



OFFICE OF INSPECTOR GENERAL

U.S. Department of Energy

INSPECTION REPORT

DOE-OIG-23-32

September 2023

**CONTRACT AND SECURITY CONCERNS
AT THE NATIONAL NUCLEAR
SECURITY ADMINISTRATION'S W88
ALTERATION 370 FEDERAL PROGRAM
OFFICE**



Department of Energy
Washington, DC 20585

September 19, 2023

MEMORANDUM FOR THE ACTING DIRECTOR, NATIONAL ENERGY TECHNOLOGY
LABORATORY & THE ADMINISTRATOR, NATIONAL
NUCLEAR SECURITY ADMINISTRATION

SUBJECT: Inspection Report on Contract and Security Concerns at the National Nuclear
Security Administration's W88 Alteration 370 Federal Program Office

The attached report discusses our inspection of an allegation regarding contracting and security concerns at the National Nuclear Security Administration's W88 Alteration 370 Federal Program Office. This report contains four recommendations that, if fully implemented, should help ensure that unauthorized subcontract activities are discontinued and that contracting authorities are reinforced. Management fully concurred with our recommendations.

We conducted this inspection from August 2022 through June 2023 in accordance with the Council of the Inspectors General on Integrity and Efficiency's *Quality Standards for Inspection and Evaluation* (December 2020). We appreciated the cooperation from your staff during the inspection.

A handwritten signature in black ink, appearing to read "Anthony Cruz".

Anthony Cruz
Assistant Inspector General
for Inspections, Intelligence Oversight,
and Special Projects
Office of Inspector General

cc: Deputy Secretary
Chief of Staff



Department of Energy Office of Inspector General

Contract and Security Concerns at the National Nuclear Security Administration's W88 Alteration 370 Federal Program Office (DOE-OIG-23-32)

WHY THE OIG PERFORMED THIS INSPECTION

The Office of Inspector General received allegations pertaining to management and oversight concerns at the National Nuclear Security Administration's W88 Alteration (ALT) 370 Federal Program Office. One of the allegations was that a Federal employee (Federal Employee) within the W88 ALT 370 Federal Program Office, whose National Nuclear Security Administration building and computer systems access was restricted, was using a subcontractor employee to send and receive emails on behalf of the Federal Employee.

We initiated this inspection to determine the facts and circumstances regarding this allegation. The other allegations will be addressed in a separate report.

What Did the OIG Find?

We substantiated the allegation that a Federal Employee, whose National Nuclear Security Administration building and computer systems access had been restricted due to a formal inquiry by a Department of Energy program, used a subcontractor employee to send and receive emails on their behalf. The Federal Employee also relocated to office space at the subcontractor's facility. The use of the subcontractor was at the improper technical direction of a former W88 ALT 370 Program Official (Program Official) and was used as a workaround to the Federal Employee's restrictions. The Program Official did not have contracting authority and provided the improper technical direction directly to the subcontractor, resulting in approximately \$1.5 million incurred by the prime contractor over the nearly 5 years of support services received that are in question.

These issues occurred because the Program Official did not consult with the appropriate National Energy Technology Laboratory contracting authorities or with the prime contractor to determine whether the use of the subcontractor to provide accommodations for the Federal Employee was appropriate and authorized.

What Is the Impact?

The actions taken by the Program Official and the subcontractor created security risks to the Department by accommodating the Federal Employee under formal inquiry with unescorted access to the subcontractor's site where nuclear weapons work and classified activities were conducted.

What Is the Path Forward?

To address the issues identified in this report, we have made four recommendations that, if fully implemented, should help ensure that unauthorized subcontract activities are discontinued and that contracting authorities are reinforced.

