK. It **EXACTLY duplicates** [emphasis added] the conversation I had with Heinrich last spring." (b)(6) (b)(7)(C) closed by stating that, (b)(6) (b)(7)(C) should state that, lest Martin [Heinrich] think we changed course."

It should be noted that in an e-mail from (b)(6) (b)(7)(C) [Sandia's (b)(6) (b)(7)(C)] dated August 24, 2009, to (b)(6) (b)(7)(C) stated that (b)(6) (b)(7)(C) had received word from (b)(6) (b)(7)(C) Sandia's (b)(6) (b)(7)(C) did not want to address the contract negotiation and come out with an official company position at this point. Therefore, according to (b)(6) (b)(7)(C) the strategy was removed from the briefing package. In response, (b)(6) (b)(7)(C) stated that, "This is absolutely ridiculous! Yet another missed opportunity." In addition, (b)(6) (b)(7)(C) said that, "I don't know what game we are playing, this process is political whether (b)(6) (b)(7)(C) accepts it or not—our competitors are not shy about invoking the political process."

In addition, a document entitled *M&O Contract Extension Strategy* was provided by (b)(6) (b)(7)(C) on November 9, 2009. This document was intended for (b)(6) (b)(7)(C) use in introducing the strategy at an off-site meeting on November 11, 2009. This document also provided updates since the May 5, 2009, off-site meeting. In the updates, it was noted that (b)(6) (b)(7)(C) met with (b)(6) (b)(7)(C) on October 5, 2009, and that (b)(6) (b)(7)(C) met with former Representative Heinrich on August 25, 2009, where part of the meeting was devoted to questions about the M&O Contract.

Also, in a December 2, 2010, e-mail from (b)(6) (b)(7)(C) SNL and (b)(6) (b)(7)(C) Sandia Corporation (b)(6) (b)(7)(C) stated that:

It has been some time since the four of us (five including (b)(6) (b)(7)(C) SNL (b)(6) (b)(7)(C)) compared notes on the M&O contract strategy. I believe at last account you indicated the action had been moved from the NNSA Administrator's office to the Secretary's office and that you would be speaking imminently w/ Dan Poneman [Deputy Secretary of Energy] to gauge the temperature of the water in the office. Also, I believe you intended to broker LM meetings w/SEC [Secretary of Energy] Chu and SEN. Bingaman in which LM (b)(6) (b)(7)(C) [Lockheed Martin Corporation] of (b)(6) (b)(7)(C)



(b)(6) (b)(7)(C) Lockheed Martin]) could express their desire to continue the successful LM/Sandia relationship and w/ SEN. Bingaman to request that he speak w/ the SEC and express his support for an extension.

In a December 3, 2010, response, (b)(6) (b)(7)(C) said, "I discussed on the Hill (Bingaman/Heinrich) yesterday but not with D'Agostino. (b)(6) (b)(7)(C) also said, "Talked with (b)(6) (b)(7)(C) and we are targeting (b)(6) (b)(7)(C) [LMC] with Chu after first of the year."

Also, in a January 4, 2011 e-mail from (b)(6) (b)(7)(C) asked, "Did I tell you that I met with both Bingaman and Heinrich on this issue?" This issue was articulated in a Sandia Point Paper that stated that, "We do not believe that the best strategy for the Department is to compete the Sandia contract in 2012," and that, "It is in the taxpayer's best interest to not compete for competition's sake, but to use the regulatory processes already available for retaining a high-performing contractor to operate a government FFRDC." Also, in a document titled *Shape the Future*, (b)(6) (b)(7)(C) stated that, "I discussed the factors around the contract extension/competition with key stakeholders in Washington, most notably the NM congressional delegation and the leadership of the key committees in Congress ensuring they were well informed," and, "I provided leadership to the Sandia side of the LM/Sandia team that has developed the strategy for extension."

(b)(6) (b)(7)(C) told us that the Contract Strategy Team initially consisted (b)(6) (b)(7)(C) (b)(6) (b)(7)(C) stated their goal was to look at options that would be the most cost effective and least disruptive to the Laboratory, what was in the best interest of the Department and to assure the Department had all the necessary information to make an informed decision.

