



Department of Energy
Washington, DC 20585

DEC 19 2008

Re: FOIA-F2006-00159

This is in final response to the request for information that you sent to the Department of Energy (DOE) under the Freedom of Information Act (FOIA), 5 U.S.C. 552. You asked for a copy of the following OIG report: FOIA: F2006-00159, Numbered 7, Response to Draft Inspection Report Captioned "Concerns Regarding the Department's Counterintelligence Inspection Program", which originated with the Office of Counterintelligence, dated December 20, 2004.

The Office of Intelligence and Counterintelligence have reviewed the responsive document and determined it to be releasable. The document is being sent per your request.

You may challenge the adequacy of the search for responsive documents by submitting a written appeal to the Director, Office of Hearings and Appeals, at HG-1/L'Enfant Plaza Building, U.S. DOE, 1000 Independence Avenue, SW, Washington, DC 20585-1615. You should submit the appeal within 30 calendar days of receipt of this determination.

The written appeal, including the envelope, must clearly indicate that a FOIA appeal is being made. The appeal must contain all the elements required by 10 CFR 1004.8. Judicial review will thereafter be available (1) in the district where you reside; (2) in the district where you have your principal place of business; (3) in the district where the DOE records are located; or (4) in the District of Columbia.

I appreciate the opportunity to assist you. You may contact Ms. Debbie Tijani of my staff on (202) 586-5162 with any questions about the processing of the request.

Enclosure

Sincerely,

A handwritten signature in black ink that reads "Michael Teribury".

Michael Teribury
Deputy Director
Management Directorate
Office of Intelligence and Counterintelligence



Appendix B




Department of Energy
Washington, DC 20585

December 20, 2004

MEMORANDUM FOR GREGORY H. FRIEDMAN
INSPECTOR GENERAL

FROM:

STEPHEN W. DILLARD
DIRECTOR, OFFICE OF COUNTERINTELLIGENCE

SUBJECT:

RESPONSE TO DRAFT INSPECTION REPORT CAPTIONED,
"CONCERNS REGARDING THE DEPARTMENT'S
COUNTERINTELLIGENCE INSPECTION PROGRAM"

The purpose of this memorandum is to respond to the captioned IG report, the latest draft of which was received by this office on December 8, 2004.

The Office of Counterintelligence (OCI) is pleased to note that the Department's Counterintelligence Inspection Program was found by the IG to be functioning properly, that the reports are timely, that there is no bias against NNSA facilities as anonymous parties had erroneously alleged, and that, as we had previously determined, the program is not required to follow the GAGAS accounting standards. We take issue with certain of the recommendations, observations and statements in the IG report.

The OCI Director is informed that the "complaint" referred to in the IG report consisted of an anonymous letter, which was followed by an individual requesting anonymity coming forward to the IG staff to provide additional information. The allegations in the anonymous complaint are not surprising to this office. In fact, they are identical to the incessant attacks and complaints regarding the Inspection Program which have been expressed directly to this office and executive components within the Department of Energy over the past two-to-three years by senior executives, both federal and contractor, within NNSA, whose programs and facilities were the subject of inspections. All of those attacks and allegations by NNSA personnel have been previously addressed by this office, and all were determined to be woefully without merit.¹

Before responding to the specific IG recommendations, several comments are in order with respect to statements and observations contained within the IG report.

This office challenges the accuracy of the title of the IG report. The report would be more accurately characterized as "Unsubstantiated Allegations Against the Department's

¹ When the IG personnel initially briefed the OCI Director regarding the allegations during the summer of 2003, the latter informed the IG staff that the allegations were identical to earlier charges levied by NNSA personnel, and were previously determined to be without merit. Those NNSA attacks on the Department's CI Inspection Program, and OCI's responses/rebuttals thereto, are well documented through a long paper trail. Although IG personnel did not request copies thereof for their review, the documentation is available to the IG and his staff should they choose to examine the history of those attacks and how they were addressed by OCI.

