



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

Inspection Report

Organizational Conflicts of Interest
Program at Sandia National
Laboratories

DOE/IG-0853

July 2011



Department of Energy
Washington, DC 20585

July 13, 2011

MEMORANDUM FOR THE SECRETARY

FROM: 
Gregory H. Friedman
Inspector General

SUBJECT: INFORMATION: Inspection Report on "Organizational Conflicts of Interest Program at Sandia National Laboratories"

BACKGROUND

The Department of Energy's Sandia National Laboratories (Sandia) is a multi-program national security laboratory managed and operated under contract by Sandia Corporation, a subsidiary of Lockheed Martin Corporation. As part of the Department's National Nuclear Security Administration (NNSA), Sandia is designated as a Federally Funded Research and Development Center (FFRDC). In performing its various research-related activities, Sandia has special access to a wide variety of Government proprietary information.

Pursuant to Federal Acquisition Regulation 35.017, *Federally Funded Research and Development Centers*, and other contractual provisions, Sandia is obligated to protect proprietary data, act with independence and objectivity, and perform in a manner free from any Organizational Conflicts of Interest (OCI). In that connection, NNSA officials requested assistance in determining whether Sandia's OCI Program complied with relevant contractual requirements. We initiated this inspection with that objective in mind.

RESULTS OF INSPECTION

Our inspection revealed a number of areas where Sandia could improve its OCI process to prevent potential or actual organizational conflicts of interest. Although specifically required by Federal Regulation and contractual provisions, Sandia had not completed a number of OCI-related activities. In particular, Sandia had not:

- Conducted OCI reviews of all Technology Transfer License Agreements (License Agreements) between Sandia and its parent, Lockheed Martin, nor had it provided all License Agreements to NNSA for review and approval prior to the release of technology to Lockheed Martin;
- Ensured that OCI reviews were completed on Work for Others (WFO) projects that were initiated between Sandia and Lockheed prior to sending them to NNSA for review and approval;
- Performed adequate reviews on Cooperative Research and Development Agreements (CRADAs) with Lockheed to identify actual or potential OCI issues; and,

- Notified NNSA or completed OCI reviews when subcontracts were initiated with Lockheed Martin, when Lockheed acquired Sandia subcontractors, or when the period of performance and dollar amount of a sole-source contract with Lockheed materially exceeded the original award.

We also found that Sandia personnel who worked directly with Lockheed on WFO projects and CRADAs were not aware of the process for releasing information that may have been proprietary to the parent corporation.

These weaknesses occurred, in part, because Sandia failed to provide adequate direction to staff and management officials on the implementation of the OCI process in the areas of License Agreements, WFO's, CRADAs and *Release of Information* to Lockheed Martin. Further, Sandia had not provided all essential personnel with the necessary OCI training to assist them in identifying and mitigating OCI issues or concerns when encountered. We also noted that no specific performance measures related to Sandia's OCI Program had been established by NNSA. Finally, we found that NNSA had not conducted periodic assessments of the OCI Program to ensure that Sandia had satisfied its OCI responsibilities.

Because the required OCI reviews were not performed for the items we tested, we were unable, and responsible Department/NNSA Federal officials could not discern, whether actual conflicts of interest existed. Such OCI determinations would have enabled the Department to better ensure that Lockheed Martin was not given an unfair competitive advantage and that proprietary data and technology was appropriately protected.

A Sandia official told us that, as a result of our inspection, the Laboratory now understood that OCI reviews should have been conducted on all License Agreements with its parent and that all agreements should have been forwarded to NNSA for review and approval. This official explained that Sandia had taken immediate steps to correct these weaknesses by initiating a new internal procedure. In addition, NNSA Sandia Site Office officials indicated that, as a result of our inspection, Sandia had taken the initiative to establish an internal process to ensure OCI reviews are performed on WFO projects with Lockheed Martin. While these actions are promising, additional effort is necessary. As such, we made a series of recommendations designed to help ensure that the issues raised in our report are addressed. If properly implemented, these steps should help improve the integrity of the OCI process at Sandia.

MANAGEMENT REACTION

NNSA management expressed its appreciation for the Office of Inspector General's (OIG) work in this area in response to an NNSA request. Management also expressed general agreement with the report and the recommendations. It indicated that Sandia had already initiated improvement efforts in several areas to strengthen its OCI Program. NNSA management identified a series of comprehensive actions it plans to take to ensure the integrity of Sandia's OCI Program, to include specific actions it will direct Sandia to take. Management's planned actions are responsive to our recommendations.

NNSA provided comments on several specific issues which appeared to question the accuracy of our report. At one point in its comments, NNSA asserted that five of the nine license/notices we cited as not having been approved did not actually require approval. Yet, NNSA's subsequent comments conceded that the items should have been reviewed by the Sandia Site Office to assess whether there were any potential OCI issues. NNSA also indicated that evidence of the approval of one agreement existed but was not furnished during the course of our review. We modified the body of our report to reflect that the evidence in question was presented to us after the completion of our inspection.

Although the Sandia Laboratory expressed general agreement with our overall conclusions and recommendations, it noted, and NNSA agreed, that the report did not address all essential elements of Sandia's OCI program. Sandia contended that this could lead to a misperception regarding the program's overall effectiveness. In particular, management indicated that the inspection report did not address Sandia's screenings of Lockheed Martin-related business opportunities and other controls intended to reduce OCI related risks. In fact, our inspection covered a significant portion of Sandia's OCI activities.

While our review focused on high risk licensing and technology transfer related issues, we acknowledge that we did not evaluate and, thus, do not comment on Sandia's assertions regarding the effectiveness of its actions to review Lockheed Martin business opportunities.

The comments provided by NNSA, to which comments from Sandia were appended, are important factors in considering the issues raised in this inspection report. To ensure full disclosure of our respective positions, portions of management comments and inspector responses are discussed at relevant points in the body of the report. Overall management comments and OIG responses are also briefly summarized in the report, with management's complete comments included in Appendix 2.