BACKGROUND

The Department of Energy's mission is to ensure America's security and prosperity by addressing its energy, environmental, and nuclear challenges through the transformative science and technology solutions of its program offices and national laboratories. The National Nuclear Security Administration (NNSA) is a semi-autonomous agency within the Department responsible for protecting the American people by maintaining a safe, secure, and effective nuclear weapons stockpile. The NNSA Office of Defense Programs oversees a portfolio of nuclear weapons life extension and major alteration programs to address aging or performance issues, enhance safety features, or improve security. A single Federal Program Manager, appointed in writing by the Deputy Administrator for Defense Programs, manages each program and is accountable for providing weapons program deliverables on schedule and within budget.

The National Energy Technology Laboratory (NETL) is a Government-owned and Government-operated national laboratory supporting the Department's mission through science and technology. In support of NETL, a prime contractor with its team of subcontractors provides technical, programmatic management, environmental planning, and logistics support services to assist NETL in meeting NNSA's requirements, as authorized by NNSA work authorizations and accepted by NETL. As authorized and funded through NETL's prime contract, the prime contractor provides technical support to the NNSA Office of Defense Programs, which includes the W88 Alteration (ALT) 370 Federal Program Office. Additionally, a subcontractor has a research support services subcontract valued at approximately \$62.8 million.

In March 2022, the Office of Inspector General received allegations pertaining to management and oversight concerns at the NNSA W88 ALT 370 Federal Program Office. One of the allegations was that a Federal employee (Federal Employee) within the W88 ALT 370 Federal Program Office, whose NNSA building and computer systems access was restricted, was using a subcontractor employee to send and receive emails on the Federal Employee's behalf. We initiated this inspection to determine the facts and circumstances regarding this allegation. The other allegations will be addressed in a separate inspection report.

FEDERAL EMPLOYEE'S ACCESS RESTRICTIONS

We substantiated the allegation that a Federal Employee, whose NNSA building and computer systems access had been restricted due to a formal inquiry by a Department program, used a subcontractor employee to send and receive emails on their behalf. The Federal Employee also relocated to office space at the subcontractor's facility. The use of the subcontractor was at the improper technical direction of a former W88 ALT 370 Program Official (Program Official) and was used as a workaround to the Federal Employee's work and computer restrictions. The Program Official did not have contracting authority and provided the improper technical direction directly to the subcontractor, resulting in the subcontractor performing services of value to the Government. The approximately \$1.5 million paid to the prime contractor, over the nearly 5 years of support services received, are in question.

Improper Technical Direction

We substantiated the allegation that a Federal Employee, whose NNSA building and computer systems access was restricted, used a subcontractor employee to send and receive emails on behalf of the Federal Employee. The Federal Employee was the subject of a formal inquiry by a Department program from January 2018 through December 2022. To safeguard Department assets and information, the Department program conducting the formal inquiry provided guidance to Federal Program Office management to restrict the Federal Employee's access to the work area at the NNSA Albuquerque Complex with the Department's computer systems, which included the Federal Employee's NNSA email account and classified material. The Federal Employee's Department security clearance was active during the Department's formal inquiry.

The Program Official issued improper technical direction to the subcontractor for the performance of services from January 2018 through December 2022. For example, as a result of the improper technical direction, the subcontractor employee sent emails on the Federal Employee's behalf to communicate and follow up on technical issues related to the W88 ALT 370 program and contacted individuals to arrange meetings. Additionally, the subcontractor employee informed us that they printed hard copies of documents for the Federal Employee and provided the Federal Employee a high-level, unclassified overview of classified meetings that the subcontractor employee attended. Further, we found that the Federal Employee relocated to office space outside of the NNSA Albuquerque Complex to the subcontractor's facility without any coordination with NETL contracting officials or the prime contractor.

The Program Official's improper technical direction to the subcontractor does not represent technical or programmatic management support for ordinary course-of-business activities. The directions were provided as a workaround to the Federal Employee's work and computer restrictions due to the Department program's formal inquiry. Additionally, although the Federal Employee was restricted from accessing the NNSA Albuquerque Complex and classified information, the Federal Employee was allowed to work at the subcontractor's site without the knowledge of the NETL contracting officials or the prime contractor where classified work for NNSA and the Department of Defense is conducted. NETL officials informed us that based on the information we provided, the actions described were inappropriate and not something explicitly specified within the scope of the prime contract (and subsequently, not in the scope of the subcontract). Further, a NETL contracting official stated that providing technical support was distinct from the workaround that resulted from the improper technical direction.

