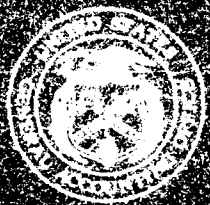


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# How to Develop and Implement Conflict of Interest Controls

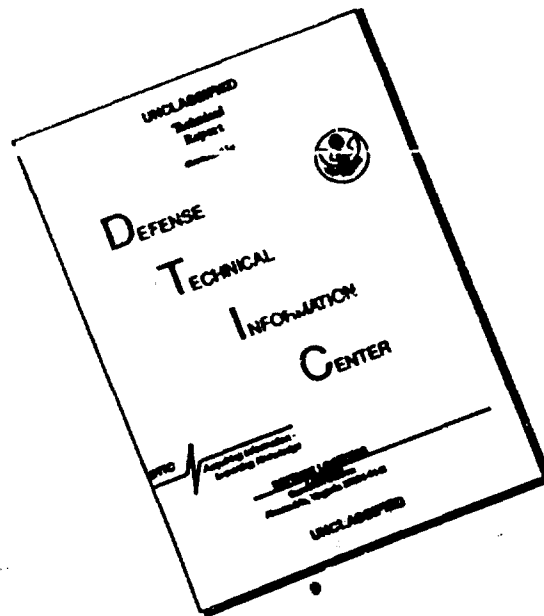


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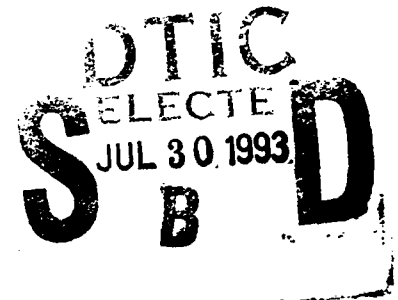
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Resources, Community, and  
Economic Development Division

B-240977

December 26, 1990

The Honorable David H. Pryor  
Chairman, Subcommittee on Federal  
Services, Post Office and Civil Service  
Committee on Governmental Affairs  
United States Senate



Dear Mr. Chairman:

In response to your request and subsequent discussions with your office, this report reviews the Department of Energy's (DOE) controls over conflicts of interest in subcontracts awarded by the agency's research centers. The report makes several recommendations to the Secretary of Energy to improve DOE's management controls for ensuring that conflicts of interest are detected and avoided before a subcontract is awarded.

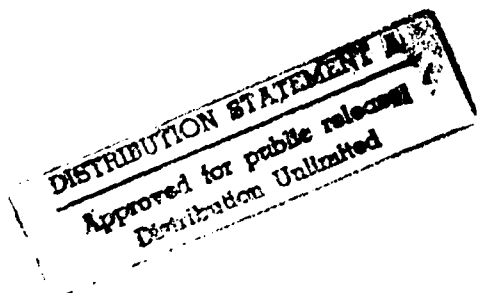
As agreed with your office, unless you announce its contents earlier, we plan no further distribution of this report until 30 days from the date of this letter. At that time, we will send copies to the Secretary of Energy and other interested parties.

This work was done under the direction of Victor S. Rezendes, Director, Energy Issues, (202) 275-1441. Other major contributors are listed in appendix I.

Sincerely yours,

*J. Dexter Peach*  
J. Dexter Peach  
Assistant Comptroller General

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# Executive Summary

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## Purpose

The Department of Energy (DOE) has 22 federally funded research and development centers that are managed and operated by private corporations and universities under contracts with DOE. In fiscal year 1989, these research center contractors spent about \$7.8 billion of DOE's funds, awarding about \$3.2 billion of this total to subcontractors.

Concerned about the potential for conflicts of interest in subcontracts and about DOE's safeguards to prevent such conflicts, the Chairman, Subcommittee on Federal Services, Post Office and Civil Service, Senate Committee on Governmental Affairs, requested that GAO review the adequacy of (1) DOE's policies and procedures for identifying and avoiding conflicts of interest in subcontracts, (2) the implementation of these policies and procedures by DOE's field offices and research center contractors, and (3) DOE's oversight of the implementation of these policies and procedures.