Attachment

cc: Deputy Secretary
Associate Deputy Secretary
Administrator, National Nuclear Security Administration
Chief of Staff
Manager, Sandia Site Office

REPORT ON ORGANIZATIONAL CONFLICTS OF INTEREST PROGRAM AT SANDIA NATIONAL LABORATORIES

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ORGANIZATIONAL CONFLICTS OF INTEREST PROGRAM AT SANDIA NATIONAL LABORATORIES

OCI PROCESS AND PROCEDURES

Our inspection revealed a number of areas where Sandia National Laboratories (Sandia) could improve its Organizational Conflicts of Interest (OCI) process to help ensure that potential or actual organizational conflicts of interest are identified. Although Sandia was specifically required by Federal Regulation and contractual provisions to operate "free from organizational conflict of interest," we found that Sandia had not completed a number of OCI-related activities. Specifically, we determined that appropriate OCI reviews were not always conducted in the areas of Technology Transfer License Agreements (License Agreements), Work for Others (WFO) projects, Cooperative Research and Development Agreements (CRADAs), and Contracts between Sandia and Lockheed Martin Corporation (LMC). In addition, License Agreements were not sent to the National Nuclear Security Administration (NNSA) for review and approval prior to the release of technology to LMC, and NNSA was not notified about certain contractual actions involving Sandia and LMC.

Technology Transfers

Sandia had not conducted OCI reviews of all License Agreements between Sandia and LMC, nor had it sent all Agreements to NNSA for review and approval prior to the release of technology to LMC.

We reviewed 10 License Agreements between Sandia and LMC. These included four Commercial License Agreements, four Government Use Notices, one Test and Evaluation Agreement, and one Bailment Agreement. Each of these agreements allowed LMC access to intellectual property, as follows:

- **Commercial License Agreement:** This type of license grants the licensee a royalty-free, world-wide, irrevocable, nontransferable, nonexclusive right and license to use, reproduce, create derivative works, and distribute Sandia intellectual property.
- **Government Use Notice:** This type of license authorizes the licensee to use Sandia intellectual property for Government purposes under the contract, but the intellectual property is not to be released, distributed or disclosed to the public. This agreement is entered into to encourage scientific collaboration aimed at further development and application of the intellectual property.
- **Test and Evaluation Agreement:** This type of license grants the licensee a nonexclusive, nontransferable license to use Sandia intellectual property and associated documentation for noncommercial purposes. Under this

agreement, the licensee desires to license Sandia intellectual property for testing and evaluation related to the determination as to the suitability of the intellectual property for commercial use by the licensee.

- **Bailment Agreement:** This type of license is an agreement in which Sandia permits the commercial or non-commercial transfer of custody, access or use of Sandia intellectual property for a specific purpose of technology transfer or research and development, including without limitation evaluation, and without transferring ownership to the licensee.

Based on our evaluation of the 10 License Agreements selected for review, we found that 9 of those agreements did not contain evidence that such an OCI review had been completed. In discussions with Sandia officials regarding the lack of this review, they acknowledged that an OCI review had not been completed because they were not aware that one was required.

In addition, during our inspection we found no evidence that any of the 10 License Agreements had been forwarded to NNSA for review and approval prior to the release of technology to LMC (Note: Subsequent to the release of a draft of this report, Sandia was able to identify a request for approval by the Contracting Officer for one of the 10 license agreements). In discussions with Sandia Licensing personnel regarding their process for initiation of a License Agreement with LMC, we were told that they were not clear on which License Agreements needed to be sent to NNSA for review and approval. Licensing personnel said that it was their understanding that only commercial License Agreements needed to be sent to NNSA. However, under its Prime Contract, Clause 85, DEAR 970.5227-3, *Conflicts of Interest-Technology Transfer*, Sandia is required to review technology transfer activities for conflicts of interest. In addition, Sandia is required to obtain the approval of the contracting officer for any licensing of, or assignment of title to Intellectual Property (Intellectual Property means patents, trademarks, copyrights, mask works, protected CRADA information, and other forms of comparable property rights protected by Federal Law).

In comments to a draft of this report, NNSA took the position that the Government Use Notices and Test and Evaluation Licenses are not actually licenses, but are administrative in nature and do not require NNSA approval. However, NNSA agreed that the Sandia Site Office should review the license agreements with LMC, to

include Government Use Notices and Test and Evaluation Licenses, in order to assess these licenses for any potential OCI issues. NNSA also stated that the Contract requires approval to license technology, and thus, approval should have been obtained for the remaining license agreements.

While we appreciate NNSA's agreement to review these licenses for any potential OCI issue, we note that Sandia had already taken actions to address this issue. During our inspection, a Sandia official acknowledged that they now realized that an OCI review should have been conducted on all License Agreements with LMC, and that all agreements should have been forwarded to NNSA for review and approval. This official attributed Sandia's failure to meet these requirements on a lack of specific direction to the licensing executives who process the LMC agreements. This official also indicated that Sandia had taken immediate steps to correct the weaknesses with License Agreements by initiating an internal procedure for the licensing executives to follow when they are processing such agreements with LMC. This procedure, titled *Sandia Program Procedure PPP-001, Agreements Process*, instructs licensing executives to conduct an OCI review on all License Agreements with LMC and to forward all agreements with LMC to the NNSA Contracting Officer for review and approval.

The Sandia official provided evidence that, as a result of our inspection, two Test and Evaluation License Agreements had been sent to NNSA for approval. As previously noted, Test and Evaluation Agreements grant the licensee a nonexclusive, nontransferable license to use Sandia intellectual property and associated documentation for noncommercial purposes. We believe that the submission of Test and Evaluation License Agreements to NNSA for approval was consistent with DEAR 970.5227-3, *Conflicts of Interest-Technology Transfer*, since the specific language of the approval request stated "In accordance with our prime contract, Sandia Corporation requests the DOE/NNSA/SSO Contracting Officer's approval for the enclosed License Agreement"

Work for Others

Our inspection determined that Sandia had not ensured that OCI reviews were completed on WFO projects that were initiated between Sandia and LMC prior to sending them to NNSA for review and approval. In particular, Sandia had not conducted OCI reviews on any of the 10 WFO projects we selected for review. In a discussion with a Sandia WFO official regarding the lack of an OCI review, we were told that the Department of Energy (Department) did not require Sandia to conduct an OCI review on

Non-Federal Entities, such as LMC.¹ This official also said that Sandia completed a *Fairness of Opportunity Determination* for each WFO project, which they felt took the place of an OCI review.