(b)(6) (b)(7)(C) indicated that the majority of the "leg work" on the project was done by (b)(6) (b)(7)(C) stated that (b)(6) (b)(7)(C) identified the people that LMC should talk with. However, contrary to (b)(6) (b)(7)(C) August 20, 2009 e-mail and the November 11, 2009, document titled *M&O Contract Extension Strategy*, (b)(6) (b)(7)(C) asserted that (b)(6) (b)(7)(C) personally never contacted Congress or any Federal officials. (b)(6) (b)(7)(C)

### Meetings with the NNSA Administrator

SNL and LMC officials also met with Mr. D'Agostino on the matter of a contract extension. The first meeting took place on September 3, 2009. According to SNL documentation, (b)(6) (b)(7)(C) (b)(6) (b)(7)(C) Lockheed Martin Electronic Systems, and (b)(6) (b)(7)(C) met with Mr. D'Agostino "to initiate discussions on the future of the Lockheed Martin/Sandia relationship and their desire to retain the same team for the future M&O contract that has performed so successfully over the past 16 years." According to this documentation, it was agreed that "a small Sandia/NNSA team would develop a framework including mutually attractive key terms and contract extension rationale for discussion" with Mr. D'Agostino on October 28, 2009.

Also, (b)(6) (b)(7)(C) description of the meeting was recorded by (b)(6) (b)(7)(C) and indicated that the SNL/NNSA team was to be comprised of (b)(6) (b)(7)(C) (b)(6) (b)(7)(C) LMC, (b)(6) (b)(7)(C) the NNSA Sandia (b)(6) (b)(7)(C). It should be noted that this was not the Contract Strategy Team that was formed in March 2009. According to (b)(6) (b)(7)(C) notes, Mr. D'Agostino had "easy access to Secretary Chu and Mr. Dan Poneman in the Department front office and Mr. D'Agostino has no problem interfacing with Congress and committees on the matter of a Sandia contact extension." It was also noted that, "There is no need for Sandia to speak with congressional delegates or staff on the subject."

The evidence also indicates that (b)(6) (b)(7)(C) successor at SNL also participated in the implementation of the Contract Strategy. Specifically, this was evidenced by an e-mail from (b)(6) (b)(7)(C) regarding a white paper on contract extension. In the e-mail dated September 10, 2010, (b)(6) (b)(7)(C) indicated that, per (b)(6) (b)(7)(C) request, (b)(6) (b)(7)(C) was attaching the white paper for (b)(6) (b)(7)(C) meeting with Mr. D'Agostino the following week. The white paper was titled, *A Case for Extension of the Sandia Corporation M&O Contract without Competition*, and it addressed contract extension without competition while specifically discussing competition requirements; the regulatory basis for competition and extension of M&O contracts for the operation of FFRDCs; and the Department's M&O FFRDC competition experience.

In an October 1, 2010, e-mail regarding the contract extension, (b)(6) (b)(7)(C) encouraged (b)(6) (b)(7)(C) to request a meeting directly with then Secretary Chu as well as Mr. D'Agostino to impress him with LMC's commitment and determine whether the Secretary was prepared to extend the contract and inform Congress of his decision. (b)(6) (b)(7)(C) wanted (b)(6) (b)(7)(C) to obtain Mr. D'Agostino's clear agreement that he would direct his organization to proceed immediately to work with LMC on a contract extension.

### SNL Coordination with LMC

As previous indicated, SNL employees who were funded under the M&O contract were actively engaged with LMC in the implementation of the plan to influence members of Congress and/or Federal officials. In addition, a January 9, 2009, e-mail from (b)(6) (b)(7)(C) discussed whether SNL was included in LMC's Washington Operations marketing plan. (b)(6) (b)(7)(C) warned (b)(6) (b)(7)(C) that SNL should not be requesting help from LMC Washington Operations team, stating that it would put SNL "in serious hot water" for lobbying. However, in an May 12, 2009, e-mail to HWC, (b)(6) (b)(7)(C) stated "we [SNL] have met w/the LM [Lockheed Martin] Electronic Systems management (our LM reporting org.) and the LM Washington Operations team to engage their support for our strategy." Also, an October 20, 2009, e-mail from (b)(6) (b)(7)(C) made it clear that (b)(6) (b)(7)(C) wanted (b)(6) (b)(7)(C) to request that Mr. D'Agostino entertain a sole source, unsolicited proposal in order to extend the Sandia Corporation contract.