Appendix B

Counterintelligence Inspection Program.” The IG addressed the original allegations and found them to be without merit. The only “concerns” regarding the Inspection Program itself were surfaced as the two recommendations. As discussed more thoroughly below, the first recommendation may not necessarily be a “concern,” inasmuch as OCI’s feedback from ME-6C personnel is that the current contract may well be in proper order, and the problems identified leading to the second recommendation were addressed and corrected prior to the current IG investigation even starting.

) The IG’s comments with respect to the bifurcated CI program within the Department are gratuitous and make recommendations on a legislative initiative, which both the Department and the Administration have already pursued during the previous two Congressional sessions, and are now considering pursuing during the next session of Congress. Moreover, the IG’s finding “. . . that the relationship between OCI and ODNCI personnel was not as collegial as would have been expected . . .” is also gratuitous, is highly subjective in nature, and the IG report is devoid of any factual basis to support that assertion. We acknowledge, however, that there are, as the IG stated, “. . . significant philosophical differences between the two offices regarding the approach for conducting the Department’s counterintelligence operations, with specific emphasis on the Inspection Program.”

Comment is also required on the observations contained in the IG report on the 2002 Oakland inspection, referencing the cost and number of inspectors involved in inspecting an office consisting of one individual. The IG report stated that the “. . . inspection team consisted of 7 inspectors and 2 administrative staff. . . .” The number of inspectors consisted of a Lead Inspector and five inspectors for a total of six inspectors, each of whom conducted two or three audits. (The IG is likely to have incorrectly considered the Technical Advisor, who was only present during the second week of the inspection, as an inspector. That position has now been completely eliminated in a cost saving and efficiency move.)

This was not an inspection of the Oakland office *per se*, but an inspection of the total Oakland CI Program and its implementation. All programs, regardless of size, are required to have the same program sub-elements, all of which must be inspected. All have basic records to be reviewed; external and internal liaison contacts to be interviewed; facility relationships to be reviewed; processes to be examined; staffing levels to be determined; and a determination made of overall effectiveness, efficiency and performance. Numerous interviews are conducted in addition to the CI office staff. The scope of a CI program is more important in dictating the number of inspectors than the size of the CI office. The Oakland CI program was responsible for numerous contractors and cleared employees doing business with DOE and NNSA. It provided CI services to the Oakland Operations Office which, in addition to major national laboratory contracts, oversees approximately 300 active contracts and grants, totaling approximately \$630 million, with hundreds of contractor staff at numerous locations throughout the United States. It also provides CI services to the DOE Berkeley and Stanford Site offices; Stanford Linear Accelerator Center (SLAC), Palo Alto, CA; and General Atomics, San Diego, California, a prime contractor to DOE. Inspectors traveled to the Berkeley and Stanford Site offices to interview personnel and review records, as well as to the local FBI offices, LLNL CI office, Sandia California CI office, and others. Again, this was not a single inspection “trip.”

Appendix B

The 2002 Oakland inspection, which followed an unsatisfactory finding in the previous inspection, did not simply inspect what the Oakland CI office was addressing but, moreover, it addressed what the full scope CI program should be. The inspection made staffing recommendations to increase the office complement. It made 28 recommendations for improvement, providing specific guidance for the new SCIO to refocus and reprioritize the Oakland CI program. This guidance paved the way for the SCIO to build the program into a comprehensive, integrated and effective program addressing a full scope of facilities and responsibilities. This could not have been accomplished with fewer inspectors.

The CI inspection process has played a major role in defining, implementing and improving the DOE/NNSA CI Program, particularly at field sites. From the first in August 1999, inspections have resulted in a legion of findings and recommendations. The implementation of those recommendations has significantly improved the field sites' CI Programs and the overall national CI Program. The number of findings decreases with subsequent inspections. The true value of the Inspection Program has been its ability to accurately identify a broad range of shortcomings and recommend solutions that work. Inspections have identified inefficiencies in field programs which were corrected, resulting in considerable budgetary savings; ineffective and inefficient Counterintelligence Officers who were subsequently properly addressed; organizational structure issues; regional reorganizations; provided operational and investigative insight; and identified numerous other issues which could not have been identified without an on-the-ground inspections process by a group of experts in CI, management and inspections.