During the course of our inspection, Sandia Site Office officials told us that they had not officially addressed the need for an OCI review on WFO projects with LMC and had not provided Sandia with the appropriate criteria and direction. However, in comments to a draft of this report, the Sandia Site Office stated that, after re-examining the contract and the OCI Mitigation Plan, Sandia is required by virtue of its contract and its NNSA-approved OCI Management Plan to ensure it is free from organizational conflicts, including but not limited to WFO. The Sandia Site Office stated that while the Department directives governing WFO may not have explicitly required an OCI review, the other terms and conditions of the Prime Contract and OCI Management Plan clearly require Sandia to remain free from conflicts of interest. Therefore, the Sandia Site Office took the position that a review of the Non-Federal Entities agreements with LMC would be necessary to ensure the OCI requirements were being met.

In comments to a draft of this report, Sandia modified its position on the *Fairness of Opportunity Determination* stating that it was not a substitute for an OCI review. Rather, Sandia stated that it utilizes the *Fairness of Opportunity Determination* as an important element to mitigate OCI, along with additional elements such as rigorous training for staff and use of the OCI Subject Matter Expert. However, NNSA stated in its comments on the draft that there appears to be a reliance on the *Fairness of Opportunity Determination* and employees' personal knowledge in which to base their OCI determinations. Management elaborated that there is a lack of formality in documenting the evaluation Sandia purports to do, including but not limited to a holistic evaluation of how Sandia concludes it is free from OCI.

Sandia Site Office officials said that, as a result of our inspection, Sandia had taken the initiative on their own to establish an internal process that would be implemented immediately. This process directs the WFO staff to conduct an OCI review on all future WFO projects initiated with LMC prior to sending them to NNSA for review and approval.

¹ Non-Federal Entities are entities such as private industry, state and local governments, Non-profit Organizations, and Academia.

Cooperative Agreements

We determined that Sandia had not performed adequate OCI reviews on CRADAs with LMC to identify actual or potential OCI issues. During our evaluation of the 10 CRADA projects that were selected for review, we learned that Principal Investigators (PIs) assigned to CRADA projects certified that an OCI review had been conducted.² This certification was part of the CRADA documentation forwarded to NNSA for review and approval and was contained in the *Supplemental Joint Work Statement* in the form of a question that asked:

"Are there any organizational or personal conflict of interest issues associated with this Project Task Statement³ (PTS)?"

Following this question were two boxes to be checked by the PIs indicating their response to the question, one labeled "yes" and one labeled "no." However, a review of the OCI determinations completed by the PIs revealed that their responses were consistently "no." In an effort to understand how they arrived at their OCI determination, we requested additional information such as a narrative describing their review or any other supporting documentation for their response. The PIs told us that there were no supporting documents for their response to the OCI question.

During interviews with a sample of eight PIs we selected, we determined that none of them had taken the Sandia OCI training, and the majority did not fully understand the OCI question that was in the CRADA *Supplemental Joint Work Statement*. Specifically, when asked if they understood the difference between a personal conflict of interest and an organizational conflict of interest, many of the PIs stated that they probably did not.

The PIs raised a concern about the manner in which the conflict of interest question was formatted. They pointed out that the question contained both an organizational conflict of interest portion and a personal conflict of interest portion, which they felt was confusing. In addition, the PIs said that since they were more familiar with the subject of a personal conflict of interest, they may have been more focused on that portion of the question when they completed the OCI determination. The PIs and their Managers proposed that the OCI question be modified to separate the two conflict of interest

² Members of the technical staff in the line organizations are given the title of Principal Investigator when they are assigned as the technical lead on a CRADA project.

³ Project Task Statement (PTS) identifies an individual project under an Umbrella CRADA that exists at Sandia for all LMC CRADA projects.

subjects into two distinct questions. In addition, they asked to be provided with some type of protocol or guidance that they would be able to use as support when they completed the OCI determination on future CRADA projects.

The Organization Conflict of Interest question is part of the *Supplemental Joint Work Statement* identified in DOE Manual 483.1-1. The manual states that the *Joint Work Statement* format may be supplemented by the local field office, an action that the Sandia Site Office may wish to take to clarify the difference between an OCI and a Personal Conflict of Interest.

Contracts

Our review concluded that Sandia had not notified NNSA or completed OCI reviews when contracts were initiated with LMC, when LMC acquired Sandia subcontractors or when the period of performance and dollar amount of a sole-source contract with LMC materially exceeded the original award. Procurement personnel, such as Sandia Contracting Representatives and their Managers, had not taken the formal OCI training as required in the OCI Management Plan. This lack of training is of particular concern since the Sandia OCI Management Plan identifies procurement as a potential area of OCI interest. Sandia Procurement Guidelines require that potential or actual OCI issues be identified prior to award.

Contracts with LMC

Sandia had not conducted an OCI review on five of the six contracts that we reviewed and did not forward these contracts to NNSA for review and approval prior to award. Sandia Procurement Guidelines, which are part of Sandia's NNSA approved procurement system, require OCI evaluations on procurements of over \$100,000 with LMC and state that the OCI determinations must be reviewed and evaluated by NNSA. Consistent with this requirement, NNSA officials stated that their expectation was for Sandia to conduct an OCI review on contracts awarded to LMC and to obtain the appropriate NNSA review and approval.

Further, NNSA officials were not aware of this condition prior to our inspection and stated that Sandia's failure to conduct an OCI review and obtain NNSA approval prior to awarding the contracts caused them concern. NNSA officials indicated that this condition calls into question Sandia's ability to provide the necessary assurances that they are performing objectively and without bias, preventing LMC and its affiliates from receiving an unfair competitive advantage.

Subcontractors Acquired by LMC

Sandia also did not notify NNSA when LMC acquired Sandia subcontractors during the performance of ongoing subcontract work and did not perform the required OCI reviews. Under the Sandia prime contract and procurement guidelines, NNSA is required to be notified and an OCI determination made in instances where facts disclosed prior to the award of a contract are changed, such as acquiring Sandia subcontractors. During our review, we found that LMC acquired two Sandia subcontractors during the performance of ongoing subcontract work, establishing these subcontractors as LMC affiliates. However, Sandia did not notify NNSA as required, and did not ensure an OCI determination was performed.