Then, in a November 13, 2009, e-mail to (b)(6) (b)(7)(C) requested a discussion with (b)(6) (b)(7)(C). The discussion was on missed opportunities to shape the policy letter on contract extension/competition being developed by then Secretary Chu's office because one individual

was inhibiting the engagement of an SNL Vice President with regard to attempts to influence the outcome in favor of [SNL/Lockheed Martin's] mutual interests. The e-mail string went on to discuss the eventual conversation (b)(6) (b)(7)(C) had with (b)(6) (b)(7)(C). In the e-mail, (b)(6) (b)(7)(C) stated, "we believe it is best for LM [Lockheed Martin], Sandia and the nation to work together towards influencing DOE to retain this team. (b)(6) (b)(7)(C) response is that (b)(6) (b)(7)(C) cares only about LM and takes direction only from (b)(6) (b)(7)(C) said (b)(6) (b)(7)(C) does not want to engage to try and influence the Chu position."

Also, in an e-mail dated May 24, 2011, (b)(6) (b)(7)(C) was informed that (b)(6) (b)(7)(C) (b)(6) (b)(7)(C) for Lockheed Martin, had sent a memorandum to then Secretary Chu stating that LMC wanted to have the contract extended with the same terms and conditions. (b)(6) (b)(7)(C) replied to that e-mail and stated that, "if the answer [from the Secretary] was not in the affirmative, then Lockheed Martin/Sandia should seriously consider initiating some heavy Congressional support."

### Possible Influence of Congress Using Written Matter

We also noted that, in addition to the appearance of attempts to influence members of Congress and Federal officials with regard to a contract extension, SNL provided the New Mexico Congressional Delegation with information that raised a concern about lobbying. Each year the New Mexico Congressional Delegation requests that SNL provide them with information on the ongoing and future national security and science research. SNL included a section in their document labeled "Next Steps" or "What Could Congress Do." This section sometimes included funding requests or expressed an opinion on a Congressional matter.

(b)(6) (b)(7)(C) Sandia Field Office, expressed concern to us over the (b)(6) (b)(7)(C) correspondence from the New Mexico Delegation to (b)(6) (b)(7)(C) inviting SNL to keep them apprised on ongoing research and other issues and concerns. (b)(6) (b)(7)(C) noted that (b)(6) (b)(7)(C) would prefer that the delegation contact the Department for that information. (b)(6) (b)(7)(C) also stated that had SNL provided just factual information on programs in the documents themselves, the data provided would have been fine. However, in the last section of most programs described, SNL suggested that the Congressional delegation fund programs to certain levels or encourage certain policies. (b)(6) (b)(7)(C) believed that this is where SNL crossed the line. (b)(6) (b)(7)(C)

In 2009, (b)(6) (b)(7)(C) the NNSA (b)(6) (b)(7)(C) at the Sandia Field Office, expressed concern that the section might be construed as lobbying. This official believed that this information might unduly influence Congress in their decisionmaking, and therefore violate 18 U.S.C. § 1913 *Lobbying with appropriated moneys*. In an e-mail received by SNL, (b)(6) (b)(7)(C) stated the following:

I would refrain from incorporating recommendations in the provided document. My rationale is based on the difference between 'informing/keeping the delegation apprised of issues and concerns' and lobbying lies in the recommendation. In the

fifteen issues presented, twelve requested additional or sustained funding in the recommendation. I don't think it adds to their discussion of the issue or impacts but it does smack squarely into the definition of lobbying congressional members.

However, SNL disregarded these concerns and continued to include suggestions to Congress.

### Contributing Factors

These conditions were caused, in part, by the desire of SNL officials to maintain the SNL/LMC relationship and prevent competition. Department policy recognizes that conducting competitions for laboratory M&O contracts is time consuming, disruptive, and costly. Department policy also states that, in many cases, what improvements have been observed could have been achieved in the absence of competition. However, this policy recognizes, first and foremost, a preference for full and open competition. By actively trying to prevent full and open competition, SNL's actions were in direct conflict with Department policy.

