OFFICE OF INSPECTOR GENERAL

U.S. Department of Energy

AUDIT REPORT

DOE-OIG-21-31 July 2021

MANAGEMENT OF INSTITUTIONAL GENERAL PLANT PROJECTS AT LAWRENCE LIVERMORE NATIONAL LABORATORY

Department of Energy
Washington, DC 20585

July 7, 2021

MEMORANDUM FOR THE ACTING ADMINSTRATOR, NATIONAL NUCLEAR SECURITY ADMINISTRATION;
ACTING CHIEF FINANCIAL OFFICER AND DIRECTOR, OFFICE OF BUDGET;
MANAGER, LIVERMORE FIELD OFFICE

FROM: Teri L. Donaldson
Inspector General

SUBJECT: INFORMATION: Audit Report on "Management of Institutional General Plant Projects at Lawrence Livermore National Laboratory"

BACKGROUND

As 1 of the 8 National Nuclear Security Administration (NNSA) sites, Lawrence Livermore National Laboratory (LLNL) maintains 686 buildings with 6.1 million total square feet of floor space. The age of the buildings, about 42 years on average, along with historically low maintenance budgets, has created a large backlog of buildings and systems in need of revitalization or modernization. NNSA accomplishes this, in part, through minor construction projects referred to as General Plant Projects. According to Department of Energy Order 430.1B, *Real Property Asset Management*, General Plant Projects are necessary to adapt facilities to new or improved production techniques; to affect economies of operations; and to reduce or eliminate health, fire, and safety problems. Department Order 430.1B also identifies a class of General Plant Projects called Institutional General Plant Projects (IGPP). According to Department Order 430.1B, IGPPs are "miscellaneous minor new construction and betterment projects of a general institutional nature benefiting multiple cost objectives and required for general-purpose sitewide needs." The Order further explains that "IGPPs do not include projects whose benefit can be directly attributed to a specific or single program."[1] Accordingly, IGPPs are funded through overhead by charging an indirect rate to direct program activities at the site. These funds are known as "indirect funds."

Although Department Order 430.1B was superseded by Department Order 430.1C in August 2016, we refer to the requirements of both Department Orders due to the scope of our audit, which included expenditures from fiscal year (FY) 2014 through FY 2017. It is important to note that Department Order 430.1C no longer uses the term IGPP; however, the most recent update to the Department's Financial Management Handbook, Chapter 24, dated March 2019,

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[1] Department Order 430.1B Change 2, *Real Property Asset Management* (April 2011).

now refers to IGPPs as "Indirect Funded Minor Construction Projects," which serve the same purpose as IGPPs, and further states that the allocation of funds must be made to benefiting programs and follow cost accounting standards.

Department Order 430.1B provides examples of IGPPs, including multi-programmatic or interdisciplinary scientific laboratories, institutional training facilities, sitewide maintenance facilities and utilities, new roads, multi-programmatic office space, and multi-programmatic facilities required for "quality of life" improvements. In the past, LLNL has funded IGPPs using indirect funds from the Site Support Overhead Pool to provide infrastructure upgrades, such as low conductivity water and gas utilities, which were institutional in nature and benefited multiple facilities and programs. From FY 2014 through FY 2017, LLNL funded 11 IGPPs from these indirect funds, with a total estimated cost of approximately $40.6 million. During our fieldwork, we judgmentally selected 3 of the 11 IGPPs for detailed testing and review, all of which occurred from FY 2014 through FY 2017. These three projects had a total estimated cost of approximately $21 million and consisted of a utility project, a new facility construction project, and a facility upgrade project. Given the importance of infrastructure to the achievement of NNSA's mission, we initiated this audit to determine whether LLNL managed its IGPPs in accordance with applicable Department guidance.

RESULTS OF AUDIT

We determined that LLNL followed applicable Department IGPP guidance and therefore appropriately used indirect funds for two of the three projects we reviewed. The two projects that complied with Department IGPP guidance included a manufacturing laboratory and a utilities project that provided needed utilities to LLNL. We found that both of these projects benefited multiple programs at LLNL and were therefore institutional in nature. However, we found that the third project, a $7.2 million renovation to Building 490, did not comply with Department IGPP guidance for use of indirect funds, which required that the project be of a general institutional nature whose benefit cannot be directly attributed to a specific or single program and is required for general-purpose sitewide needs.[2] This occurred because LLNL incorrectly interpreted the IGPP requirements, and LLNL and Livermore Field Office officials performed ineffective project reviews. According to LLNL officials, they considered this renovation project met the requirement that IGPP projects using indirect funds must benefit multiple cost objectives in Department Order 430.1B since the project would be used for multiple Strategic Partnership Projects (SPP) customers and programs.[3] In addition, LLNL officials incorrectly relied upon potential future SPP and Department users who might utilize the facility in the future as support for the use of indirect funds through an IGPP. Completing a project that did not follow applicable Department IGPP guidance constituted a possible misuse of indirect funds from the Site Support Overhead Pool and therefore merited a detailed evaluation by the Department on whether this violated the Antideficiency Act and the purpose statute. Additionally, the misuse of indirect funds through an IGPP for the Building 490

[2] Department Order 431.1B, Change 2 (April 2011).
[3] The SPP program, formerly known as "Work for Others," provides Department/NNSA resources (either personnel or facilities) on a reimbursable basis to non-Department entities for work that is not directly funded by Department/NNSA appropriations. See Department Order 481.1D, as revised to Department Order 481.1E.

renovation project prevented other multi-use institutional projects without funding that should have been available to them, though these projects had been recommended by LLNL in its FY 2017 Project Prioritization Process.

LLNL's Implementation of Two of Three IGPPs Complied with Department Guidance

Based on our review, we found that two of the three projects complied with Department Order 430.1B requirements. For example, we found that the newly constructed Advanced Manufacturing Laboratory complied with Department Order 430.1B requirements because it benefited multiple programs, such as the Stockpile Stewardship, Inertial Confinement Fusion, and intelligence programs, with a broad impact across LLNL. In another example, the East Side Low Conductivity Water/Natural Gas Infrastructure Extension, a utilities project, complied with Department Order 430.1B requirements because it provided necessary site utilities for high-performance computing and other programmatic users. In our review of the project documents for these two projects, we found that responsible officials from LLNL and the Livermore Field Office appropriately reviewed and approved these projects. In addition, we found that the preliminary Project Execution Plan (PEP) and the final PEP for these two projects were consistent in documenting their respective justifications for supporting multiple programs. During our fieldwork, we verified and concluded that these two projects were either multi-programmatic or institutional in nature.