Moreover, if the requests to provide the workaround that resulted from the improper technical direction had been coordinated in advance through the appropriate Department contracting authorities, the accommodations could have been rejected due to the appearance of a personal services relationship between the Federal Employee and the subcontractor. According to 48 Code of Federal Regulations (CFR) § 37.104(a), *Personal services contracts*, a personal services contract is characterized by the employer-employee relationship it creates between the Government and the contractor's personnel. The Government is normally required to obtain its employees by direct hire under competitive appointment or other procedures required by the civil service laws. Additionally, 48 CFR § 37.104(c)(1) states that an employer-employee relationship under a service contract occurs when, as a result of the manner of its administration

during the performance, contractor personnel are subject to the relatively continuous supervision and control of a Government officer or employee. Also, the Department's *Acquisition Guide* states that support services contracts must be carefully administered to ensure that contractors do not perform inherently Government functions or personal services. According to the *Acquisition Guide*, Government personnel must avoid even the appearance of a personal services relationship with contractor personnel, and that personal services tend to circumvent the rules covering the employment of civil servants.

As a result of the restrictions put in place due to the Department's formal inquiry, the Federal Employee did not have access to Department computer systems and email and would not have been able to work on projects and day-to-day activities without the subcontractor employee's support. For example, the subcontractor employee distributed a project execution plan authored by the Federal Employee and requested comments on multiple occasions in October 2022 to Federal and contractor personnel at Sandia National Laboratories, Los Alamos National Laboratory, and the Pantex Plant. Additionally, the subcontractor employee downloaded documentation on an external flash drive and provided that flash drive to the Federal Employee for the Federal Employee to perform work, such as the development of the project execution plan. As previously stated, the subcontractor employee informed us that they printed hard copies of documents and attended classified meetings for the Federal Employee. Based on the information we provided, NETL contracting officials stated that services provided by the subcontractor from the improper technical direction could be considered personal services.

Program Official Did Not Have Contracting Authority

We also found that the Program Official who issued the improper technical direction did so directly to the subcontractor, and did not have the contracting authority to do so. Per Federal Acquisition Regulation 1.602-1(a), *Authority*, contracting officials have the authority to enter, administer, or terminate contracts. Additionally, 31 U.S. Code § 1341, *Limitations on expending and obligating amounts* (Antideficiency Act), states that an officer or employee of the U.S. Government may not involve the Government in a contract or obligation for the payment of money before an appropriation is made unless authorized by law. Further, 5 CFR § 2635.101(b)(6), *Basic obligation of public service*, requires that employees shall not knowingly make unauthorized commitments or promises of any kind purporting to bind the Government.

While the Program Official stated that it was remarkable that a good solution for the problem of the Federal Employee's work restrictions was found, the improper manner in which the Program Official made the requests, and the subsequent arrangements with the subcontractor to provide accommodations for the Federal Employee, resulted in noncompliance with Federal regulations. The Program Official entered into a verbal agreement with a subcontractor official to obtain workspace for the Federal Employee and directly requested a subcontractor employee assist the Federal Employee with emails and other informational support (i.e., improper technical direction). According to the Program Official, the Federal Employee had valuable experience and knowledge pertaining to the W88 ALT 370 program, so the Program Official assigned the Federal Employee work that did not involve classified information. The Program Official also stated that the Federal Employee's work heavily involved interacting with subcontractor personnel, so having the Federal Employee work at the subcontractor's site made sense.

Moreover, the Program Official told us that they had consulted with a subcontractor official and another NNSA Office of Defense Programs official about physically locating the Federal Employee at the subcontractor’s facility and considered that the service was already incorporated into the subcontract rates.