### FFRDC and Prime Contract Arguments

SNL took the position that FAR 35.017, *Federally Funded Research and Development Centers*, allowed SNL to undertake these activities in order to be prepared to demonstrate to the Department/NNSA that SNL was fulfilling the Department's needs. Specifically, in an April 26, 2013, memorandum to (b)(6) (b)(7)(C) Sandia Field Office (b)(6) (b)(7)(C) SNL stated the FAR established that, "An FFRDC meets some special long-term research or development need," and that, "Long-term relationships between the Government and FFRDCs are encouraged." SNL stated that they valued and desired to continue a long-term relationship with the Department/NNSA. SNL claimed that their actions were typical activities for any contractor intent on continuing a relationship with its sponsor, especially a long-term relationship, and that SNL was preparing to demonstrate that it deserved a full 5-year extension permissible under the FAR.

Also, SNL indicated that, in accordance with prime contract clause I-8, FAR 52.203-12, *Limitations on Payments to Influence Certain Federal Transactions*, Subsection C, and prior to a formal solicitation for competition, SNL prepared information and met with NNSA personnel because SNL felt it necessary for the Department and NNSA to make an informed decision on a contract extension. Specifically, in a July 8, 2013 memorandum to (b)(6) (b)(7)(C) SNL argued that its actions to obtain a contract extension were based on "the merits of the matter." These merits included their performance, the impact of a change in contractor and the likelihood of qualified offerors for competition, and a number of other issues jointly of interest and value to SNL and NNSA.

(b)(6) (b)(7)(C)

Further, (b)(6) (b)(7)(C) described this as a "teaming" effort with NNSA to educate decision makers on Sandia's accomplishments and capabilities. (b)(6) (b)(7)(C) also stated that the goal of the Strategy Team was to obtain a 5-year extension on the M&O contract. (b)(6) (b)(7)(C) also noted that the scope of Strategy

Team was to "prepare evidence" to emphasize the elements of FAR 17.605(c)(1)(2)(3), *Management and Operating Contracts/Award, Renewal, and Extension*, by demonstrating Sandia's "great performance" and the "downside of competition."

### Allowability of Costs Argument

As early as March 21, 2004, SNL had considered the question of whether a cost would be allowable when SNL assisted LMC in matters of competition. A March 21, 2004, e-mail from SNL Legal Counsel, stated that there was a tenuous benefit to SNL in merely assisting LMC in the acquisition of other business. Legal Counsel believed that segregating LMC "Business Development" from the "M&O of Sandia" would be appropriate. Legal Counsel stated that:

Finally, I am recalling that as an FFRDC we operate with objectivity and with full disclosure to the sponsoring agency. Neither Sandia nor NNSA could tolerate even the suspicion that Sandia was assisting in the competition at prime contract expense.

In a May 20, 2010 e-mail from (b)(6) (b)(7)(C) to the SNL Legal Counsel, (b)(6) (b)(7)(C) stated that the LMC (b)(6) (b)(7)(C) of Washington Operations had called and asked if "Sandians" [Sandia employees] could work with LMC on the contract extension (meeting with NNSA, putting together strategies and contract terms). (b)(6) (b)(7)(C) told the SNL Legal Counsel that, "I told (b)(6) (b)(7)(C) yes, because there is no RFP, no competition, so we can work on [the] extension using our operating dollars." (b)(6) (b)(7)(C) asked SNL Legal Counsel for information that (b)(6) (b)(7)(C) could provide to the LMC (b)(6) (b)(7)(C) citing the law and contract provisions supporting the position that "no competition means operating dollars can be spent." The SNL Legal Counsel responded by providing the March 21, 2004 e-mail legal opinion. Legal Counsel noted that a normal part of contract management and administration was to engage with the Government customer regarding schedule as well as other revisions to the contract. Legal Counsel indicated that, "The cost of that activity is allowable."

However, we believe that SNL's actions went far beyond engaging the Government customer regarding schedule and revisions to the contract, and that these actions were in direct conflict with the warning given by SNL Legal Counsel in the March 2004 e-mail where (b)(6) (b)(7)(C) stated that, "Neither Sandia nor NNSA could tolerate even the suspicion that Sandia was assisting in the competition at prime contract expense." Perhaps SNL felt empowered because it had improperly directed Federal funds to similar activities in the past. In an e-mail dated May 20, 2010, an SNL official wrote, "In terms of precedent, we used operating costs in the same way in securing the extensions in [1998] and 2003." This official also stated that, "In 2003 there was a Sandia team formed to secure the extension and we worked closely with LMC."