However, the third IGPP we reviewed, a $7.2 million project to renovate Building 490, did not comply with Department Order 430.1B because it supported neither multiple programs nor general institutional improvement. Additionally, in approving this renovation project as an IGPP using indirect funds, LLNL may have avoided a requirement to allocate costs for the project to the benefiting SPP. Since the only benefiting user was an SPP at the time of the final project approval, the project should have been consistent with Department Order 522.1, *Pricing of Departmental Materials and Services*, which requires charging full cost to organizations and agencies outside the Department, unless an agreement was reached for a partially refundable or non-reimbursable agreement on the benefit of the funding received between the Department and the sponsoring Federal agency.

LLNL and Livermore Field Office officials reviewed and approved the final PEP for the Building 490 renovation project from March 2017 through May 2017. As detailed in the final PEP, the project was executed to support the Department of Defense (DoD) through the SPP program. The renovation project included the design and construction of class 1,000 and class 10,000 clean rooms,[4] as well as adjacent office space and a control room for laser system users, all for the use of the DoD, a single program user. According to LLNL officials, the project was completed in April 2018.

Building 490 Renovation Project Did Not Support Multiple Programs or General Institutional Improvement

Department Order 430.1.B requires that the benefits of IGPPs do not include projects whose benefit can be directly attributed to a specific or single program. In addition, Department Order

[4] These clean room classes are established under International Organization for Standardization 14644–1.

430.1B requires IGPPs, and associated indirect funds, be used for general-purpose sitewide needs. This renovation project was approved with justification in the preliminary PEP, specifically to address the need for laboratory space to support current SPP and Department programs. However, the final PEP did not identify support for multiple Department programs or general institutional improvements, as required by Department Order 430.1B. Instead, LLNL officials reviewed and approved the final PEP that states the following:

> This project addresses the development of secure Laboratory space to support current DoD and (Work for Others) [SPP] programs. Currently, LLNS[5] has insufficient secure Laboratory space to meet these needs. There is also an expectation of program growth in the DoD area, and the need for appropriate Laboratory space will become more critical. This project will position LLNS to be able to manage this need into the future.

Based on the language in its own justification documents, this project was only for LLNS to support external agencies (DoD and SPP programs) and not Department programs. Therefore, the project should not have been approved to use IGPP funds.

LLNL officials were unable to supply documentation showing how they determined that this renovation project would provide benefit to multiple programs or was required for general-purpose sitewide needs. The justification in the preliminary PEP submitted by LLNL to obtain approval for the Building 490 renovation project indicated that the project was intended to address the development of laboratory space to support LLNS' current SPP and other Department programs.

Department Order 481.1D, *Strategic Partnership Projects*, states that it is Department policy that Department/NNSA resources are made available to non-Department/non-NNSA entities. However, this policy applies only to existing capabilities, not to an emerging need or the development of new capabilities. In describing its Objectives, Section 1 of the Order explains that the use of Department/NNSA facilities by non-Department/non-NNSA entities "is not directly funded by Department/NNSA appropriations" and "[p]rovide[s] access to Department/NNSA highly specialized or unique facilities, services, or technical expertise to non-Department/non-NNSA entities when private sector facilities are inadequate." Order 481.1D does not provide for renovating facilities or developing new capabilities to meet potential or future needs of existing SPP customers.

SPP projects must be funded through an SPP agreement rather than Department/NNSA resources. LLNL renovated Building 490 and developed a new capability; i.e., construction of class 1,000 and class 10,000 clean rooms to meet the future needs of the SPP customer without any other Department or NNSA customers or programs. Therefore, LLNL and the Livermore Field Office incorrectly certified and approved the use of Department funds to renovate Building 490, a facility that was previously vacant, to develop a new capability for the DoD and the SPP program, which violated the requirements in Department Order 481.1D.

LLNL officials were unable to provide any documentation that identified other users because there were no other Department programs that expressed interest in using the renovated facility.

[5] LLNS refers to Lawrence Livermore National Security, LLC, the management and operating contractor of LLNL.

In addition, LLNL officials only provided documentation showing that the DoD had committed to utilize the facility in January 2019, or 8 months after LLNL took beneficial occupancy. The DoD program started using the facility in May 2019. With the exception of the DoD agreement to use 50 percent of the facility, LLNL did not provide supporting documentation that identified any other users for the facility, despite numerous requests during our fieldwork. LLNL officials stated that an internal LLNL program expressed interest in using the other 50 percent of the laboratory space in the renovated facility. However, the officials did not specify the name of the internal program or provide documentation showing any such interest or commitment to use the facility. Furthermore, although the renovation project was completed in April 2018, an LLNL official said that as of August 2019, only 50 percent of the facility has been occupied.

Shortly after we issued our initial draft report in April 2019, LLNL supplied to us, for the first time, a list of potential sponsors and one technology area as potential users of the renovated facility. Nearly all of the potential users were from SPPs. This list of potential sponsors was neither provided to us during our fieldwork nor submitted to the Livermore Field Office as a basis for project approval. Only one potential user, the DoD, and one program, SPP, were identified when the project was approved; and only one user, the DoD, has used the facility.

Speculating on possible future users without a tangible commitment or plan is an inappropriate justification for the use of funds. Importantly, even if a Department entity now moved into the unoccupied space, it would not remedy the issue as there was no Department need for the space at the time the project commenced. Specifically, 31 U.S. Code Section 1502, referred to as the "*bona fide* need rule," mandates that an "appropriation or fund is not available for expenditure for a period beyond the period otherwise authorized by law." LLNL's anticipation of potential future needs for such a space is an insufficient reason for a current need, and it did not constitute a justifiable *bona fide* need when the final PEP was executed. We recognize that LLNL officials informed the Office of Inspector General (OIG) that an internal LLNL program expressed interest in Building 490. However, we find that such an informal expression of interest was also insufficient to constitute a *bona fide* need.

NNSA noted that its laboratories are funded "in a significant part" with no-year funds. As cited by the OIG's Office of Counsel, in a 2015 U.S. Government Accountability Office (GAO) decision, the *bona fide* need rule does not apply to no-year funds.[6] However, LLNL was unable to provide evidence that only no-year funds were used for the Building 409 renovation.

Costs Not Allocated Properly

Because this renovation project did not follow applicable Department IGPP guidance regarding improperly used indirect funds and improperly funded new SPP capabilities, LLNL should have allocated costs for the project to the SPP. Department Order 522.1, *Pricing of Departmental Materials and Services,* and Department Order 418.1D on SPPs, requires contractors to fully recover all costs associated with SPP-related work from the SPP user. To renovate the facility, LLNL spent approximately $7.2 million to provide the necessary infrastructure for class 1,000 and class 10,000 clean room space that included a control room and laboratories. Because the

[6] See GAO Decision on General Services Administration: Availability of No-Year Appropriations for a Modification of an Interagency Order (B-326945) September 2015.