However, the Program Official was not a contracting official, as required by Federal Acquisition Regulation 1.602-1(a), nor delegated any authority by the NETL Contracting Officer to make these types of decisions. Additionally, the Program Official obligated the Government for services that were unauthorized, potentially invoking the Antideficiency Act. While there was no indication that the Program Official intentionally violated 5 CFR § 2635.101(b)(6), due diligence for a senior Government official is a necessity. In fact, this was not the only instance that the Program Official requested W88 ALT 370 Federal Program Office personnel to work at the subcontractor’s site without prior involvement of the NETL contracting officials. In August 2018, the Program Official requested another W88 Federal Program Office staff member to work at the subcontractor’s site. The W88 ALT 370 Federal Program Office staff member informed us that they worked at the subcontractor’s site for a few weeks within the August 2018 to September 2018 timeframe.

Government Payment of Questioned Costs

Because the Program Official issued improper technical direction that resulted in the subcontractor performing services of value to the Government, the paid costs associated with those services are in question. The subcontractor employee was retained to support the W88 ALT 370 Federal Program Office by assisting the Federal Employee with emails and information support because the Federal Employee did not have access to computer systems as a result of the Department’s formal inquiry. Specifically, the Program Official informed us that there were professional matters that resulted in the subcontractor employee being transferred into another position, which included assisting the Federal Employee with sending emails and providing information support. The Government paid the prime contractor approximately \$1.5 million for the nearly 5 years of support services received for the W88 ALT 370 Federal Program Office. We have included a table detailing the subcontractor employee’s position level, corresponding billing rate from calendar years 2018 through 2022, and how much the Government paid the prime contractor for a full-time equivalent position.

Calendar Year	Position Level	Rate	Cost
2018	2	\$121.39	\$ 252,491.20
2019	2	\$125.18	\$ 260,374.40
2020	3	\$149.06	\$ 310,044.80
2021	3	\$153.27	\$ 318,801.60
2022	4	\$180.78	\$ 376,022.40
Total			\$1,517,734.40

We question the total amount that the Government paid the prime contractor for the services rendered resulting from the improper technical direction to the subcontractor. We interviewed both the Federal Employee who was the subject of the formal inquiry, as well as the subcontractor employee who provided the services. Both individuals confirmed that they

worked closely together to get the W88 ALT 370 into the production phase. The Federal Employee stated that they spent 100 percent of their time with the subcontractor employee from January 2018 through April 2021. Additionally, in January 2023, the Federal Employee estimated that 75 percent of their time was spent working with the subcontractor employee. Both individuals stated that it was difficult to estimate the exact amount of time the subcontractor employee spent performing informational liaison activities. Due to the comingling of the services that resulted from the improper technical direction, we are questioning \$1,517,734.40 in Department funds as potentially unallowable. The Department should seek reimbursement, as appropriate, for the services provided as a result of the improper technical direction.

CONTRIBUTING FACTORS

These issues occurred because the Program Official did not consult with the appropriate NETL contracting authorities or with the prime contractor. Therefore, a determination was not made on whether the physical and information accommodations the subcontractor provided the Federal Employee, who was under a formal Department inquiry, were appropriate and authorized. Consequently, the prime contractor was not able to engage with the cognizant NETL contracting authorities to bring the matter to their attention. Had the prime contractor brought the matter to the attention of NETL contracting officials, the NETL contracting officials could have assessed the situation, involved legal counsel (if necessary), and handled the situation appropriately to avoid activities that could be perceived as personal services, such as the activities that circumvented the Federal Employee's work restrictions.

Additionally, the subcontractor official received multiple informal requests for services directly from Federal Program Office personnel. Specifically, the subcontractor official stated that when they received these direct informal requests, they alone made a value judgment whether the request could be completed or whether it should go to the Contracting Officer. According to the subcontractor official, there are normal and extraordinary requests—an extraordinary request would be to “help bury a dead body.” However, the subcontractor is in violation of its subcontract by taking requests for services directly from Federal Program Office personnel, whether informal or not, rather than going through the prime contractor, as directed in the subcontract. Per the subcontract, the subcontractor “shall not communicate with [the prime contractor's] customer, a higher-tier customer this subcontract supports, or the representatives of the program [the prime] contract supports without the prior written approval of [the prime contractor].” Moreover, the subcontract requires that the prime contractor shall be solely responsible for all liaison and coordination with the prime contractor's customer as it affects the applicable prime contract and the subcontract.