### Impact and Path Forward

As a result of SNL's strategy to obtain a contract extension, and SNL's execution of that strategy, appropriated funds were used in a manner inconsistent with Federal law and regulations.

### Use of Appropriated Funds

Clearly, SNL officials were committed to the notion that the SNL/LMC relationship should continue into the future and that this should be accomplished without the benefit of competition. This was, as best we could determine, the underlying rationale for the actions identified in this report. SNL took the position that FAR 35.017, *Federally Funded Research and Development Centers*, allowed SNL to undertake these activities in order to be prepared to demonstrate to the Department/NNSA that SNL was fulfilling the Department's needs. SNL indicated that these were typical activities for any contractor intent on continuing a relationship with its sponsor, especially a long-term relationship, and that SNL was preparing to demonstrate that it deserved a full 5-year extension as contemplated by the FAR. Also, SNL indicated that, in accordance with prime contract clause I-8, FAR 52.203-12, *Limitations on Payments to Influence Certain Federal Transactions*, Subsection C, and prior to a formal solicitation for competition, SNL prepared information and met with NNSA personnel because SNL felt it necessary for the Department and NNSA to make an informed decision on a contract extension. SNL argued that its actions to obtain a contract extension were based on "the merits of the matter," and that SNL costs associated with such activities were allowable.

In contrast, we find that the position and actions taken by SNL to develop and execute the contract extension plan to be highly problematic. Given the specific prohibitions against such activity, we could not comprehend the logic of using Federal funds for the development of a plan to influence members of Congress and Federal officials to, in essence, prevent competition. As noted above, SNL was cognizant of problems with using Federal funds for similar purposes, but chose to interpret Federal regulations and use Federal funds in a manner that was intended to benefit its parent corporation.

Under the FAR 52.203-12, *Limitation on Payments to Influence Certain Federal Transactions*, it is prohibited to influence or attempt to influence as making, with the intent to influence, any communication to or appearance before an officer or employee of any agency or member of Congress in connection with any covered Federal action, including extending any Federal contract. However, the plan developed by the SNL Contract Strategy Team, both in written form and by design, was intended to influence both officers and employees of the Department as well as members of Congress. While the FAR allows the contractor to provide, prior to formal solicitation of any covered Federal action, any **information** [emphasis added] not specifically requested but necessary for an agency to make an informed decision about initiation of a covered Federal action, the stated and intended plan of the Contract Strategy Team went far beyond merely providing **information** [emphasis added].

In addition, it appears that the plan developed by the SNL Contract Strategy Team was a violation of the Sandia Corporation M&O contract. The contract prohibits SNL contractors from making interface with any present or potential Federal, state, municipal, or local government customers or commercial customers, or Federal, state, municipal or local legislators or legislative personnel for the purpose of obtaining or retaining business for Sandia Corporation. However, in this case, the plan developed with the assistance of SNL contractors envisioned these types of interfaces for the purpose of retaining business (i.e., obtaining a contract extension and preventing competition of the M&O contract).

The implementation of the plan developed by the SNL Contract Strategy Team represented the culmination of the plan to influence members of Congress and/or Federal officials, an apparent violation of 31 U.S.C. § 1352, *Limitation on use of appropriated funds to influence certain Federal contracting and financial transactions*, and FAR 31.205-22, *Lobbying and political activity costs*. Specifically, under these provisions, none of the funds appropriated may be expended by the recipient of a Federal contract to pay any person for influencing or attempting to influence an officer or employee of an agency or a member of Congress in connection with the extension of a Federal contract. In this case, as best we could determine, appropriated funds were used to pay the recipients of a Federal contract, both SNL employees and SNL consultants, salaries and fees for developing a plan for influencing or attempting to influence an officer or employee of the Department, or a member of Congress, in connection with the extension of the Sandia Corporation contract.

We recognize that LMC, as a for-profit entity, has a corporate interest in the future of the Sandia Corporation contract. However, the use of Federal funds to advance that interest through actions designed to result in a noncompetitive contract extension was, in our view, prohibited by Sandia Corporation's contract and Federal law and regulations.

We made several recommendations designed to assist management in preventing any future use of Federal funds to influence members of Congress and/or Federal officials with regard to Federal contracting actions. We also recommended that a determination be made on the allowability of costs associated with the SNL Contract Strategy Team (SNL Employees and consultants) to include the recovery of any costs determined to be unallowable. Finally, we concluded that these matters should be considered in the contractor fee determinations, even if retroactive actions are necessary.