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## Background

DOE's regulations define "conflict of interest" as a situation in which a potential contractor has interests that (1) may diminish the potential contractor's capacity to give impartial, technically sound, objective assistance and advice or (2) may result in the contractor's having an unfair competitive advantage over others competing for the contract.

DOE requires that subcontractors, before they are awarded a contract, submit either (1) a certification that they know of no relevant information bearing on possible conflicts of interest or (2) information disclosing relevant possible conflicts. A DOE official must review this information to determine whether a possible conflict of interest exists and, if so, decide the proper course of action. Possible actions include revising the scope of the contract to eliminate the reason for the conflict or directing the research center contractor not to award the contract.

DOE headquarters has delegated to its eight field offices, referred to as operations offices, the responsibility for implementing DOE's conflict-of-interest policies and procedures and ensuring that the research centers follow them. GAO reviewed the handling of conflict-of-interest issues in subcontract awards at DOE's Albuquerque Operations Office and two of its research centers—Sandia National Laboratory and Los Alamos National Laboratory. In fiscal year 1989, Los Alamos and Sandia awarded about \$1.2 billion in subcontracts—about one-third of the monies all of DOE's research centers spent on subcontracts.

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Previous GAO reports have discussed problems of compliance with DOE's conflict-of-interest policies and procedures at other research centers, similar to those reported here, as well as problems with DOE's oversight.

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## Results in Brief

As written, DOE's policies and procedures provide for the basic internal management controls necessary to ensure that conflicts of interest are identified and properly addressed. However, neither the Albuquerque Operations Office nor the contractors that operate the Los Alamos and Sandia research centers properly implemented these policies and procedures. Contrary to DOE's regulations, Albuquerque allowed the research centers to make conflict-of-interest determinations, rather than retaining this responsibility itself.

Because DOE's policies and procedures had not been properly implemented, GAO was unable to test whether, in practice, they were effective. However, GAO did note two management control problems. First, Albuquerque has relied extensively on subcontractors' self-certifications to make its conflict-of-interest decisions even though certifications may not always be accurate. Second, Albuquerque's documentation of conflict-of-interest decisions is limited.

Neither Albuquerque nor DOE headquarters exercised effective oversight to ensure that conflicts of interest were avoided in the subcontracts Los Alamos and Sandia awarded. Since GAO's review, Albuquerque has taken steps to bring its own practices and procedures and those of the research centers into compliance with DOE's regulations. A key issue yet to be resolved, however, is whether Albuquerque will have adequate staff to review subcontracts for conflicts of interest.

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## Principal Findings

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### Conflict-Of-Interest Determinations May Not Be Sound Because of Problems With Certifications and Documentation

As required by law, DOE has developed conflict-of-interest policies and procedures that follow accepted internal control standards for the management of federal agencies. However, GAO was unable to test whether these policies and procedures were effective in practice because Albuquerque had not properly implemented them. GAO did review the policies and procedures that Albuquerque was using and found two management control problems that could undermine Albuquerque's ability to ensure that its conflict-of-interest determinations are sound.

First, Albuquerque generally does not verify the accuracy of subcontractors' certifications. As a result, these certifications may not always be reliable. For 36 subcontracts that GAO reviewed at Los Alamos, the subcontractors certified that no relevant information bearing on conflicts of interest existed. Yet in 12 subcontract files GAO found information that should have been reported because it was relevant to conflict-of-interest decisions.

Because of work load constraints, checking each subcontractor's certification may not be practical. However, other options exist to improve the reliability of certifications. Albuquerque could check the accuracy of a sample of the certifications against data in the subcontract files. Also, DOE could impose administrative sanctions on subcontractors that submit inaccurate certifications. Such enforcement actions are provided for in DOE's regulations.

A second management control problem is that Albuquerque's documentation for its decisions on possible conflicts of interest is limited. GAO found that the files for most of the 18 subcontracts that Sandia referred to Albuquerque for conflict-of-interest determinations did not fully explain the basis for the conclusions reached.