Building 490 renovation project was approved for the benefit of an outside user, the same outside user should have taken on these renovation costs. Further, after this project was approved, NNSA recognized that there were issues using indirect funds for new capabilities and in March 2018 issued an NNSA-directed policy, *Procedure for Implementing Laboratory Management Review for Technical Activities Charged to Indirect Accounts*. This policy requires LLNL to assess and evaluate the applicability of capabilities and existing technologies for institutional or multi-programmatic use. This policy also only allows for providing "existing capabilities" to other Federal and non-Federal sponsors. At the time the funding for the Building 490 renovation project was approved, LLNL did not have an existing capability, the space was vacant, and LLNS converted the space into a class 1,000 and class 10,000 clean room space to support DoD and SPP programs. Therefore, indirect funds should not have been used for this project.

Because the Building 490 renovation project was funded through an indirect overhead cost pool, other Department programs shared in the cost of a renovation project that may have not benefited them. For example, the list of potential users of the Building 490 renovated space, provided by LLNL in May 2019, included five SPP users and two NNSA users, resulting in a disproportionate allocation of facility usage. Specifically, if all potential users on the list occupied the building at the same time, SPP users would be allocated greater than 70 percent occupancy of the renovated space, leaving NNSA users with less than 30 percent occupancy. Cost Accounting Standard 418, *Allocation of Direct and Indirect Costs*, states that "pooled costs shall be allocated to cost objectives in reasonable proportion to the beneficial or causal relationships of the pooled costs to cost objectives." During the audit, LLNL stated that the renovated facility is suitable for a variety of users; however, at this time, there is only one user of the facility. In addition, Federal Acquisition Regulation 31.201–4, *Determining allocability*, states that a cost is allocable if it is assignable or chargeable to one or more cost objectives on the basis of relative benefits received or other equitable relationship. Therefore, facility users should bear the renovation costs in reasonable proportion to their greater consumption of the renovated space. Further, Federal Acquisition Regulation 31.201–4 states, in part, that a cost is allocable to a Government contract if it is necessary to the overall operation of the business. Finally, LLNS' FY 2015 through FY 2017 Cost Accounting Standards Board Disclosure Statements define the major functions, activities, and elements of the Site Support Overhead Pool as "accumulat[ing] the costs necessary for the management, maintenance, and upgrades of the general purpose facilities and property, and for the provision of basic infrastructure services and safety on site." As previously stated, the Building 490 renovation project was not of a general institutional nature because it only benefited one user.

Potential Violation of the Antideficiency Act and Purpose Statute

The Antideficiency Act prohibits Federal agencies from obligating or expending Federal funds in advance or in excess of an appropriation, and from accepting voluntary services. Additionally, the purpose statute, 31 U.S. Code Section 1301, mandates that appropriations shall be applied only to the objects for which the appropriations were made, except as otherwise provided by law. The Building 490 renovation project utilized indirect funds via an IGPP, which were directed to a project that was not required for general-purpose sitewide needs and whose sole beneficiary was another Federal agency through the SPP program. Therefore, the renovation of Building 490 via the use of indirect funds from multiple programs through an IGPP funding vehicle may constitute a purpose statute violation. Based on our analysis, we concluded that NNSA potentially violated the purpose statute when it used IGPP funds to pay for the renovation of Building 490 at LLNL. Analyzing whether a purpose statute violation has occurred requires analyzing whether a specific purchase is deemed a "necessary expense."

To analyze whether a purchase is a necessary expense, the GAO applies a three-part test:[7]

1. the expenditure must have a logical relationship to the appropriation sought to be charged;
2. the expenditure must not be prohibited by law; and
3. the expenditure must not be provided for by another appropriation.

NNSA's approval of the use of IGPP funding for the renovation of Building 490 may not meet the requirements of the necessary expense doctrine, and by extension, the purpose statute. Our application of the three-part GAO test leads us to conclude that while the expenditure may not have been explicitly prohibited by a limitation in the appropriation itself or by a separate statute, the expenditure did not have a logical relationship to the appropriation sought to be charged, and it could have been provided for by another appropriation. Specifically, the work was not related to the intended use of the indirect cost pool for projects that benefit general-purpose sitewide needs, and the SPP's appropriation should have been used. Department Order 481.1D explains that SPP work is not directly funded by Department/NNSA appropriations, requires approvals for SPP construction at an NNSA site, and envisions the use of another agency's funding for a construction project via the SPP program.[8] Using such a funding mechanism would have ensured that the DoD, and not NNSA, would be financially responsible for the DoD's use of the facility.

If there was a purpose statute violation, a determination as to whether this led to an Antideficiency Act violation depends on whether or not the violation can be corrected. Therefore, we found that the actions described above merit a detailed evaluation under the Antideficiency Act and the purpose statute.

Building 490 Renovation Project Did Not Comply with Department Guidance

The Building 490 renovation project was inappropriately funded due to incorrect interpretations of funding requirements for IGPPs and ineffective project reviews by LLNL and Livermore Field Office officials.

Incorrect Interpretations of Requirements

According to LLNL officials, they used IGPP funds to renovate Building 490 because they determined that it met the criteria of Department Order 430.1B. LLNL officials concluded that this renovation project met multiple cost objectives because they considered multiple SPP

[7] See GAO Decision: Presidio Trust - Use of Appropriated Funds for Audio Equipment (B-306424) March 2006; GAO Decision: Army - Availability of Army Procurement Appropriation for Logistical Support Contractors (B-303170) April 2005; 63 Comp. Gen. 422 (B-213137) June 1984, 427–28.
[8] Department Order 481.1D at Section 1 and Section 4(g).

customers as multiple final cost objectives. However, the LLNL officials were unable to provide any documentation showing that multiple SPP customers had committed to using the facility. The DoD was the only SPP customer identified in the final PEP. Moreover, even if more than one SPP customer had committed to using the facility, SPP is only one program and Department Order 430.1B states that IGPP-funded projects must also be of a general institutional nature whose benefit cannot be attributable to one program and be required for general-purpose sitewide needs. The Building 490 renovation project did not meet any of these criteria for IGPP-funded projects as outlined in Department Order 430.1B.

Officials from the Department's Office of the Chief Financial Officer provided clarification on minor construction policies. They stated that IGPP-funded projects should benefit the Department and its multiple programs, not multiple SPP customers, even if multiple SPP customers had committed to using the space. Similarly, in a prior OIG audit report related to the use of IGPP funding, the Department's Office of Asset Management disagreed with the local site officials' interpretation that the requirement to use IGPP funds to benefit multiple programs was satisfied by a benefit to multiple users.[9] In the instance with LLNL's Building 490, local site officials similarly interpreted the multiple program requirement to mean multi-user and therefore concluded that the multi-program requirement was met by a multi-user benefit. The Office of Acquisition and Project Management has confirmed that it continues to disagree with this interpretation.[10] When we spoke to an official within the Office of Asset Management for this audit, the official still maintained the interpretation that benefiting multiple programs did not necessarily mean benefiting multiple users.