Sole-Source Contract with LMC

Sandia did not notify NNSA when revisions were made to a LMC sole-source contract after award, and did not conduct an OCI review or re-evaluate the sole-source justification. Specifically, Sandia extended the period of performance and increased the dollar amount of a contract without notifying NNSA of these changes and did not perform an OCI review. The original contract was awarded in March 2002, with a ceiling of \$100,000 and a period of performance that ended on June 30, 2002. LMC was identified as the only known source to provide the necessary services and the contract was issued on a non-competitive basis.

Sandia Procurement Guidelines exempt procurements with a total value of \$100,000 or less from an OCI review. We were told by the Sandia Site Office that when the period of performance increases and the dollar amount exceeds \$100,000, Sandia is then required to conduct an OCI review and obtain NNSA review and approval. However, we found that the Sandia Contracting Representative extended the period of performance to eight years and increased the dollar amount to \$2 million without Sandia management review or NNSA review and approval. During a discussion with the Sandia Contracting Representative, we were told that the contract was extended to meet the continuing and growing needs of Sandia. We were also told that the Sandia Contracting Representative's interpretation was that NNSA did not

need to review the extensions of time or the increase in the dollar amount since none of the fundamental facts of the procurement were changed.

In discussions with NNSA regarding this contract, we were told that their expectation was that Sandia would have obtained the necessary NNSA approval when the terms of the contract exceeded the \$100,000 approved ceiling. In addition, NNSA officials agreed that, as the contract progressed and the dollar amount significantly increased, Sandia should have conducted an OCI review to determine if LMC was being given an unfair competitive advantage. Also, NNSA officials indicated that as the period of performance expanded, Sandia should have considered testing the market to determine if there were other companies who could have done the same work, allowing for effective competition.

In comments to a draft of this report, Sandia stated that their NNSA-approved procurement policy did not require Sandia to perform an OCI review on (1) contracts under \$100,000; (2) contracts for routine information technology services; (3) maintenance contracts; and, (4) contracts to contractors which are acquired by LMC after contract award. As such, Sandia stated that the five contracts cited in this report were not required to be reviewed for OCI per the exemptions above. However, NNSA noted, in its comments on the draft report, that all subcontracts with LMC should have been reviewed for OCI notwithstanding any exemption criteria established for other organizations or services being procured.

**RELEASE OF
INFORMATION**

We found that Sandia personnel who work directly with LMC on WFO projects and CRADAs were not aware of the process for *Release of Information* to LMC. Pursuant to the management and operating contract, NNSA required Sandia to develop an *Organizational Conflicts of Interest (OCI) Management Plan* which outlines, in part, how Sandia will implement its OCI Program to ensure that Sandia operates free from actual, potential or the appearance of a conflict of interest. Additional OCI Program requirements are found in Sandia's Procurement Operating Instructions and other topical manuals. As part of the OCI process, Sandia maintains an OCI Awareness Program administered by the Corporate Contracts and Policy Management Department. Under this program, Sandia created a formal process for *Release of Information* to LMC as an essential tool to provide the assurance that it was operating in an OCI free manner.

However, we found that the majority of the PIs and more than half of their Managers were not aware of the process for *Release of Information* to LMC. This process utilizes an OCI Form SF 1901, *Visit/Information Release Review and Approval*, and is used when there are planned communications between Sandia and LMC that involve substantive releases of information, other than agreed upon communication included in a WFO or CRADA agreement. The SF 1901, once approved by the requestor's senior management, is to be submitted to the Sandia Corporate Contract Management Department for review and approval prior to any release of information.

The SF 1901 provides for the advanced approval of a proposed visit or information release to LMC, or an affiliate, by the OCI reviewer. This approval ensures that the proposed information release has been evaluated by management and is determined to be appropriate. In addition, the SF 1901 documents the approval to release information, conduct meetings and have discussions with LMC and their affiliate organizations in the event of an audit regarding OCI procedures. The lack of knowledge of this process on the part of Technical Line Organization personnel raises a concern that information may have been provided to LMC that could have been identified as a potential OCI issue.

In discussions with Corporate Contracts and Policy Management Department officials, we were told that Sandia, as part of its OCI Awareness Program, created this formal process for *Release of Information* to LMC as an essential tool to provide the assurances that it was operating in an OCI free manner. When told that the Technical Line Organization personnel were not aware of this process, Sandia officials stated that they would immediately address this issue to ensure that all personnel at Sandia become aware of the process for release of information to LMC. They also said that all personnel would be provided with resources that would assist them in identifying a potential or actual conflict of interest in connection with Sandia activities. In addition, in comments to a draft of this report, Sandia stated that, based on this inspection, a strategy was deployed to raise awareness of the *Release of Information* requirement to have substantive technical interactions with LMC documented and approved by Senior Management by means of the SF 1901 form.

We were also told by the Director of the LMC Corporate Relations Department that, as a result of our inspection, Sandia was developing a website on their internal network to address this issue. We were told that the website would provide members of

the workforce with information relating to LMC relations with Sandia. Specifically, information on the website would include: exploring and developing agreements with LMC; detailed guidance on OCI; guidance regarding NNSA requirements for collaborating with LMC; LMC partnering objectives; and, links to helpful documents and Subject Matter Experts at Sandia and other organizations. In comments to a draft of this report, Sandia indicated that the website was implemented in Fall 2010 and has a section dedicated to describing OCI issues and concerns pertaining specifically to Sandia/LMC interactions. Sandia stated that the website explains in detail the contractual and internal controls, including training, mitigation plans, use of the SF 1901, new business opportunity screening for OCI, and other measures in place to help Sandia operate in an OCI-free manner as a LMC affiliate.