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### Albuquerque Allowed Practices That Did Not Comply With DOE's Regulations

Albuquerque allowed Los Alamos and Sandia to make conflict-of-interest decisions even though DOE's regulations do not permit them to do so. Los Alamos reviewed all of its own subcontracts. Sandia selected from among the subcontracts DOE requires to be scrutinized those that were more likely to have possible conflicts of interest. Information on only those subcontracts was forwarded to Albuquerque for review. Thus, from April 1989 through January 1990, Sandia forwarded only 18 of an estimated 2,100 subcontracts that were subject to DOE's conflict-of-interest provisions.

Albuquerque's failure to comply with DOE's regulations resulted in three cases that GAO identified in which possible conflicts of interest were not avoided. In the first case, at Los Alamos, a subcontractor evaluated equipment it had previously developed—a situation that could have affected the subcontractor's objectivity. In the second case, Los Alamos awarded a consulting subcontract for computer services to an individual and, later, a subcontract for computer support in the same area to the individual's company. Despite the overlap in the work to be performed under the two subcontracts, Los Alamos did not bar the company from involvement in the consultant's work. Without this restriction, company

employees might evaluate their president's work. In the third case, Sandia awarded a subcontract for communication services to a firm that had previously subcontracted with Sandia—experience that Albuquerque later found gave the firm an unfair competitive advantage.

Albuquerque officials believed incorrectly that DOE's procurement regulations allowed the research centers to make conflict-of-interest decisions. As a result of GAO's review, however, Albuquerque is bringing its practices into compliance with DOE's regulations and has directed the research centers to submit subcontracts to the operations office for review. Since these changes will mean an additional work load for Albuquerque, officials expressed concern that the office might not have adequate staff to carry out this task. As of October 1990, DOE's senior-level management was discussing this potential problem.

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### DOE's Oversight Was Not Effective

Neither DOE headquarters' procurement management system nor Albuquerque's procurement oversight reviews identified the problems described above. Furthermore, even when Albuquerque did identify problems and made recommendations to correct them, it did not effectively follow up on its recommendations. For example, in its 1988 review at Sandia, Albuquerque identified three subcontracts that had not been reviewed for conflicts of interest and recommended that Sandia request the required information from the subcontractors. Although Sandia did not do so, Albuquerque closed the recommendation.

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### Recommendations

GAO is making several recommendations to the Secretary of Energy that should improve Albuquerque's management controls for ensuring that conflicts of interest are detected and avoided before a subcontract is awarded. GAO is further recommending that the Secretary (1) determine whether the problems that exist at Albuquerque also exist at DOE's other operations offices and (2) study options to improve the reliability of the conflict-of-interest certifications furnished by subcontractors.

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### Agency Comments

In providing official oral comments on a draft of this report, DOE generally concurred with GAO's findings and recommendations. DOE said it plans to use GAO's report as a catalyst for efforts to ensure that its operations offices properly implement conflict-of-interest policies and procedures. DOE also said that, in line with other initiatives already underway, it will determine whether the problems GAO identified at the Albuquerque Operations Office exist at other operations offices.

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**Table**

**Table 2.1: Roles of DOE, Research Centers, and Subcontractors in Ensuring That Conflicts of Interest Are Identified**

14

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**Abbreviations**

CPSR	Contractor Purchasing System Review
DOE	Department of Energy
GAO	General Accounting Office
PMAR	Procurement and Assistance Management Review
RCED	Resources, Community, and Economic Development Division

# Introduction

The Department of Energy (DOE) has 22 federally funded research and development centers (research centers) that are operated under contracts with private corporations and universities. The research centers carry out a wide range of research and development projects, from basic research to advanced systems engineering and design. These projects encompass a broad range of subjects, such as nuclear weapons systems and energy technology.

In fiscal year 1989, the research centers spent about \$7.8 billion of DOE's funds, awarding about \$3.2 billion, or 41 percent, of this total to subcontractors for research and other tasks supporting the research centers' activities. Subcontracting can result in organizational conflicts of interest with adverse consequences. For example, a subcontractor's objectivity could be diminished if the individual evaluated a project that he or she had previously developed. Therefore, management controls are necessary to ensure that the government's best interests are protected.