Ineffective Project Reviews

Department Order 430.1B requires that IGPPs are certified by responsible officials at the site where they are planned. Therefore, LLNL and Livermore Field Office officials performed reviews, provided recommendations, and approved IGPPs. The purpose of this process was to ensure that the requirements established in Department Order 430.1B were met. However, we found that LLNL and Livermore Field Office officials performed ineffective reviews of the Building 490 renovation project because they did not verify or document the existence of other Department users or multiple programs that would benefit from the Building 490 renovation project. For example, LLNL and Livermore Field Office officials signed off on the project compliance verification checklist, which required them to verify that the Building 490 renovation project would not directly benefit a specific or single program. However, LLNL and the Livermore Field Office could not provide documentation on how they verified that the project would benefit multiple programs or support general institutional improvement.

In addition, both LLNL and the Livermore Field Office relied on the Statement of Mission Need in the renovation project's preliminary PEP rather than the final PEP. The preliminary PEP is the initial project documentation that outlines the project's scope, schedule, and cost. The preliminary PEP states that the renovation project would support current SPPs and other Department programs. However, the Mission Statement in the final PEP states that the

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[9] OIG Audit Report on the *Argonne National Laboratory Infrastructure Projects* (OAS-M-15-02, February 2015).
[10] On April 16, 2015, the Office of Acquisition and Project Management was reorganized and divided into the Office of Project Management, the Office of Asset Management, and the Office of Acquisition Management.

renovation project was only to support current SPPs, and only specifically named the DoD, while references to other Department programs were omitted. In comparing the preliminary PEP to the final PEP, there was clearly an inconsistency with the documentation of the Statement of Mission Need. This inconsistency occurred because changes to project documentation were neither communicated by LLNL nor independently verified by the Livermore Field Office.

Impact to Other LLNL Programs

By completing an IGPP project with indirect funds that did not meet the requirements for the IGPP to benefit multiple cost objectives and general-purpose sitewide needs, indirect funds were possibly misused, while other important institutional projects recommended by LLNL in its FY 2017 Project Prioritization Process did not receive IGPP funding. In FY 2017, LLNL recommended 41 projects with reported costs of approximately $24 million. The $7.2 million cost associated with the renovation of Building 490 could have been used to initiate one or more of the other eligible programs where there was a benefit to general-purpose sitewide needs. In addition, we concluded that LLNL did not appropriately charge the benefiting SPP for the $7.2 million spent on the building renovation.

In a prior draft report, we recommended that NNSA's Acting Administrator obtain a legal opinion as to whether the Building 490 renovation project violated the Antideficiency Act and/or the purpose statute. NNSA obtained a legal opinion from its own General Counsel in which they determined that NNSA appropriately used indirect funding for the betterment and conversion of space in Building 490 to clean room laboratory space. As stated previously, the Building 490 renovation project still did not comply with Department Order 430.1B, which was in effect at the time of the renovation, or its own disclosure statement, since the building neither supported multiple programs nor provided general institutional improvement, as required.

In our first recommendation below, the OIG will formally report the potential violation of the Antideficiency Act, the purpose statute, and *bona fide* need rule, to the Department's Acting Chief Financial Officer to request a written determination of the potential violations, as required per Department Order 130.1A, *Budget Planning, Formulation, Execution, and Departmental Performance Management*, and the Department's Financial Management Handbook, Chapter 2, *Administrative Control of Funds*.

RECOMMENDATIONS

We recommend that the Department's Acting Chief Financial Officer and Director:

1. Review in coordination with the Office of General Counsel the potential violations of the Antideficiency Act, the purpose statute, and *bona fide* need rule, which were identified in this report, and issue a determination regarding this issue, including any recommendations of disciplinary actions, if appropriate.

We also recommend that the Acting Administrator, NNSA direct the Manager, Livermore Field Office to:

2. Coordinate with the Office of Field Financial Management and determine the proper allocability of the $7.2 million of costs incurred for the renovation of Building 490 that was improperly claimed as IGPP indirect funding and improperly allocated by LLNL in accordance with Cost Accounting Standard 418, *Allocation of Direct and Indirect* Costs; once the proper allocability of the $7.2 million is determined, recover improperly allocated costs in accordance with the allowability requirements of Federal Acquisition Regulation 31.2, *Contracts with Commercial Organizations or other appropriate allowable funding*.

3. Perform a review of its indirect funded minor construction projects approval process to ensure it fully meets Department requirements.

Further, we recommend that the Manager, Livermore Field Office direct LLNL to:

4. Adhere to the current policies and Department requirements related to indirect funded minor construction projects.

5. Ensure that documentation for indirect funded minor construction projects submitted for approval consistently identifies multi-programmatic benefits.

6. Update its policies and procedures to ensure indirect funded minor construction projects comply with Department requirements prior to authorization and upon completion of projects.

7. Review and verify that indirect funded minor construction projects comply with applicable cost accounting standards in accordance with applicable Department guidance.

MANAGEMENT RESPONSE

The Department's Acting Chief Financial Officer concurred with the recommendation to review the potential violations that we identified, in coordination with the Office of General Counsel, to issue a determination consistent with the Office of General Counsel's legal guidance, and to provide any appropriate recommendations regarding disciplinary actions. This action's estimated completion date is September 30, 2021.

NNSA nonconcurred with many of our findings and recommendations and concurred in principle with one of our recommendations. NNSA disagreed that the Building 490 project did not identify potential multi-programmatic benefits; however, management acknowledged that there was language inconsistency in the Building 490 renovation project documentation that could lead to a misimpression of an improper basis for project approval. To help prevent future issues in this area, management agreed to reemphasize the importance of ensuring consistency in project documentation throughout the process identified.

NNSA nonconcurred with our recommendation that the IGPP approval processes did not follow or were inconsistent with Department requirements. NNSA stated that the auditors did not identify any validated noncompliance with IGPP policies or Department requirements. Further, NNSA points out that the Department policy referenced in the report, Department Order 430.1B, has been superseded, and the explicit multi-program distinction upon which our findings are based have been removed. Management stated that LLNS will reemphasize the importance of ensuring consistency in project documentation throughout the process.

It should be noted that NNSA's management comments address a prior recommendation that has since been eliminated. Specifically, in the prior draft report, our first recommendation was for NNSA to obtain a legal opinion as to whether the Building 490 renovation project violated the Antideficiency Act and/or the purpose statute. Since our first draft report, NNSA obtained a legal opinion; therefore, we eliminated the associated recommendation from this report. Management comments are included in their entirety in Attachment 3.