With respect to the timeliness of reports following inspections, in the early years of the program, inspections were held almost back-to-back at a rate close to one per month. There was little time for the inspection staff to write each report immediately; however, each site was given only thirty days to correct identified issues, without waiting for the written report. The IG report stated that a sample review of seven inspection reports since May 2003, determined that all were issued within 60 days of the site visit. During 2003-04, up to the time of the initial IG draft report, eleven inspections were conducted, and one hundred percent of those reports were issued within sixty days.

RESPONSES TO RECOMMENDATIONS

RECOMMENDATION 1: In coordination with the Director, Office of Management, Budget and Evaluation, identify the most appropriate mechanism for procuring support for the counterintelligence inspection program.

Response: In accordance with the recommendation, the Director, OCI, has once again undertaken consultations with the Director, Office of Procurement and Assistance Management, within the Office of Management, Budget and Evaluation (ME), on this subject, and is awaiting a response from ME.

Comments: The Director and senior staff of OCI believe that PNNL, the M&O contractor that developed the Inspection Program and continues to provide principal technical and administrative support to the program, is doing an outstanding job. At the inception of the Inspection Program, OCI selected PNNL as the implementing contractor for several reasons:

Appendix B

PNNL had been implementing programs in direct support of DOE's CI mission since 1988, when programmatic responsibility transitioned from SO, and the CI program was established under IN. During that timeframe, while shaping the various elements and functional areas of the HQ program, PNNL developed broad capabilities, which matured even further with the implementation of PDD-61, which caused the CI functions to be established under the newly formed OCI during 1998.

The long history of PNNL's engagement with DOE CI functions and involvement with headquarters CI programs, combined with a strong CI program of their own, resulted in their possessing the requisite expertise, experience and subject/domain competence with which the Inspection Program mandated by PDD-61 could be created and implemented.

- PNNL was also uniquely qualified to provide the technical and scientific expertise required to set up the inspection process and to identify and resolve issues developed during the inspection of technical areas.

The OCI Director is of the opinion that we must be very careful in making adjustments to the OCI Inspection Program. Stated differently, we do not want to "fix" something that is not "broken" and working well, and are not interested in making major changes in this program's administration, unless it is absolutely mandatory. The OCI Director is concerned that we could be subjected to Congressional criticism for making major administrative changes in a program held out by one of our oversight committees as a model for the remainder of the Executive branch. The following discussion buttresses that position.

The Intelligence Authorization Act for FY 2004, specifically §341 thereof, required the Director of Central Intelligence, acting through the National Counterintelligence Executive (NCIX), to

... establish and implement an inspection process for all agencies and departments of the United States that handle classified information related to the national security of the United States intended to assure that those agencies and departments maintain effective operational security practices and programs directed against counterintelligence activities.

On June 19, 2003, an NCIX program manager telephonically informed the OCI Director that the NCIX had been advised by the staff of the House Permanent Select Committee on Intelligence (HPSCI) that the latter considered the DOE Office of Counterintelligence Inspection Program to be the one the Executive branch-wide inspection program should be modeled after. At the request of the NCIX, on February 12, 2004, the OCI Director personally provided to the NCIX copies of the DOE OCI Inspection Standards and Inspection Audits, which are the only copies to have been disseminated outside this office. The OCI Director is informed that the NCIX is in the process of developing Executive branch-wide procedures based in large part upon the DOE OCI Inspection Program model.

Additionally, the value of our Inspection Program is also commented upon in a HPSCI report dated June 21, 2000, entitled, "Report of the Redmond Panel," which stated, in part, "(T)he team

Appendix B

judges that there is no DOE CI program that is more useful or efficient than this inspection regime.”