## What Is an Organizational Conflict of Interest?

As required by 42 U.S.C. section 5918(a), DOE has established policies and procedures for identifying and avoiding possible organizational conflicts of interest<sup>1</sup> before contracts and subcontracts are awarded. According to DOE's regulations, an organizational conflict of interest exists when a contractor has interests that (1) may diminish the contractor's capacity to give impartial, technically sound, objective assistance and advice or (2) may result in the contractor's being given an unfair competitive advantage. As DOE's regulations state, it is difficult to identify in advance all situations or relationships that might involve a conflict of interest. However, the regulations give examples of situations in which conflicts of interest frequently arise, such as the following:

- If a contract requires the evaluation of the contractor's own products or services, or another party's products or services in whose development or marketing the contractor is or has been substantially involved, then the contractor is placed in a position in which its judgment could be biased.
- If a contractor prepares or furnishes specifications for an item that is to be purchased competitively and later bids for the contract for that item, then the contractor can have an unfair competitive advantage.

<sup>1</sup>This report does not address personal conflicts of interest, which are governed by other policies and procedures.

## Past GAO Reports Uncovered Problems in DOE's Management Controls Over Conflicts of Interest

Several previous GAO reports have discussed DOE's controls over the agency's operating contractors and their administration of conflict-of-interest regulations. According to an April 22, 1982, report, DOE's Sandia and Argonne National Laboratories were not fully complying with DOE's conflict-of-interest regulations.<sup>2</sup> For example, the contract for the operation of Sandia did not require Sandia to request conflict-of-interest information from prospective subcontractors before it awarded subcontracts. We recommended that DOE amend all management and operating contracts to include such a requirement. In October 1983, Sandia's contract was modified accordingly.

According to the same report, DOE's oversight of contractors' procurement operations did not cover the two research centers' compliance with DOE's conflict-of-interest regulations. DOE pledged that future oversight reviews would focus specifically on conflicts of interest.

In 1987, we reported that, in administering DOE's technology transfer program, the operating contractor for DOE's Oak Ridge National Laboratory had given an unfair competitive advantage to an affiliate company.<sup>3</sup> The operating contractor gave the affiliate company information on a DOE-funded technology, but did not provide this information to another firm that was also interested in the technology. To strengthen DOE's oversight of the research center's compliance with conflict-of-interest requirements, we recommended that DOE periodically review the operating contractor to ensure that business contacts with affiliates and possible conflict-of-interest situations were identified and reported to DOE. DOE concurred with our recommendation and conducted its first such review on February 26, 1988.

## Objectives, Scope, and Methodology

The Chairman, Subcommittee on Federal Services, Post Office and Civil Service, Senate Committee on Governmental Affairs, asked GAO to evaluate the adequacy of DOE's programs for preventing conflicts of interest in subcontracts awarded by DOE's research centers. The Chairman was concerned that conflicts of interest could compromise a potential subcontractor's objectivity or give a subcontractor an unfair competitive advantage in obtaining subcontracts. Specifically, we reviewed the adequacy of

<sup>2</sup>The Subcontracting Practices of Large DOE Contractors Need to Be Improved (GAO/EMD-82-35, Apr. 22, 1982).

<sup>3</sup>Energy Management: Problems With Martin Marietta Energy Systems' Affiliate Relationships (GAO/RCED-87-70, Mar. 5, 1987).

- DOE's policies and procedures for avoiding conflicts of interest,
- the implementation of these policies and procedures, and
- DOE's oversight of the implementation of these policies and procedures.

We conducted our work at DOE headquarters in Washington, D.C.; DOE's operations office in Albuquerque, New Mexico (including its area office in Los Alamos, New Mexico); and two research centers in New Mexico: Sandia National Laboratories (Sandia) and Los Alamos National Laboratory (Los Alamos). Sandia has research centers in Albuquerque and Livermore, California; our work was limited to the Albuquerque center. The combined subcontracts of Sandia and Los Alamos totaled about \$1.2 billion in fiscal year 1989, which was over one-third of the \$3.2 billion subcontracted by DOE's 22 research centers. Sandia is operated by American Telephone and Telegraph, Inc. (formerly AT&T Technologies, Inc.), and Los Alamos is operated by the University of California.