AUDITOR COMMENTS

Although the Acting Chief Financial Officer agreed with our recommendation to review the potential violations, NNSA nonconcurred with several of our recommendations and stated that our conclusion was inaccurate. We disagree with management's assertion that our conclusion was inaccurate for the reasons provided below.

We conclude that the Building 490 renovation project did not comply with Department Order 430.1B, which was in effect at the time of the renovation, or its own disclosure statement, because it neither supported multiple programs nor provided general institutional improvement, as required by the Order. We recognize that the Building 490 renovation project may be integral to the long-term LLNL mission and that SPP programs are intended to compliment the mission of the nuclear enterprise. However, we conclude that the use of an IGPP with indirect Site Support Overhead Pool funding was inappropriate because renovating the facility did not meet general-purpose sitewide needs and does not support multiple programs other than entities outside of LLNL; i.e., the DoD project. Although the DoD project is currently occupying approximately 50 percent of the building, and funded approximately $4.8 million to modify the space for its specific use after LLNL's renovation project was completed, we question the lack of multiple users and/or multiple programs that would benefit from LLNL's project at this time or in the future. NNSA asserts that the remainder of the space remains available for multiple users and multiple programs over the anticipated lifespan of the building, and immediate occupancy is not required under law. However, we conclude that speculating on possible future users without any tangible commitments was an inappropriate justification for the use of IGPP indirect funds for the Building 490 renovation. Following such logic would result in the justification of using IGPP funds to construct any building so long as extra space was allocated to a possible future user. In addition, LLNL's anticipation of potential future needs for such a laboratory space qualifies as an "insufficient current need" and could not constitute a justifiable "*bona fide* need" when the project was approved and executed.

Regarding Department Order 430.1B, we agree that it has been superseded, as noted in our report, and that the revised Department Order 430.1C does not address IGPPs. However, the most recent update to the Department's Financial Management Handbook, Chapter 24, dated March 2019, refers to indirect funded minor construction projects, which serve the same purpose as IGPPs, and further states that the allocation of funds must be made to benefit multiple programs and follow cost accounting standards. Consequently, we reiterate our recommendations to ensure proper documentation and update any policies and procedures to prevent a future occurrence of noncompliance with Department guidance.

In its response, NNSA noted that its laboratories are funded "in significant part" with no-year funds. According to a 2015 GAO decision, the *bona fide* need rule does not apply to no-year funds provided the use of such funds is consistent with other restrictions, such as purpose or amount, upon the appropriation's availability. The exception for no-year funds would only apply if NNSA solely used no-year funds for this project. NNSA's response suggests that some of the funds used for this project were time-limited. Also, the funds used were from an indirect cost pool that included funds from a variety of sources. It does not appear that an analysis was done to ensure that all funds from this pool came from appropriations that were not time-limited.

We still conclude that NNSA may have violated the purpose statute by approving the renovation of Building 490 using indirect funding that was unavailable for that purpose. NNSA inappropriately approved the use of funds from an indirect cost overhead pool to renovate a facility that did not provide a benefit to multiple users, was not required for general-purpose sitewide needs, and had only one intended beneficiary. In this case, the approving officials at the Livermore Field Office should have denied funding of the Building 490 renovation based on the revised justification in the final PEP, which showed DoD and SPP programs as the sole beneficiary of the project. In addition, NNSA's approval of the use of the indirect cost overhead pool funding through an IGPP project for the renovation of Building 490 may not meet the requirements of the necessary expense doctrine and, by extension, the purpose statute. Our application of the three-part GAO test leads us to conclude that while the expenditure was not explicitly prohibited by a limitation in the appropriation itself or by a separate statute, the expenditure did not have a logical relationship to the appropriation sought to be charged, and it should have used a different appropriation mechanism.

If there was a purpose statute violation, a determination as to whether there was an Antideficiency Act violation may be dependent on whether NNSA can obtain alternative funding to reimburse the accounts from which the funds were originally taken. If alternative funds are unavailable, the use of IGPP and indirect cost overhead pool funds to renovate Building 490 for what appears to exclusively benefit the DoD project, and did not have any other specifically identified NNSA users, may violate the Antideficiency Act. The Department's Financial Management Handbook, Chapter 2, Section 8, *Reporting of Violations within the Department*, states that "[a]ny person who knows about a possible violation is responsible for forwarding a report on it to the cognizant Field Chief Financial Officer (CFO)/Financial Manager. This report shall form the basis for allotee reports to the CFO on violations or apparent violations of legal or administrative control limitations." To address this requirement, and in light of NNSA's conclusion, we will formally report the potential violations of the Antideficiency Act, the purpose statute, and *bona fide* need rule to the Department's Acting Chief Financial Officer to request a written determination of the potential violations, as required per Department Order 534.1B, *Accounting*, and the Department's Financial Management Handbook, Chapter 2, *Administrative Control of Funds*. In addition to requesting that the Department's Acting Chief Financial Officer review potential violations, we will also refer these potential violations to the GAO for a written decision.

Attachments

cc: Deputy Secretary
Chief of Staff
Office of General Counsel

OBJECTIVE, SCOPE, AND METHODOLOGY

OBJECTIVE

We conducted this audit to determine whether Lawrence Livermore National Laboratory (LLNL) managed its Institutional General Plant Projects (IGPP) in accordance with applicable Department guidance.

SCOPE

This audit was conducted from August 2017 through January 2020 at the Department of Energy Headquarters in Washington, DC; the National Nuclear Security Administration in Washington, DC; Albuquerque, New Mexico; and at LLNL located in Livermore, California. The audit scope includes a review of selected IGPPs from fiscal year (FY) 2014 through FY 2017. We conducted this audit under Office of Inspector General project number A17LL042.

METHODOLOGY

To accomplish our audit objective, we

- Reviewed Federal laws and regulations, Department regulations and guidance, and contract provisions related to General Plant Projects (GPP).
- Reviewed LLNL's internal policies, procedures, and practices.
- Reviewed LLNL's process for managing GPPs and the Department's oversight activities.
- Selected a judgmental sample of three IGPPs and four GPPs from FY 2014 through FY 2017 based on risk indicators including, but not limited to, minor construction projects with total estimated costs that are at, or near, the congressionally established threshold of $10 million and the risk of incremental segmentation to potentially avoid the established threshold. A nonstatistical sample design was chosen with the intent to isolate minor construction projects with the highest-risk indicators. Because the selection was based on a judgmental sample, results and overall conclusions cannot be projected to the entire population of minor construction projects subject to audit.
- Reviewed prior reports issued by the Office of Inspector General and the Government Accountability Office.
- Interviewed key Department officials and LLNL personnel to obtain an understanding of the processes for managing and administering LLNL's GPPs and IGPPs.