CONTRIBUTING FACTORS

These weaknesses occurred, in part, because NNSA had not conducted periodic assessments of the OCI Program to ensure that Sandia had satisfied its OCI responsibilities. Also, Sandia failed to provide adequate direction on the implementation of the OCI process in the areas of License Agreements, WFO's, CRADAs and *Release of Information* to LMC. Further, Sandia had not provided all essential personnel with the necessary OCI training to assist them in identifying and mitigating OCI issues or concerns when encountered. We noted that no specific performance measures related to Sandia's OCI Program had been established by NNSA.

Technical Line Organization personnel who had the potential to interact with LMC and their affiliates on a daily basis, and who worked directly with LMC on CRADA projects, had not been provided OCI training. Also, procurement personnel, such as Sandia Contracting Representatives and their Managers, had not taken formal OCI training. The OCI Management Plan and associated documents state that early detection of potential OCI issues enables a resolution prior to acceptance of work, and that potential OCI issues should be identified and resolved by the employees themselves at the lowest organizational level. However, Sandia did not require all essential personnel to take OCI training. Instead, Sandia developed a *Target Audience* concept which only identified personnel from selected groups to participate in the training.

Because the required OCI reviews were not performed for the items we tested, we were unable, and responsible Department/NNSA Federal officials could not discern, whether actual conflicts of interest existed. Without such determinations,

the Department could not, in our judgment, satisfactorily determine if LMC was given an unfair competitive advantage or proprietary data and technology was appropriately protected.

In comments to a draft of this report, Sandia stated that procurement personnel, including Sandia Contracting Representatives and their managers, are implementing the requirement to complete OCI training. In addition, Sandia described a two track training process. The first track included training of all personnel in functions pertaining to business development in both line and support programs that traditionally involve potential OCI risks. The second track described an *OCI Awareness* approach designed for and available to all Sandia personnel, but particularly emphasized for those technical personnel whose job functions could potentially involve OCI risks.

RECOMMENDATIONS

Due to the process and procedural weaknesses identified in the Sandia OCI Program, and the questions raised with regard to the assurance that LMC was not given an unfair competitive advantage or that proprietary data and technology was appropriately protected, we recommend the Manager, Sandia Site Office, ensure that Sandia:

1. Develops processes and procedures to conduct OCI reviews on Technology Transfer License Agreements with LMC consistent with direction from NNSA, and ensures that these Agreements are submitted to NNSA for review and approval;
2. Develops processes and procedures to ensure that OCI reviews are conducted on all WFO projects between LMC and Sandia;
3. Improves the adequacy of OCI reviews on all CRADAs between LMC and Sandia by providing guidance to assist PIs in the completion of the OCI determination on future CRADA projects;
4. Consistent with NNSA review and direction on the present format of the OCI question contained in the *Supplemental Joint Work Statement*, modifies the OCI question to clarify the difference between an OCI and a Personal Conflict of Interest;
5. Conducts OCI reviews and notifies NNSA when contracts are initiated with LMC, when LMC acquires Sandia

subcontractors, and when changes occur to a contract after award;

6. Provides Sandia personnel who work directly with LMC on CRADA and WFO projects with the appropriate procedures for *Release of Information* to LMC; and,
7. Provides all essential personnel with the necessary OCI training to assist them in identifying and mitigating OCI issues or concerns.

In addition, to ensure adequate Federal monitoring of Sandia's OCI Program, we recommend that the Manager, Sandia Site Office:

8. Review the Sandia OCI Program, to include the OCI Management Plan and the Sandia Procurement Guidelines, to ensure that all Site Office expectations are clearly communicated; and,
9. Conduct periodic assessments of Technology Transfer License Agreements, WFO projects, CRADAs, and Contracts awarded to LMC to verify that the OCI processes and procedures implemented by Sandia are effective.

MANAGEMENT AND INSPECTOR COMMENTS

NNSA management generally agreed with the report and the recommendations, and indicated that Sandia had already initiated improvement efforts in several areas to strengthen its OCI Program. Specifically, NNSA management identified a series of comprehensive actions it plans to take to ensure the integrity of Sandia's OCI Program, to include specific actions they will direct Sandia to take. In addition, Sandia stated that it is in agreement with the overall conclusions of the report, and that the conclusions are reflected in the recommendations.

However, Sandia stated that the overall message of the report paints an incomplete picture of the broad OCI Program that will mislead the reader. Sandia stated that the report fails to address the full scope of Sandia's overall OCI Program, omitting any discussion of many of the essential elements that create Sandia's well implemented program. In particular, Sandia stated that it conducted extensive OCI screenings of LMC business opportunities in which Sandia may also be involved. Sandia went on to state that the broad, absolute assertions in the report based on a portion of the overall OCI Program negatively implicate the quality of Sandia's OCI Program in its entirety. Sandia stated that

this negative implication is factually inaccurate and causes the report to be fundamentally flawed.

We take exception to Sandia's position that the report is factually inaccurate and fundamentally flawed. Specifically, the scope of the inspection looked at four critical areas where potential OCI issues could exist with LMC: Technology Transfer License Agreements; WFO's; CRADAs; and, Contracts. We also reviewed Sandia's OCI Training and *Release of Information* processes. We did not conduct a comprehensive review of what Sandia refers to as extensive OCI screenings of LMC business opportunities nor did we focus on the Sandia Subject Matter Expert process. As such, we offer no comment on the effectiveness of those activities.

Contrary to Sandia's statement that the report did not address training material and web-based information, our report specifically addresses training and web-based information. We noted that Sandia developed a website on their internal network to address the training issues discussed in the report. We also reported the fact that the website would provide members of the workforce with information relating to LMC relations with Sandia.

In addition, the report addresses the fact that Sandia described a two track training process. The report discusses: the first track, which includes training of all personnel in functions pertaining to business development in both line and support programs that traditionally involve potential OCI risks; and, the second track which was described as an *OCI Awareness* approach designed for and available to all Sandia personnel, but particularly emphasized for those technical personnel whose job functions could potentially involve OCI risks.

Contrary to Sandia's statement that the report did not address Executive Level Approval, we specifically note that, based on this inspection, Sandia stated that a strategy was deployed to raise awareness of the *Release of Information* requirement to have substantive technical interactions with LMC documented and approved by Senior Management by means of the SF 1901.

We consider management's comments and corrective actions planned and/or taken responsive to our recommendations.