To evaluate the adequacy of DOE's policies and procedures on conflicts of interest, we reviewed the relevant legislation and regulations to determine how DOE had implemented the statutes. We also compared DOE's policies and procedures with accepted internal control standards for the management of federal agencies<sup>4</sup>—for example, standards for the documentation and separation of duties—to determine whether DOE's controls would ensure that conflicts of interest are identified and avoided. In addition, we discussed the adequacy of DOE's policies and procedures with the headquarters officials who are responsible for establishing them and who administer headquarters' oversight program and with Albuquerque officials. We discussed possible changes that would address the problems we found in DOE's policies and procedures.

To evaluate the adequacy of the implementation of DOE's conflict-of-interest policies and procedures, we first reviewed the policies and procedures DOE's Albuquerque Operations Office and the two research centers followed to determine whether they were consistent with DOE's regulations. We then interviewed the responsible officials to determine how they implemented these policies and procedures and whether they had any problems meeting DOE's requirements.

To test the implementation of DOE's policies and procedures, we reviewed a judgmentally selected sample of 81 subcontracts totaling approximately \$39 million. (Because our sample was judgmentally

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<sup>4</sup>Standards for Internal Controls in the Federal Government, GAO (Washington, D.C.: U.S. Government Printing Office, 1983).

selected, our results cannot be projected to the universe of subcontracts awarded by Los Alamos, Sandia, or DOE's other research centers.) We selected subcontracts awarded in fiscal year 1989 from the categories that DOE's regulations identify as susceptible to conflicts of interest (see ch. 2). We had to review a few contracts from the previous fiscal year to answer questions on the subcontracts in our sample. To keep our sample size manageable and to concentrate on the more significant subcontracts, we included only those valued in excess of \$50,000, except for consulting subcontracts. We did not impose a dollar threshold on these subcontracts because, according to DOE officials, even a small consulting subcontract can potentially influence subcontracts for large sums of money. In addition, we reviewed all 18 subcontracts that Sandia submitted to Albuquerque from April 1989 through January 1990 to determine how Albuquerque reached its conflict-of-interest decisions.

We reviewed the files for the subcontracts selected to determine what information the subcontractors submitted concerning conflicts of interest and how it was evaluated. In selected cases, we contacted the subcontractors concerning the data they provided. To the extent possible, we validated the statements subcontractors made about their relationships with affiliates by checking the relevant annual reports and independent business references. We also reviewed the financial disclosure statements of selected senior research center officials, as well as those of research center employees involved in the subcontracts in our sample, to identify information that should have been considered in conflict-of-interest determinations.

To evaluate the adequacy of DOE's oversight activities, we interviewed DOE headquarters and field officials about their criteria and procedures for evaluating the implementation and effectiveness of DOE's conflict-of-interest policies and procedures. We reviewed DOE headquarters' and Albuquerque's management oversight reports to determine what they contained concerning conflict-of-interest activities. We also obtained information on what actions had been taken in response to findings and recommendations in DOE's reviews.

Lastly, we reviewed the Secretary of Energy's reports to the President for fiscal years 1983 through 1989, which are required by the Federal Managers' Financial Integrity Act. None of the reports identified material internal control weaknesses in the management of conflicts of interest.

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**Chapter 1**  
**Introduction**

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We performed our fieldwork from July 1989 through June 1990 in accordance with generally accepted government auditing standards.

DOE provided official oral comments on a draft of this report. These comments are presented in chapters 2, 3, and 4.

# DOE's Policies and Procedures Governing Conflicts of Interest Have Not Been Properly Implemented

At the time of our review, neither the Albuquerque Operations Office nor the Sandia and Los Alamos research centers had properly implemented DOE's policies and procedures for avoiding conflicts of interest. According to DOE's regulations, conflict-of-interest determinations are to be made by a DOE contracting officer. However, Albuquerque allowed these two research centers to make their own determinations. Los Alamos made conflict-of-interest decisions on all subcontracts. Sandia was allowed to select which subcontracts were more likely to have possible conflicts of interest and forward information on only those subcontracts to Albuquerque for review. This practice diminished Albuquerque's managerial controls for ensuring that conflicts of interest are detected and properly mitigated. We identified three instances of possible conflicts of interest that the research centers did not avoid. The research centers also did not document their conflict-of-interest determinations.