IMPACT AND SUBSEQUENT EVENTS

The actions taken by the Program Official and the subcontractor created security risks to the Department by providing the Federal Employee under formal inquiry with unescorted access to the subcontractor's facility where nuclear weapons work supporting NNSA Office of Defense Programs and classified activities were conducted. While the circumstances involving the Federal Employee's situation were out of the ordinary for the W88 ALT 370 Federal Program Office, the situation resulted in a Department program restricting access to safeguard Department

assets and information to mitigate national security risks. Additionally, the subcontractor created security risks to the prime contractor and NETL, as these two entities responsible for the prime contract and subcontract were not aware of the facts and circumstances we identified in this inspection until we informed them. Specifically, the security risks included the following:

- By physically locating the Federal Employee at the subcontractor's facility, the Federal Employee could have attempted to knowingly access the subcontractor's classified area and classified material with their Department badge. For example, the Federal Employee could have tried to gain access to a classified meeting at the subcontractor's facility with their Department badge as the [subcontractor] *Facility Security Plan* requires visitors to sign in and wear distinguishing badges.
- The Federal Employee has a history of violating procedures regarding the safeguarding of sensitive information. These incidents occurred during the timeframe of the Department's formal inquiry, which also included multiple instances where the Federal Employee made false statements about the possession and storage of Government documents.
- The subcontractor employee informed us that they provided the Federal Employee unclassified briefings to provide an overview of classified matters since the Federal Employee could not attend meetings at the NNSA Albuquerque Complex. However, the subcontractor employee was neither authorized nor trained to determine the content that could be provided to the Federal Employee.
- From February 2018 through September 2022, instances of improper handling of sensitive unclassified information occurred when W88 ALT 370 Federal Program Office personnel provided information to the Federal Employee. These instances occurred because of the NNSA restrictions placed upon the Federal Employee. In one instance, export controlled information was provided to the Federal Employee by unauthorized or unapproved means. Department Order 142.2A, *Voluntary Offer Safeguards Agreement and Additional Protocol with the International Atomic Energy Agency*, states that export controlled information must be protected consistent with U.S. laws and regulations, and that unrestricted dissemination could reasonably be expected to have adverse effects on U.S. national security and nonproliferation objectives.

We noted that the Program Official was placed in a challenging predicament to keep an employee working on the W88 ALT 370 program productive despite the imposed work site, classified information, and computer system access restrictions. The Federal Program Office and NNSA Office of Defense Program officials expressed frustration at the length of time the formal inquiry had been in progress. A Department program official associated with the formal inquiry of the Federal Employee acknowledged the length of time that had passed.

We issued a Management Alert memorandum to NETL and NNSA on these issues in December 2022. The memorandum contained suggestions for NETL and NNSA to address the potential contracting violations and security risks involving the Federal Employee's accommodations

provided by the subcontractor. Finally, the Department program official associated with the formal inquiry informed us that due to our inspection, the Department initiated additional actions.

RECOMMENDATIONS

We recommend that the Acting Director, NETL, ensure through the appropriate Contracting Officer that the prime contractor:

1. Direct the subcontractor to only perform work explicitly within the scope of its contract and discontinue other activities in question (such as providing office space for Federal personnel without prior consultation with the NETL Contracting Officer and prime contractor and performing services resulting from improper technical direction);
2. Determine the allowability of approximately \$1.5 million paid by the Government for questioned costs where the subcontractor rendered services as a result of improper technical direction; and
3. Oversee the subcontractor for proper coordination and compliance with subcontract requirements.