## RECOMMENDATIONS

To address the weaknesses identified in this report, we recommend that the Administrator, National Nuclear Security Administration:

1. Develop policy guidance on the type of information a Laboratory can provide under FAR 52.203-12, *Limitation on Payments to Influence Certain Federal Transactions*, and FAR 31.205-22, *Lobbying and political activity costs*.

Also, we recommend that the NNSA Contracting Officer at SNL:

2. Determine if a violation of Sandia Corporation SF 6432-CO, *Standard Terms and Conditions for Consultants and Other Professional Provider Services*, occurred, and take appropriate steps to ensure SNL contractors do not interface with any present or potential Federal, state, municipal, or local government customers or commercial customers, or Federal, state, municipal, or local legislators or legislative personnel for the purpose of obtaining or retaining business for Sandia Corporation.
3. Determine the allowability of salaries paid to SNL employees who participated in the activities of the SNL Contract Strategy Team, and recover any costs determined to be unallowable.
4. Determine the allowability of fees paid to consultants who participated in the activities of the SNL Contract Strategy Team, and recover any costs determined to be unallowable.

Finally, we recommend that the appropriate Fee Determination Official:

5. Determine whether adjustments to previously awarded performance fees are appropriate to address the administration and management issues we observed relative to the activities of the SNL Contract Strategy Team.



## **MANAGEMENT RESPONSE**

Management reviewed the report and agreed with its findings and recommendations. Management stated that they took the issue seriously and were committed to implementing corrective actions and taking preventive measures to ensure it did not recur. Management's comments are included in Appendix 3.

## **INSPECTOR COMMENTS**

We consider management's comments responsive to the report's recommendations.

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## OBJECTIVE, SCOPE AND METHODOLOGY

### Objective

The objective of the inquiry was to determine if Sandia National Laboratories (SNL) violated Federal and/or contractual provisions prohibiting the use of Federal funds to influence members of Congress or Federal officials with regard to an extension to the SNL contract.

### Scope

We conducted our inspection fieldwork from May 2013 to October 2014 at SNL and the Sandia Field Office, Albuquerque, New Mexico.

### Methodology

To accomplish the inspection objective, we:

- Reviewed 31 United States Code § 1352 *Limitation on use of appropriated funds to influence certain Federal contracting and financial transactions*;
- Reviewed Federal Acquisition Regulation (FAR) 31.205-22 *Lobbying and political activity costs*;
- Reviewed FAR 52.203-12 *Limitation on Payments to Influence Certain Federal Transactions*;
- Reviewed documentation provided by SNL to the Field Office related to the Management and Operating Contract Strategy Team;
- Interviewed Field Office officials;
- Accessed SNL's Oracle Database in order to gather relevant contract information;
- Gathered and reviewed relevant e-mails for specified SNL employees from 2009 through 2011; and
- Interviewed selected members of the Contract Strategy Team.

This inspection was conducted in accordance with the Council of the Inspectors General on Integrity and Efficiency, *Quality Standards for Inspection and Evaluation*, January 2012. Those standards require that we plan and perform the review to obtain sufficient, appropriate evidence to provide a reasonable basis for our findings and conclusions based on our inspection objective.

We believe the evidence obtained provides a reasonable basis for our findings and conclusions based on our inspection objective. The inspection included tests of controls and compliance with laws and regulations to the extent necessary to satisfy the inspection objective. Because our review was limited, it would not necessarily have disclosed all internal control deficiencies that may have existed at the time of our inspection. Also, we relied on computer processed data to some extent to satisfy our objective. We confirmed the validity of such data, as appropriate, by conducting interviews and reviewing source documents.

NNSA waived the exit conference on October 16, 2014.

PRIOR REPORT

- Inspection Report on Concerns with Consulting Contract Administration at Various Department Sites (DOE/IG-0889, June 2013). Our inspection identified serious concerns with the administration and management of agreements with Heather Wilson, LLC, for advice and consultation provided to senior managers at four Department of Energy contractor-operated sites. In fact, our testing revealed that the four facility contractors paid approximately \$450,000 to Heather Wilson, LLC even though they did not receive evidence that work performed under the agreements had been completed. These payments were fully reimbursed by the Government.

## **FEEDBACK**

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