The OCI Director has placed senior personnel within the DOE Office of Procurement and Assistance Management on notice with respect to the above information. He has also informed them that, if required, he will initiate efforts to change the manner in which the Inspection Program is administered. This, however, may not necessarily have to take place. The IG report stated that “. . . the use of (PNNL) to procure the services of inspectors to conduct counterintelligence inspections was inconsistent with DOE policy on purchasing M&O contractors . . .” and that “DOE procurement officials opined that by administering the counterintelligence inspection program, (PNNL) was directly supporting a Headquarters mission that was not within the scope of its M&O contract.” Contrary to those assertions by the IG, recent discussions with personnel from the Office of Procurement and Assistance Management have indicated that the Inspection Program contract may be well within the PNNL Scope of Work. The procurement office is continuing to evaluate the Inspection Program contract with PNNL.

RECOMMENDATION 2: Enhance efforts to manage the costs of the counterintelligence inspection program.

Response: This office disagrees with the recommendation, disagrees with observations and comments that adequate controls have not been in place, and also disagrees with the implication of the recommendation that costs have not been managed effectively. As stated, *supra*, the problems identified in the IG report leading to this recommendation were addressed and corrected prior to the start of the IG’s investigation.

Comments: The following statement in the IG report is misleading: “(PNNL) officials advised us that, prior to our request, they did not have a system that could provide cost data for individual inspections.” At the time the IG request was made, PNNL had already implemented a system to track the individual inspections. The PNNL officials’ comments referred to their difficulty in reconstructing individual inspection costs during the earlier years, in the specific manner requested by the IG staff.

When the Inspection Program was initiated during 1999, OCI was newly formed, and the Department was being smeared in the national and international media for lapses in its security and counterintelligence programs. Numerous congressional committee investigations were underway concerning the Department’s counterintelligence program failures, including the numerous failures alone in the Wen Ho Lee investigation. Those congressional investigations continued into late 2000. The then OCI Director’s primary mission was to get the CI Program, including the Inspection Program, up and running as soon as possible under extremely difficult circumstances. With respect to the Inspection Program, the object was to get as many sites inspected as soon as possible. The thrust, at the time, was on continuing to fine-tune the methodology of the inspection process, and addressing and correcting a plethora of field CI performance shortfalls identified through the inspection findings. The IG report failed to take into account the extreme difficulties faced in the early years of this office’s formalized program.

Appendix B

From 1999 through 2002, at the direction of the then Inspection Program Manager, the cost structure was not set up to capture the costs of individual inspections and activities in the format requested by the IG. Thus, there was initial difficulty in providing cost information to IG personnel, as some of the requested data from inspections conducted early in the program was difficult to reconstruct in the form requested. The data call to PNNL by IG personnel was for information from 1999 through mid-FY03. PNNL has been tracking the costs of individual inspections since mid-FY03. Beginning in the first quarter of FY03, and more broadly during the remainder of FY03 and into FY04, sweeping changes were made regarding the manner in which costs associated with the Inspection Program are charged, captured, tracked and reported. The level of detail which has been provided since that time is more than adequate and provides the federal manager assurance that both cost and performance are properly managed. Since mid-FY03, a separate sub-account has been established for each separate inspection activity to ensure that any and all costs associated with a specific inspection are properly associated with that activity. Charging guidelines assure that costs are attributed to the proper activity within the Work Breakdown Structure.

The approximate \$15.7M total cost is an accurate reflection of the total program cost from July 1999 through late 2003, with approximately \$8M of unburdened costs directly associated with specific site inspections. While this leaves a remaining balance of \$7.7M, all of this is not properly considered "overhead." Of the \$7.7M, approximately \$5M can be accurately considered overhead per accounting terminology. The remaining \$2.7M of unburdened costs is in direct support of the Inspection Program, but represents costs that are not directly tied to an individual inspection.² Viewed correctly, the average full inspection is approximately \$135,924 (unburdened) or approximately \$266,752 (with costs pro rata). A special inspection is approximately \$76,244 (unburdened) or approximately \$149,628 (with costs pro rata). Corrected numbers in the form requested are contained in the Appendix to this response.