We recommend that the Administrator, NNSA, direct the Office of Defense Programs to:

4. Ensure that W88 ALT 370 Federal Program Office personnel are informed of the contracting authorities for both NETL and the prime contractor of the research support services contract, and when to contact these authorities to determine the allowability of contract activities.

MANAGEMENT RESPONSE

Management fully concurred with our recommendations and provided corrective actions taken and in process that will be completed by December 31, 2023. According to NETL, it will continue to work collaboratively with NNSA to strengthen the relationships between NETL contracting professionals and NNSA Office of Defense Programs' Federal staff to ensure open lines of communication. Additionally, NNSA stated that it shared our concerns regarding potential security risks. NNSA also stated that it is taking action to review protocols for coordinating among agency elements and will promptly resolve any remaining security concerns.

Management comments are included in Appendix 2.

INSPECTOR COMMENTS

Management's comments and corrective actions are responsive to our recommendations.

Appendix 1: Objective, Scope, and Methodology

OBJECTIVE

We conducted this inspection to determine the facts and circumstances regarding the alleged oversight concerns at the National Nuclear Security Administration's (NNSA) W88 Alteration 370 Federal Program Office. This report is focused on the contracting and security concerns in the allegation associated with the Federal employee.

SCOPE

The inspection was performed from August 2022 through June 2023 at the NNSA Albuquerque Complex. The scope was limited to the facts and circumstances regarding the allegations concerning contracting and security concerns from January 2018 through December 2022. The inspection was conducted under Office of Inspector General project number S22AL018.

METHODOLOGY

To accomplish our inspection objective, we:

- Identified and reviewed laws, regulations, and Department of Energy directives relevant to the inspection;
- Obtained and reviewed the research support services prime contract with the National Energy Technology Laboratory and the research support services subcontract;
- Interviewed key NNSA, National Energy Technology Laboratory, prime contractor, and subcontractor officials; and
- Obtained and reviewed documentation pertaining to the circumstances and the use of the subcontractor's resources pertaining to the alleged contracting and security concerns.

We conducted our inspection in accordance with the Quality Standards for Inspection and Evaluation (December 2020) as put forth by the Council of the Inspectors General on Integrity and Efficiency. We believe that the work performed provides a reasonable basis for our conclusions.

We held an exit conference with National Energy Technology Laboratory officials on September 7, 2023. NNSA officials waived an exit conference.



NNSA-2023-005626

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



MEMORANDUM FOR TERI L. DONALDSON
INSPECTOR GENERAL
OFFICE OF THE INSPECTOR GENERAL

FROM: JILL HRUBY 

SUBJECT: Response to the Office of Inspector General (OIG) Draft Report
*Contract and Security Concerns at the National Nuclear
Security Administration's W88 Alteration 370 Federal Program
Office (S22AL018)*

Thank you for the opportunity to review and comment on the subject draft report. This response addresses the findings and recommendation directed to the National Nuclear Security Administration (NNSA). We understand the Department of Energy's National Energy Technology Laboratory (NETL) will provide a separate response to address OIG's three other recommendations within their purview.

NNSA appreciates the independent OIG review and has taken action to address the auditors' recommendation regarding proper coordination of contracting activities, as described in the attached management decision. NNSA also shares the auditors' concerns regarding potential security risks from these activities, and we agree that resolution has taken too long. We are taking action to review the information presented in the report, as well as protocols for coordinating among Agency elements, and will promptly resolve any remaining security concerns. If you have any questions regarding this response, please contact Mr. Dean Childs, Director, Audits and Internal Affairs, at (202) 836-3327.

Attachment

NATIONAL NUCLEAR SECURITY ADMINISTRATION
Management Decision

**“Contract and Security Concerns at the National Nuclear Security Administration’s W88
Alteration 370 Federal Program Office” (S22AL018)**

The Office of Inspector General recommended that NNSA:

Recommendation 4: Ensure that W88 ALT 370 Federal Program Office personnel are informed of the contracting authorities for both NETL and the prime contractor of the research support services contract, and when to contact these authorities to determine the allowability of contract activities.