Management's comments have been provided in their entirety in Appendix 2.

OBJECTIVE

In response to a request from the National Nuclear Security Administration (NNSA), we initiated this inspection to determine whether the Organizational Conflict of Interest (OCI) Program at Sandia National Laboratories (Sandia) complied with contractual requirements.

SCOPE AND METHODOLOGY

We conducted our fieldwork from February through October 2010. We interviewed Sandia and NNSA Site Office officials. In addition, we reviewed and analyzed the NNSA Management & Operating contract with Sandia Corporation, and the following laws, regulations and policies:

- FAR 35.017, *Federally Funded Research and Development Centers*.
- DEAR 952.209-72, *Organizational Conflicts of Interest*, and DEAR 970.5227-3, *Conflict of Interest-Technology Transfer*.
- DOE O 481.1C, *Work For Other (Non-Department of Energy funded work)*, and DOE O 483.1, *DOE Cooperative Research and Development Agreements*.
- *DOE Acquisition Guide*, Chapter 9.1, *Conflict of Interest*.
- 48 CFR 970.09, *Contractor Qualifications*.

We also reviewed and analyzed the Sandia OCI Management Plan, Sandia Procurement Guidelines, and the following Sandia documents:

- Sandia Corporate Procedure ME 100.3.5, *Manage Organizational Conflicts of Interest*.
- Sandia Corporate Conflicts of Interest Program Guide, *How to Identify, Avoid, Neutralize, and Mitigate OCI*.
- Sandia Corporate Process Requirement No. CPR 200.3, *Conflicts of Interest*.

During the inspection, we assessed the contractor's compliance with the Government Performance and Results Act of 1993 and found that no specific performance measures related to the OCI Program had been established at Sandia.

This inspection was conducted in accordance with the Council of the Inspectors General on Integrity and Efficiency, *Quality*

Appendix 1 (continued)

Standards for Inspections, issued by the President's Council on Integrity and Efficiency, January 2005. Since our inspection was focused on particular aspects of the OCI program, it may not have identified all internal control issues that may have existed.

NNSA management waived an exit conference on July 7, 2011.

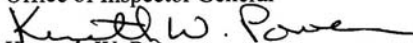


Department of Energy
National Nuclear Security Administration
Washington, DC 20585



June 17, 2011

MEMORANDUM FOR: Sandra D. Bruce
Assistant Inspector General for Inspections
Office of Inspector General

FROM: 
Kenneth W. Powers
Acting Associate Administrator
for Management and Budget

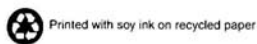
SUBJECT: Revised Comments to IG Draft Report on Organizational
Conflicts of Interest Program at Sandia National
Laboratories

The National Nuclear Security Administration (NNSA) appreciates the opportunity to comment on the Inspector General's (IG) draft inspection report "*Organizational Conflicts of Interest Program at Sandia National Laboratories*." I understand that the Manager of the Sandia Site Office (SSO) requested the IG to perform this inspection to assess the health of Sandia's Organizational Conflict of Interest (OCI) program. NNSA appreciates the IG for accommodating SSO's request for this review.

NNSA generally agrees with the report and the recommendations. The IG concluded that Sandia Corporation (Sandia) could improve its OCI processes. To this end, Sandia has already initiated improvement efforts in several areas to strengthen its OCI program. However, Sandia has expressed some concern about a possible misperception of its OCI program due to a lack of discussion in the report of essential elements of its OCI program. For examples: OCI screenings of Lockheed Martin Corporation (LMC) business opportunities in which Sandia may also be involved; a dedicated, full-time subject matter expert who actively consults with Sandia's line organizations on OCI issues; training material and web-based information that address OCI; and a requirement for executive-level approval of Sandia's participation in activities where the potential OCI risks are greater. NNSA agrees with Sandia's concern, and to alleviate those concerns, we suggest that a more complete description of Sandia's OCI program be included as it will strengthen the IG's report. Attached is a copy of Sandia's response to the draft report. While we do not agree with all of Sandia's statements, the IG may have additional information obtained through the conduct of the inspection that provides further insight into the basis of these statements.

Below are some specific comments to the report:

1. Sandia asserts that their M&O contract does not require Sandia to submit the actual negotiated LMC license agreements with full terms and conditions to NNSA for approval. The M&O contract requires approval for Sandia to conduct licensing of or



an assignment of title to intellectual property to LMC. Sandia's assertion can be interpreted as accurate since nothing in the M&O Contract requires Sandia to provide the actual negotiated license agreement with full terms and conditions to the Contracting Officer for review and approval. Rather, the M&O Contract requires Sandia to obtain the Contracting Officer's approval of Sandia's intent to license technology. Currently, the OCI Management Plan requires Sandia to certify that they will treat LMC no differently than other commercial entities who either have or would license this same technology. A closer look at the nine "license agreements" reviewed revealed the following:

- Five of the nine licenses/notices (Government Use Notices and Test and Evaluation License) are not actually licenses, but are administrative in nature and do not require SSO approval. The Government Use Notice is merely an acknowledgement by the entity being given the software or technology for use under another government contract only and they may not redistribute further or use for any other purpose. Government Use Notices are kept on file by Sandia. A Test and Evaluation License is a standardized agreement available to any entity allowing the use of software or technology for a set period of time to see if that entity might find it useful and then negotiate an actual license. We agree that SSO should review the license agreements with LMC, to include Government Use Notices and Test and Evaluation Licenses, in order to assess these licenses for any potential OCI issues.
 - One of the license agreements was approved by the Contracting Officer (CO) but evidence of such may not have been in Sandia's files presented to the IG.
 - The remaining three license agreements (or notifications of intent to license) were not submitted to the CO for approval. One of these three contained standard template language for software that had been licensed to multiple entities under the same terms and conditions. The M&O contract requires approval to license technology, and thus, approval should have been obtained.
2. Sandia also asserted that they do not use "Fairness of Opportunity (FOO) determinations" as a substitute for an OCI review. However, there appears to be a reliance on "FOO determinations" and skill of the craft in which to base their OCI determinations. There is a lack of formality in documenting the evaluation they purport to do including but not limited to a holistic evaluation of how they conclude they are free from OCI.
 3. Sandia asserted five of six subcontracts did not include an OCI review prior to award because their NNSA-approved Procurement Guideline does not require Sandia to perform an OCI review on (1) contracts under \$100,000, (2) contracts for routine information technology services, (3) maintenance contracts, and (4) contracts to contractors which are acquired by LMC after contract award. The SSO believes all subcontracts with LMC should be reviewed for OCI notwithstanding any exemption criteria established for other organizations or services being procured. Accordingly, SSO will direct Sandia to revise its Procurement Guideline to clearly require an OCI review of all subcontracts with

LMC. Sandia acknowledges that the current Procurement Guideline requires all LMC subcontracts to be provided to SSO for review and approval.