We conducted this performance audit in accordance with generally accepted government auditing standards. Those 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 conclusions based on our audit objective. We assessed internal controls and compliance with laws and regulations necessary to satisfy the audit objective. In particular, we assessed the internal control components and underlying principles significant to the audit objective. Specifically, we assessed the control environment component and underlying principles regarding Livermore Field Office's oversight responsibility. We assessed the risk assessment component and the underlying principles of assessing fraud risk. We also assessed the reliability of processed data by verifying the Department's certification of real property information systems. However, because our review was limited to these internal control components and underlying principles, it may not have disclosed all internal control deficiencies that may have existed at the time of this audit. Additionally, we assessed the Department's implementation of the *GPRA Modernization Act of 2010* as it relates to our audit objective and found that the Department had established performance measures for the activities we reviewed.

An exit conference was waived by management on June 17, 2021.

PRIOR REPORT

Audit Report on the *Argonne National Laboratory Infrastructure Projects* (OAS-M-15-02, February 2015). The audit concluded that Argonne National Laboratory, for the most part, implemented appropriate controls over infrastructure projects; capitalizing costs, if required; and ensured subcontracts complied with requirements of the *Davis-Bacon* and *Buy American Acts*. However, the audit found that Argonne National Laboratory may have inappropriately used, or planned to use, indirect funding to complete 4 of 10 minor construction projects funded as Institutional General Plant Projects contrary to Department of Energy Order 430.1B Change 2, *Real Property Asset Management*. According to Department policy, projects funded indirectly as Institutional General Plant Projects do not include projects whose benefit can be directly attributed to a specific or single program. The audit found four projects totaling $15.9 million that, in the auditor's view, were not of a general institutional nature but instead related to specific program needs.

MANAGEMENT COMMENTS

Department of Energy
Washington, DC 20585

June 3, 2021

MEMORANDUM FOR THE INSPECTOR GENERAL

FROM: CHRISTOPHER S. JOHNS
ACTING CHIEF FINANCIAL OFFICER

SUBJECT: Response to CFO Recommendation in OIG Draft Report, "The Management of Institutional General Plant Projects at Lawrence Livermore National Laboratory (A17LL042)"

Thank you for the opportunity to review and comment on the subject draft report. The report contains one recommendation to the Acting Chief Financial Officer. We agree with the recommendation, as detailed in the enclosure.

If you have any questions regarding this response, please contact Thomas P. Griffin, Director, CFO Office of Financial Policy and Audit Resolution, at 202-586-1585.

Enclosure

Enclosure

Management Response
OIG Draft Report: "The Management of Institutional General Plant Projects at Lawrence Livermore National Laboratory A17LL042"

Recommendation #1: Review in coordination with the Office of General Counsel the potential violations of the Antideficiency Act, the Purpose Statue, and bona fide need rule, which were identified in this report, and issue a determination regarding this issue, including any recommendations of disciplinary actions, if appropriate.

DOE Response: Concur

The Office of the CFO will review the potential violations identified by the OIG, in coordination with the Office of General Counsel, issue a determination consistent with Office of General Counsel legal guidance, and provide any appropriate recommendations regarding disciplinary actions.

Estimated Completion Date: September 30, 2021

Department of Energy
Under Secretary for Nuclear Security
Administrator, National Nuclear Security Administration
Washington, DC 20585

NNSA National Nuclear Security Administration

May 20, 2020

MEMORANDUM FOR TERI L. DONALDSON
INSPECTOR GENERAL

FROM: LISA E. GORDON-HAGERTY Lisa E. Gordon-Hagerty

SUBJECT: Response to the Office of Inspector General Draft Report *Management of Institutional General Plant Projects at Lawrence Livermore National Laboratory* (A17LL042)

Thank you for the opportunity to review and comment on the subject draft report. The National Nuclear Security Administration (NNSA) appreciates the auditors' validation of Lawrence Livermore National Laboratory's (LLNL) processes for approving Institutional General Plant Projects (IGPPs). As suggested in the draft, NNSA obtained a legal opinion to verify whether LLNL used the appropriate funding mechanism for space conversions in Building 490 or violated the Purpose Statute or the Antideficiency Act. That legal decision confirmed the funding source was appropriate and found no statutory violations. Given that the funding source question underpinned the majority of the conclusions in the report, a number of the findings and recommendations are no longer supported, and we have reflected those as non-concurrences in the attached Management Decision. We request that the final report reflect the findings and impact of the legal determination.

NNSA does acknowledge there was a language inconsistency in project documentation for the Building 490 work (one of the three projects in the auditors' sample) which, taken alone, could give the misimpression of an improper basis for project approval. We have identified appropriate actions in response to proposed recommendations 3 and 5 of the draft report to reinforce the importance of ensuring consistency among approval documents to help prevent future findings in this area.

The attached Management Decision provides NNSA's specific response to each recommendation, supported by the NNSA General Counsel opinion (also attached). Subject matter experts have also provided technical comments for your consideration under separate cover to enhance the accuracy and completeness of information presented in the report. If you have any questions regarding this response, please contact Mr. Dean Childs, Director, Audits and Internal Affairs, at (301) 903-1341.

Attachments

Attachment

NATIONAL NUCLEAR SECURITY ADMINISTRATION
Management Decision

Management of Institutional General Plant Projects at Lawrence Livermore National Laboratory (A17LL042)

The Office of Inspector General (OIG) recommended that:

Recommendation 1: The Administrator of the National Nuclear Security Administration (NNSA) obtain a legal opinion as to whether the Building 490 renovation project violated the Antideficiency Act and/or the Purpose Statute;

Management Response: Concur. A legal opinion (attached) was obtained from NNSA General Counsel (NA-GC), which determined that NNSA appropriately used indirect funding for the betterment and conversion of space in Building 490 to cleanroom laboratory space. Consequently, NA-GC opined that the Purpose Statute was not violated, and there was no violation of the Antideficiency Act. NNSA considers this recommendation closed.

Recommendation 2: The Administrator, NNSA, direct the Manager, Livermore Field Office (LFO) to coordinate with the Office of Field Financial Management and make a determination on the proper allocability of the $7.2 million of costs incurred for the renovation of Building 490 that was improperly claimed as Institutional General Plant Project (IGPP) funding and improperly allocated by Lawrence Livermore National Security, LLC (LLNS) in accordance with Cost Accounting Standard 418, *Allocation of Direct and Indirect Costs*. Once the proper allocability of the $7.2 million is determined, recover questionable costs in accordance with the allowability requirements of the Federal Acquisition Regulation 31.2, *Contracts with Commercial Organizations*.