Management Response: Concur. NNSA fully addressed this recommendation through a mandatory NETL Research Support Services (RSS) Contracting Training that was provided to NNSA Office of Defense Programs supervisors on May 23, 2023, which included participation from management within the W88 ALT 370 Federal Program Office. Additional Defense Programs staff were invited to voluntarily attend. This training was led by NETL contracting professionals and provided the participants with details on the contracting authorities for both NETL and the prime contractor of the RSS contract, including when to contact these authorities regarding contract activities. This briefing also covered distinctions between the prime contractor and subcontractors, authorized contractual relationships, and activities to avoid under non-personal services contracts. NNSA considers this recommendation closed based on actions taken.

Appendix 2: Management Comments



NATIONAL ENERGY TECHNOLOGY LABORATORY
Albany, OR • Morgantown, WV • Pittsburgh, PA



September 6, 2023

MEMORANDUM FOR TERI L. DONALDSON
INSPECTOR GENERAL

FROM: SEAN I. PLASYNSKI, PH.D. Sean I. Plasynski Digitally signed by Sean I. Plasynski
Date: 2023.09.06 16:52:50 -0400

ACTING DIRECTOR, NATIONAL ENERGY TECHNOLOGY
LABORATORY

SUBJECT: Response to the Office of Inspector General Draft Inspection
Report *Contract and Security Concerns at the National Nuclear
Security Administration's W88 Alteration 370 Federal Program
Office (S22AL018)*

Thank you for the opportunity to review and comment on the subject draft report. This response addresses the findings and recommendations directed to the Department of Energy's National Energy Technology Laboratory (NETL). It is understood that the National Nuclear Security Administration (NNSA) will be providing a separate response. NETL appreciates the independent Office of Inspector General (OIG) review and has already taken action to address the OIG recommendations, as described in the attached management response. NETL will continue to work collaboratively with NNSA to strengthen the relationship between NETL contracting professionals and NNSA Office of Defense Programs' federal staff to ensure open lines of communication.

If there are any questions or clarification is needed on NETL's response to the report recommendations, please contact me.

Attachment

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National Energy Technology Laboratory Management Response

Contract and Security Concerns at the National Nuclear Security Administration's W88 Alteration 370 Federal Program Office (S22AL019)

The Office of Inspector General (OIG) recommended that the Director, National Energy Technology Laboratory (NETL), ensure through the appropriate Contracting Officer that the Prime Contractor:

Recommendation 1: Direct the subcontractor to only perform work explicitly within the scope of its contract and discontinue other activities in question (such as providing office space for Federal personnel without prior consultation with the NETL Contracting Officer and Prime Contractor and performing services resulting from improper technical direction).

Management Response: Concur. NETL, through the Contracting Officer, requested a written response from the Prime Contractor on December 19, 2022, after receiving the initial Management Alert (S22AL018). The direction provided to the Prime Contractor was to ensure that their subcontractors cease any activities not authorized in the scope of work. The Prime Contractor also reminded their subcontractor of the contractual terms and conditions of the subcontract; specifically, the privity of contract is with the Prime Contractor and not NNSA; the appropriate manner for accommodating requests from NNSA federal staff; the appropriate lines of communication with subcontractor; and the roles/responsibilities/authorities of the federal NETL Research Support Services (RSS) contract team under which the Prime Contractor operates. The Prime Contractor acted via telephone on January 4, 2023, and in writing on January 5, 2023, by formally transmitting a Corrective Action Notice Letter and Nonconformance & Corrective Action Report (NCR) which addressed these issues. The subcontractor provided a detailed response on January 12, 2023, regarding the NCR back to the Prime Contractor ensuring that (1) Subcontractor management will provide remedial and recurring training to managers, supervisors, and employees about differentiating between personal and professional services and underscore corrective punitive actions the subcontractor will take if such employee behavior recurs; (2) The subcontractor will emphasize the importance of only accepting direction from the Prime Contractor; (3) Subcontractor will rely on the Prime Contractor to be solely responsible for all liaison and coordination with Prime Contractor's customer as it affects the applicable prime contract and the subcontract; (4) Subcontractor will continue and intensify ongoing efforts to train staff on the difference between personal and professional services and continue to brief staff on the ramifications of ignoring that advice; and (5) any direct requests, informal or otherwise, from W88 ALT 370 FPO personnel that do not explicitly fall within the subcontractor Statement of Work will be immediately referred to the Prime Contractor Program's point of contact. The Prime Contractor notified the subcontractor that they would pause any backfills and new position requests and will reconsider those once the current investigation is complete; while also continuing to actively interface with the subcontractor to verify that employee training and awareness of the above issues are ongoing.