4. The IG also concluded that Sandia's weaknesses occurred, in part, because NNSA had not conducted periodic assessments of Sandia's OCI program. We agree; this is true due to resource constraints and that is why SSO requested assistance from the local IG office.

With regards to the recommendations, NNSA concurs, however, recommendations 4, 8 and 9 appear to be duplicative and as such we suggest consolidating them into one recommendation. The correction actions to the recommendations are:

Recommendation 1

Develops processes and procedures to conduct OCI reviews on all Technology Transfer License Agreements with LMC, and ensure that these Agreements are submitted to NNSA for review and approval.

Management Comment

The SSO will direct Sandia to review and modify its OCI Management Plan, and associated processes and procedures, as appropriate, to require OCI reviews on all Technology Transfer License Agreements with LMC, and ensure that these Agreements are submitted to NNSA for review and approval. The SSO will also direct Sandia to present the planned improvements to SSO for review and comment. The SSO will also direct Sandia to continuously evaluate the accuracy, quality and completeness of its OCI reviews prior to submittal to SSO. This action should be completed by October 2011.

Recommendation 2

Develops processes and procedures to ensure that OCI reviews are conducted on all WFO projects between LMC and Sandia.

Management Comment

Sandia has revised its WFO Manual including the attendant Determination and Certifications (D&C) language. The SSO will review the revised Manual and D&C and provide feedback to Sandia. The SSO will also direct Sandia to continuously evaluate the accuracy, quality and completeness of its OCI reviews prior to submittal to SSO. This action should be completed by October 2011.

Recommendation 3

Improves the adequacy of OCI reviews on all CRADAs between LMC and Sandia by providing guidance to assist PIs in the completion of the OCI determination on future CRADA projects.

Management Comment

Sandia has begun to provide one-on-one OCI training with its Principal Investigators (PI) and obtain confirmation from the PIs that they understand Sandia's Corporate OCI policies and procedures. The SSO will direct Sandia to continuously evaluate the effectiveness of this training. These actions should be completed by October 2011.

Recommendation 4

Consistent with NNSA direction, modifies the OCI question in the *Supplemental Joint Work Statement* to clarify the difference between an Organizational Conflict of Interest and a Personal Conflict of Interest.

Management Comment

Sandia's *Supplemental Joint Work Statement (JWS)* is consistent with the format contained in DOE Manual 483.1-1 *DOE Cooperative Research and Development Manual*. Separating the one question into two distinct questions [i.e., one for OCI and one for Personal Conflict of Interest (PCI)] would be considered an administrative change and the SSO will direct Sandia to form two questions on the *Joint Work Statement*. It is SSO's belief that the addition of definitions of OCI and PCI in the *Joint Work Statement* may constitute a deviation to the Manual and we will make a recommendation to HQ to consider revising. Notwithstanding, SSO believes it would be more appropriate and sufficient if Sandia's definition and examples of OCI and PCI are contained within their policies and training materials provided they are consistent with the terms of the contract and applicable statutes and regulations. The SSO will direct Sandia to form two questions for use in all *Joint Work Statements* and ensure their policies and training materials accurately describe the differences between OCI and PCI by October 2011.

Recommendation 5

Conducts OCI reviews and notifies NNSA when contracts are initiated with LMC, when LMC acquires Sandia subcontractors, and when changes occur to a contract after award.

Management Comment

Sandia's approved Procurement policy should be revised to clearly require an OCI review of all proposed LMC subcontract awards. SSO will re-assess Sandia's procurement policy for possible revisions and direct Sandia to make changes as may be necessary. The SSO will direct Sandia to conduct OCI reviews on all LMC subcontract awards and obtain SSO approval when contracts are initiated with LMC, or notify SSO when LMC acquires Sandia subcontractors, and when changes occur to a contract after award, consistent with existing terms of Sandia's prime contract. These actions should be completed by October 2011.

Recommendation 6

Provides Sandia personnel who work directly with LMC on CRADA and WFO projects with the appropriate procedures for *Release of Information* to LMC.

Management Comment

Sandia has begun to provide one-on-one OCI training with its Principal Investigators (PI) and Program Managers (PM) to include the topic of release of information to LMC. Sandia is also obtaining confirmation from the PIs and PMs that they understand Sandia's Corporate OCI policies and procedures. The SSO will direct Sandia to annually provide training and evaluate its effectiveness and provide SSO with its assessment in its annual OCI disclosure update. These actions should be completed by October 2011.

Recommendation 7

Provides all essential personnel with the necessary OCI training to assist them in identifying and mitigating OCI issues or concerns.

Management Comment

Sandia has begun the process to ensure all essential personnel take the OCI training. SSO will direct Sandia to provide periodic updates of the completion of this action in addition to ensuring appropriate procedures are in place to make certain all new essential personnel receive training and all personnel receive periodic refresher training. These actions should be completed by October 2011.

Recommendation 8

Review the present format of the Organizational Conflict of Interest question contained in the Supplemental Joint Work Statement, and modify as appropriate to clarify the difference between an Organizational Conflict of Interest and Personal Conflict of Interest.

Management Comment

See the response to Recommendation 4. This recommendation is redundant with Recommendation 4 and 9. Suggest this recommendation be deleted.

Recommendation 9

Direct Sandia to implement the Sandia Site Office changes to the Organizational Conflict of Interest question contained in the *Supplemental Joint Work Statement*.