The OCI Inspection Program was mandated by PDD-61, executed on February 11, 1998. The Inspection Program costs for the past five years have been as follows: FY 00 - \$3,591,377; FY 01 - \$3,758,398; FY 02 - \$3,977,339; FY 03 - \$3,256,374; and FY 04 - \$2,086,293. FY 04 expenditures were 48 percent less than in FY 02. This reduction in spending was the result of a re-examination of CI program expenditures and functions over those years, as well as a re-alignment of inspection protocols. Those reductions have resulted in savings which have been allocated to a number of critical projects, such as the CI-NET infrastructure costs, and allocations to field sites with increasing overhead costs. We believe that a 48% reduction in expenditures in a program over a two-year period demonstrates that this office is sufficiently managing the costs of the Inspection Program, contrary to what is implied by the IG report.

While the CI budget is now classified, the current inspection budget is significantly less than in earlier years, yet with an increase in work product. Administrative processes have been streamlined; reports are prepared in less time and made more concise; fewer inspectors are used per site inspected; some inspectors depart the site early as workload allows; and pre-inspection visits to HQ are now limited to only the lead inspector. The overall budget for the program simply could not have been reduced so dramatically without achieving greater efficiency and

² (See the discussion of overhead in the attached Appendix.)

Appendix B

without effective federal management controls, which were already in place prior to the IG investigation.

The IG report has, unfortunately, reached its conclusions that there are not sufficient management controls over inspection costs, by narrowly focusing on the difficulty in providing information on the costs of individual inspection trips during the early years of the program. With respect to that specific issue, as stated above, that tracking system has been in place since mid-FY03. This office is of the opinion that the efforts demonstrated by its management personnel in voluntarily reducing the program's costs by 48% over the past two fiscal years, while increasing the performance of the individual inspections, exemplifies the outstanding management of the costs of the OCI Inspection Program.

APPENDIX

OVERHEAD

Overheads associated with our cost accounting structure include such things as:

- **Organizational Overhead:** Represents costs for management, supervision, and administration of technical departments. Organization Overhead also includes costs for buildings and utilities.
- **Program Development and Management (PDM):** Includes costs for business development, planning, and monitoring for a group of projects.
- **National Security Mission Adder:** The operating costs for the Sensitive Compartmented Information Facility (SCIF) are allocated to projects in the benefiting Market Sectors (DOE-NN, DOE-CN, DOE-IN, DOE-SO, and DoD).
- **G&A:** Includes general functions such as Accounting, Legal, and Personnel department costs, contract administration, Laboratory Directed R&D, etc.
- **Service Assessment:** Includes costs paid to DOE for plant-wide support services such as fire, library, mail, and roads.

UNBURDENED COSTS

\$2.7M of the \$15.7M total cost represents unburdened costs in direct support of the inspection program, but that are not directly tied to an individual inspection, for example:

- materials and equipment acquisition and support program startup efforts – developing the inspection methodology, processing, guidelines, standards, etc.
- shipping of materials
- mandatory annual training for inspectors and administrative staff
- mandatory polygraph examination for inspectors and administrative staff
- other tasks received directly from the OCI Director
- holding or attending annual workshops
- project management and administrative costs.

The 9% project management/administrative costs that were noted in the report are not considered an overhead but are based on the labor/travel costs associated with managing the project. Actual burdened cost for project management and administration in FY04 is approximately \$101K. Total FY04 burdened cost associated with the inspection program is approximately \$2.1M. Therefore, the FY04 percentage of the total burdened cost associated with project management for this program is nearer to 4.8%.