Appendix 2: Management Comments

Recommendation 2: Determine the allowability of approximately \$1.5 million paid by the Government for questioned costs where the subcontractor rendered services as a result of improper technical direction.

Management Response: Concur. NETL will fully address this recommendation by formally engaging the Prime Contractor, specifically on the \$1.5 million of questioned subcontractor costs that may have been performed as a result of improper technical direction. When initially made aware of the OIG Management Alert (S22AL018), NETL informally engaged the Prime Contractor who then met with the subcontractor, on January 5, 2023, via teleconference and then via a formal Nonconformance & Corrective Action Report (NCR). The Prime Contractor reinforced the importance of the privity of contract and made it explicitly clear that the subcontractor was not to accommodate direct requests from W88 AI 370 Federal Program Office, but instead, engage the appropriate Prime Contractor personnel to ensure proper technical direction was provided. The NCR clarified roles and responsibilities where the Prime Contractor will work with the NETL Contracting Officer, Contract Specialist, and Contracting Officer's Representative to confirm any necessary revisions to the subcontractor's scope and associated costs.

Additionally, the Federal NETL Research Support Services (RSS) team (i.e., Contracting Officer, Contract Specialist, and Contracting Officer's Representative) conducted training for the NNSA Office of Defense program supervisors surrounding the contract 89243318CFE000003 on May 23, 2023, which included participation from management within the W88 Alt 370 Federal Program Office and others within Defense Programs. The focus of the training was the roles and responsibilities of both NETL and the Prime Contractor, the current NETL and Prime Contractor contacts, the distinctions between the prime contractor and subcontractors, authorized contractual relationships, and activities to avoid personal services or the appearance of personal services.

Recommendation 3: Oversee the subcontractor for proper coordination and compliance with subcontract requirements.

Management Response: Concur. Although NETL does not have the privity of contract with the subcontractor, NETL has already taken steps to ensure that the Prime Contractor improves oversight, coordination, and compliance with subcontract requirements. This is evidenced by the engagement of NETL immediately with the Prime Contractor who subsequently engaged the subcontractor as outlined in the previous responses. In doing so, the Prime Contractor reinforced the importance of the privity of the contract and made it explicitly clear they will not tolerate any subcontractor performing services outside the established scope of work. In addition, the Prime Contractor instructed the subcontractor to include the Prime Contractor's Program Manager in all correspondence related to their "tasking" or questions related to work-scope in which they were involved under the NETL contract. The Prime Contractor is confident that the subcontractor will increase their level of communication with them from this point forward so that they may, as appropriate, quickly escalate questions to NETL's attention for proper resolution.

FEEDBACK

The Office of Inspector General has a continuing interest in improving the usefulness of its products. We aim to make our reports as responsive as possible and ask you to consider sharing your thoughts with us.

Please send your comments, suggestions, and feedback to OIG.Reports@hq.doe.gov and include your name, contact information, and the report number. You may also mail comments to us:

Office of Inspector General (IG-12)
Department of Energy
Washington, DC 20585

If you want to discuss this report or your comments with a member of the Office of Inspector General staff, please contact our office at 202-586-1818. For media-related inquiries, please call 202-586-7406.