Management Comment

See the response to Recommendation 4. However, this recommendation is redundant with Recommendation 4 and 8. Suggest this recommendation be deleted.

Recommendation 10

Review the Sandia OCI Program, to include the OCI Management Plan and the Sandia Procurement Guidelines, to ensure that all Site Office expectations are clearly communicated.

Management Comment

The SSO will direct Sandia to review their OCI Management Plan and Procurement Guidelines for improvement and provide SSO a proposed redlined revision for SSO review and disposition. The SSO and Sandia will form a working group to address and implement improvements. These actions should be completed by March 2012.

Recommendation 11

Conduct periodic assessments of Technology Transfer License Agreements, WFO projects, CRADAs, and Contracts awarded to LMC to verify that the OCI processes and procedures implemented by Sandia are effective.

Management Comment

SSO will establish a periodic assessment schedule to evaluate the effectiveness of Sandia's OCI processes and procedures. This action should be completed by December 2011. Moreover, SSO will work to this schedule to periodically assess Sandia's OCI processes and procedures for effectiveness and compliance with the terms and conditions of the contract.

Again, NNSA appreciate the IG for accommodating SSO's request in performing this inspection due to the concerns about Sandia's OCI Program.

Appendix 2 (continued)

7

If you have any questions concerning this response, please contact JoAnne Parker, Director, Office of Internal Controls, at 202-586-1913.

Attachment

cc: Patty Wagner, Manager, Sandia Site Office

**Sandia Corporation Management Response to the IG Draft Inspection Report on
*Organizational Conflicts of Interest Program at
Sandia National Laboratories***

Within the OIG cover letter dated April 5, 2011 it specifically asks for a review of the draft inspection report that provides "...written comments within 15 working days on the facts presented, the conclusions reached, the appropriateness of the recommendations, and the benefits that may be realized upon implementing the recommendations. . ." Below we specifically address these areas.

Factual Accuracy:

The Sandia OCI program involves a wide range of processed systems and the OIG reviewed the vast majority of these areas while performing their field work at Sandia. However, the overall message of the OIG's report paints an incomplete picture of this broad program that will mislead the reader. The inspection itself revealed that certain specific OCI review processes could be strengthened. However, the report fails to address the full scope of Sandia's overall OCI program, omitting any discussion of many of the essential elements that create Sandia's well implemented program. The broad, absolute assertions based on a portion of the overall OCI program negatively implicate the quality of Sandia's OCI program in its entirety; this negative implication is factually inaccurate and causes the report to be fundamentally flawed. OCI management at Sandia includes extensive OCI screenings of Lockheed Martin Corporation (LMC) business opportunities in which Sandia may also be involved (hundreds per quarter); a dedicated, full-time subject matter expert who actively consults with Sandia's line organizations on OCI issues; training material and web-based information that address OCI; and a requirement for executive-level approval of Sandia's participation in activities where the potential OCI risks are greater. These important precautions, as well as other elements of Sandia's OCI program, have protected Sandia from OCI incidents in its mission areas during the 18 years of its affiliation with LMC. Viewing the OCI program in its entirety provides a much different perspective than the narrow focus of this report.

There are certain specific assertions in the final draft report on which Sandia would like its position to be formally on record:

- The IG states several times that Sandia did not submit license agreements with LMC to NNSA for review and approval prior to release to LMC "as required." Sandia's M&O contract does not require license agreements to be submitted to the NNSA; it requires Sandia to obtain the NNSA approval for licensing of or assignment of title to intellectual property to LMC (there is no contractual requirement for the NNSA to approve the actual license agreement with LMC), Sandia's practice has been to request approval from our Contracting Officer to license a specific patent to LMC through a non-exclusive agreement. After obtaining that approval, Sandia executes a license with LMC.
- The OIG report claims Sandia has changed its licensing procedures to include forwarding licensing agreements to the NNSA for approval. While forwarding all licensing agreements to the SSO for approval is under consideration, we did not intend to

communicate to the IG that such a decision on the new procedure has been made. Sandia has not yet determined that forwarding all licensing agreements to the SSO is the best method of compliance with the M&O contract requirement to obtain the NNSA approval for licensing of or assignment of title to intellectual property to LMC (there is no contractual requirement for the NNSA to approve the actual license agreement with LMC).

- The WFO section of the report cited that a Sandia official said Sandia utilized Fairness of Opportunity (FOO) determinations as a substitute for OCI reviews. Sandia does not implement the FOO review as a substitute for OCI review. Sandia does not assert that FOO reviews are a substitute for OCI reviews; Sandia does use FOO as an important element to mitigate OCI, however additional elements, such as, rigorous training for staff and use of the OCI Subject Matter Expert are also used. Early in the inspection, the IG communicated how OCI reviews related to WFO agreements with LMC would improve Sandia's OCI program. In coordination with the SSO, we developed and implemented improvements in this area.
- The IG states in the Contracts section: "We found that Sandia had not conducted an OCI review on five of the six contracts we reviewed and did not forward these contracts to NNSA for review and approval prior to award . . . NNSA officials were not aware of this condition prior to our inspection... and indicated that this condition calls into question Sandia's ability to provide the necessary assurances that they are performing objectively and without bias, preventing LMC and its affiliates from receiving an unfair competitive advantage."
- Per Sandia policy, Sandia should have forwarded the five contracts referred to above to the NNSA for source selection review prior to award. However, those contracts were not reviewed for OCI because they fall into categories exempted from review. Sandia's NNSA-approved procurement policy does not require Sandia to perform an OCI review on (1) contracts under \$100,000, (2) contracts for routine information technology services, (3) maintenance contracts, and (4) contracts to contractors which are acquired by LMC after contract award. The five contracts cited by the IG as not reviewed by Sandia were not required to be reviewed for OCI per the exemptions above.

Conclusions Reached:

Within the draft IG report under "Results of Inspection", it states "Our inspection revealed a number of areas where Sandia could improve its OCI process to help ensure that potential or actual organizational conflicts of interests are identified." A very similar statement is made later in the report under "OCI Process and Procedures". These statements capture the overall conclusions reached by the IG and Sandia is in agreement. The ultimate conclusions reached by the IG are reflected in their recommendations.

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