Management Response: Non-concur. Per our response to recommendation 1, the NA-GC decision does not agree with the OIG's conclusion that IGPP funding was inappropriately used to support the Building 490 project. No additional analysis was provided to question the allocation of costs assuming proper use of IGPP funding. Therefore, NNSA considers this recommendation closed.

Recommendation 3: The Administrator, NNSA, direct the Manager, LFO, to perform a review of its IGPP approval process to ensure it fully meets Departmental requirements.

Management Response: Non-concur as written. The OIG audit did not identify any instances where the IGPP approval "process" was inconsistent with Departmental requirements. However, we acknowledge there was a language inconsistency in project documentation for one of the three projects in the auditors' sample (Building 490) which, taken alone, could give the misimpression of an improper basis for project approval. LFO will reemphasize the importance of ensuring consistency in project documentation throughout the review and approval process, consistent with recommendation 5. The estimated completion date for this action is September 30, 2020.

Attachment

Recommendation 4: The Manager, LFO direct LLNS to adhere to the current IGPP policies and Departmental requirements;

Management Response: Non-concur. The LLNS management and operating contract currently requires adherence to applicable Departmental requirements. Direction to that effect is not required. The auditors also did not identify any validated noncompliance with IGPP policies or Departmental requirements. Further, the Departmental policy referenced in the report (DOE Order 430.1B) has been superseded, and the explicit multi-program distinction upon which the OIG's findings are based have been removed. NNSA considers this recommendation closed.

Recommendation 5: The Manager, LFO direct LLNS to ensure that IGPP documentation submitted for approval consistently identifies multi-programmatic benefits;

Management Response: Concur in principle. We disagree that the project in question did not identify potential multi-programmatic benefits. However, we acknowledge there was a language inconsistency in project documentation for one of the three projects tested (Building 490) which, taken alone, could give the misimpression of an improper basis for project approval. LLNS will reemphasize the importance of ensuring consistency in project documentation throughout the process. The estimated completion date for this action is September 30, 2020.

Recommendation 6: The Manager, LFO direct LLNS to update its policies and procedures to ensure IGPPs comply with Departmental requirements prior to authorization and upon completion of projects; and

Management Response: Non-concur. As noted previously, the auditors did not identify any validated noncompliance with IGPP policies or Departmental requirements. We believe corrective actions committed to in response to recommendations 3 and 5 are sufficient to ensure appropriate application of new requirements for Indirect Funded Minor Construction Projects (previously IGPP). NNSA considers this recommendation closed.

Recommendation 7: The Manager, LFO direct LLNS to review and verify that IGPPs comply with applicable cost accounting standards in accordance with applicable Department guidance.

Management Response: Non-concur as written. The recommendation as written implies review of all prior IGPP projects to validate consistency with cost accounting standards. This is based on OIG's conclusion that IGPP funding was inappropriately used to support the Building 490 project. As the NNSA General Counsel decision disagrees with that conclusion, we find no basis to support an extensive review of all IGPP projects. NNSA considers this recommendation closed.

MEMORANDUM

Date: May 5, 2020

From: NA-GC

To: NA-LL
Peter Rodrick, Manager, Livermore Field Office

Subject: Legal Opinion on the Alleged Violation of the Purpose Statute by Lawrence Livermore National Laboratory in the Funding of the Building 490 Renovation Project

Prepared by: William Mayers, Attorney, National Nuclear Security Administration, Office of the General Counsel, william.mayers@nnsa.doe.gov, 505-845-4134

The National Nuclear Security Administration (NNSA) legally used indirect funding for the betterment and conversion of Building 490 to cleanroom laboratory space.[1] Consequently, NNSA did not violate the Purpose Statute or the Antideficiency Act.[2]

Office of the Inspector General Draft Memorandum and Legal Memorandum

The Office of the Inspector General (OIG) raised fiscal issues concerning the funding of the Lawrence Livermore National Laboratory (LLNL) Building 490 Project in a Department of Energy (DOE) draft audit report. The draft report concludes NNSA violated the Purpose Statute because the apparent sole beneficiary of the project was another Federal Agency through the Strategic Partnership Projects (SPP) program.[3] The report also concludes that LLNL officials are unable to provide documentation showing how LLNL determined that the renovation project provided benefit to multiple programs or was required for a general-purpose site-wide need.[4] Consequently, the OIG concluded that LLNL and NNSA Livermore Field Office officials performed ineffective reviews of the Building 490 renovation project because they did not verify or document the existence of other Departmental users or multiple programs that would benefit from the renovation project.[5] The OIG also concluded that the LLNL post hoc justification for the project relied on multiple SPP users rather than multiple programs, which in the opinion of the DOE Chief Financial Officer (CFO), is a requirement of DOE Order 430.1B.

A supporting legal memorandum from the OIG legal office also concludes that NNSA violated the Purpose Statute and potentially the Antideficiency Act, relying primarily on an

[1] Livermore Field Office Project IGPP-490-2016044
[2] The Purpose Statute is codified at 31 USC §1301. Application. The Antideficiency Act is codified at 31 USC §1341. Limitations on expending and obligating funds.
[3] DOE OIG Draft Audit Report, Management of Institutional General Plant Projects at Lawrence Livermore National Laboratory, DOE-OIG-XX, April 2020, page 5.
[4] Ibid. page 3.
[5] Ibid. page 6

earlier, outdated draft of the OIG report.[6] The legal memorandum also argues that the bona fide needs rule prohibits NNSA from using future use and need for such space as a justifiable bona fide current need when NNSA executed the final Project Execution Plan (PEP).[7] The legal analysis concludes that NNSA intended that the project would solely be used by the Department of Defense (DOD) through the Strategic Partnership Projects (SPP) program, and that the indirect funds were used for a project to benefit a single non-NNSA program.[8]

NNSA Analysis

NNSA properly classified the Building 490 Project as Institutional General Plant Project because the facility is integral to the long term LLNL mission and was not solely for the benefit of a single program or a single user. While NNSA acknowledges that the supporting documentation could have been more comprehensive and consistent, the multi-program, multi-user purpose of the project is clear when the documentation is considered as a whole. The record does not support the inference that the process was a subterfuge to avoid having the Department of Defense pay for a project solely for its program benefit. Further, the draconian result of a Purpose Statute or Antideficiency Act violation must be predicated on something more substantial than inference. For example, the OIG heavily relies on the inconsistency between the Preliminary Project Execution Plan (PEP) and the final PEP. However, those documents are prepared for different purposes and final PEP does not supersede the preliminary PEP.[9] The Building 490 Project was reported to Congress in both the 2018 Budget Justification and in the 2017 out-of-cycle Congressional notification for minor construction projects. The 2017 notification read as follows:

> The project will be located in building B490 – Rooms 1045, 1019, 1053, 1021, 1023, 1037, 1037A, Corridor 7, Corridor 11, Corridor 12, Corridor 32. The space will be designed / engineered to have class 1,000 and 10,000 cleanrooms, and **with the required flexibility in its utility design to accommodate a variety of users.** Utility requirements include but are not limited to; low conductivity water (LCW – supply & return), ample power (up to 500kW), clean dry air (CDA), compressed air (CA), Nitrogen (N2), and Helium (He). The project will also have adjacent office / Tech space and a control room for laser system users. (Emphasis added)

The Building 490 Project is not specifically included in the LLNL 10 year site plan.[10] The ten year site plan lists lasers and optical science as a core competencies and laser science, technology, and applications as mission focus areas in the section on SPP, but does not identify specific projects such as Building 490. Furthermore, the context is clear that the SPP mission is

[6] Memorandum from IG-40 to Kelly Boyle, Director, Western Region, Office of the Inspector General, Alleged Violation of the anti-Deficiency Act, November 1, 2019. Authorship unattributed.
[7] Ibid. page 3. See also, 31 USC §1502, Balances Available,
[8] Ibid. pages 1,3
[9] OIG Draft Report, op.cit., page 3; Legal Memorandum, op.cit., page 3
[10] LLNL Ten Year Site Plan FY 2016, April 30, 2015, Section C17, Work for Others, page 60.

intended to compliment the mission of the nuclear enterprise. Importantly, stockpile stewardship is also listed as a mission focus area in this section.

The general rule is that construction costs may be divided in a multi-use facility if each project is clearly defined and each project results independently in a complete and usable facility or improvement.[11] However, construction work in a multi-use facility should be treated as one project if all construction work is for the same or related functional purposes, the work is contiguous, and the construction includes common areas.

The Building 490 project was proposed under the DOE minor construction authority.[12] In accordance with the DOE Financial Management Handbook (FMH), a minor construction project must be characterized as either a General Plant Project (GPP) or an Institutional General Plant Project (IGPP), with GPP benefitting either a single program or multiple programs, and an IGPP project providing a site-wide benefit.[13] The Building 490 Project was properly characterized as IGPP for the construction of the shell, and as GPP for the subsequent buildout as either single program projects or multiple program projects. The DOD Missile Defense Agency (MDA) occupies approximately 50% of the building and funded $4,803,200 to modify the space for the MDA program's particular purpose. The remainder of the space remains available for multiple users and multiple programs over the anticipated life-span of the building. The authority to construct laboratory space is solidly within the authority of 42 USC §7257, and the long-term facility planning for complex scientific and industrial operations does not require immediate occupancy as a justification for the expenditure of funds.

NNSA did not violate the Antideficiency Act in this case because there is no Purpose Statute violation. The concerns with the bona fide needs rule are mitigated or eliminated for several reasons. First, there was a bona fide need for the space as part of the long term facility planning for LLNL and it was properly funded using indirect funds. Second, future users of the facility would use current year funds to provide for alterations to the space without relating back to the year the betterment or conversion was funded.[14] Third, the NNSA laboratories are funded in significant part with no-year funds, which are not time limited, and the bona fide needs rule only applies to appropriation with limited periods of availability.[15]

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[11] Decision of Associate General Counsel Kepplinger, B-234326.15, December 24, 1991. There is inconsistent use of the terms interrelated and interdependent between the GAO and the Department of Defense (DOD).The GAO used the term "clearly interrelated' in the same manner that DOD use the term interdependent. This memorandum uses the DOD convention rather than the inconsistent GAO usage. See also, [11] Illegal Actions in the Construction of the Airfield at Fort Lee, Virginia, 87th Congress, 2d Session, House Report No. 1858, June 20, 1962.

[12] 42 USC 7257, Acquisition, construction, etc., of laboratories, research and testing sites, etc.; 50 USC 2741 establishes the minor construction threshold at $20,000,000 ($10,000,000 in 2016; 50 USC 2743, Minor construction projects; 50 USC §2743a, General plant projects. Alterations are defined in FMH Chapter 10.2.n.4 and betterments and defined in 10.2.q.

[13] FMH Chapter 24, Minor Construction, Section 1.a, Purpose. Chapter added in March 2019. DOE Order 430.1B, Real Property Asset Management, superseded by DOE Order 430.1C, August 19, 2016, §4.c.1, page 8; and also Attachment 3, Definitions, Institutional General Plant Projects, page 5.

[14] Alterations are adjustments to interior arrangements or other physical characteristics of an existing property record unit so that it may be more effectively adapted to or utilized for its designated purpose. DOE Financial Management Handbook, Chapter 10, Property, Plant, and Equipment, December 2015, Section 2.n.4, page 10-8.

[15] Ibid. Chapter 5, Accounting for Obligations, October 2015, Section 1.c.2, page 5-2.

The OIG Report also alleges that the facility was renovated solely for the purpose of soliciting SPP work, and concludes that only existing capabilities may be made available, and planning should not include consideration of future SPP work. First, NNSA disagrees that the Building 490 Project is solely for the benefit of SPP program. Second, the OIG's interpretation for the statutory authority only focuses on the DOE Order language authorizing access to DOE/NNSA highly specialized or facilities, services, or technical expertise to non-DOE/non-NNSA entities when private sector facilities are inadequate.[16] However, the Order also states the objectives to assist accomplishing goals that may be otherwise unobtainable and to assist in maintaining core competencies and enhancing the science and technology base at DOE/NNSA facilities.[17] Importantly, the Atomic Energy Act and corresponding codification, along with the broad authority under 42 USC §7257 for constructing laboratories, research and testing sites and facilities, and the scope of authority to carry out plant projects under 50 USC §2748, provides broad authority for the construction of facilities such as the Building 490 Project.[18] Consequently, the LLNL justifications for the near term and long term uses of the project should be given deference in the planning and execution of projects in support of the national defense.

In summary, the LLNL justification and documentation for the Building 490 Project could have been better prepared and consistent, but the documentation is adequate to support a conclusion that there is no Purpose Statute violation; no Antideficiency Act violation; and the project is properly funded using indirect funds.

[16] DOE Order 481.D, Strategic Partnership Projects December 5, 2016, superseded, Section1, Objectives.
[17] Ibid.
[18] Atomic Energy Act of 1954, P.L. 83-703, Section 33, Research for Others, codified at 42 USC §2053. See also, 50 USC §2748, Scope of authority to carry out plant projects, which states the following, In carrying out programs necessary for national security, the authority of the Secretary of Energy to carry out plant projects includes authority for maintenance, restoration, planning, construction, acquisition, modification of facilities, and the continuation of projects authorized in prior years, and land acquisition related thereto.

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