Albuquerque officials believed incorrectly that they could delegate the authority to make conflict-of-interest decisions. As a result of our review, Albuquerque instructed Sandia and Los Alamos to bring their procedures into compliance with DOE's regulations. With the new procedures, Albuquerque officials expect that an additional 4,800 subcontracts will be submitted annually to Albuquerque for conflict-of-interest determinations. They are concerned that the office may not have adequate staff to handle this additional work load.

## DOE's Policies and Procedures Governing Conflicts of Interest

As required by 42 U.S.C. section 5918(a), DOE has established policies and procedures for identifying and avoiding or mitigating conflicts of interest before contracts and subcontracts are awarded. Contained in DOE's Acquisition Regulations and Departmental Orders, these policies and procedures are to be followed not only by all DOE offices but also by DOE contractors that subcontract work to other companies or individuals.

The statute and DOE's regulations require DOE to avoid or mitigate conflicts of interest before a contract or subcontract is signed. DOE's regulations emphasize that certain procurement categories are particularly susceptible to conflicts of interest. These categories include contracts for evaluation services, technical consulting, management support, and professional services. For such procurements, DOE operating contractors—such as those that manage the research centers—must include in contract solicitations notices requiring potential subcontractors to either (1) provide information on the possible existence of any conflicts of interest

**Chapter 2**  
**DOE's Policies and Procedures Governing**  
**Conflicts of Interest Have Not Been**  
**Properly Implemented**

when they submit their offers or (2) certify that there are no relevant facts that give rise to a conflict. The notices define what a conflict of interest is and describe DOE's policy governing such conflicts.

Under DOE's regulations, a DOE contracting officer is required to find either that a possible conflict of interest exists or that there is little or no likelihood of such a conflict, using the potential subcontractor's statement and other relevant information that may be available. DOE requires that all determinations by contracting officers be reviewed by a DOE attorney or a specially appointed contracting official. According to DOE officials, it is necessary for government officials, to make the final decisions when the government's interests may be jeopardized.

When a conflict is possible, the DOE contracting officer must either disqualify the offerer or include appropriate conditions in the contract to avoid the conflict. When conflicts cannot be avoided and the Secretary of Energy or the Secretary's designee determines that the contract award is in the best interests of the United States, the contract may still be awarded. However, appropriate mitigating clauses must be placed in the resulting contract, and the Secretary's determination must be published in the Federal Register.

The roles of DOE, the research centers, and the subcontractors are described in table 2.1.

**Table 2.1: Roles of DOE, Research Centers, and Subcontractors in Ensuring That Conflicts of Interest Are Identified**

<b>Organization</b>	<b>Role</b>
DOE headquarters (Office of Procurement, Assistance, and Program Management)	Develop policies and procedures Oversee activities of operations offices
DOE operations offices	Contract for the operation of research centers Decide whether conflicts of interest exist in subcontracts at research centers Oversee procurements at research centers
Research centers	Notify subcontractors of conflict-of-interest reporting requirements Forward information from subcontractors to operations office for a decision
Subcontractors (for contracts in the categories designated in DOE's regulations)	Disclose relevant facts regarding possible conflicts of interest or certify that no such facts exist

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## Albuquerque Inappropriately Allowed Research Centers to Make Conflict-Of-Interest Determinations

At the time of our review, the Albuquerque Operations Office had allowed Los Alamos and Sandia to review subcontracts for conflicts of interest—a practice that runs counter to DOE's regulations. At Los Alamos, Albuquerque approved procedures that allowed the research center to make conflict-of-interest decisions. At Sandia, Albuquerque allowed contracting officials to selectively request information from those subcontractors that it thought were more likely to have a possible conflict of interest and to then forward information on only those subcontracts to Albuquerque for a decision. We found three instances of subcontracts with possible conflicts of interest that might have been avoided if Albuquerque, instead of the research centers, had made the required determinations. We also found that the research centers did not document their decisions.

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## Los Alamos Was Allowed to Review All Contracts for Conflicts of Interest

The contract between DOE and the University of California for the management and operation of Los Alamos requires that conflict-of-interest procedures comply with DOE's regulations. However, Los Alamos' policies and procedures for procuring products and services, contained in the research center's Procurement Manual, makes the research center, not Albuquerque, responsible for determining whether conflicts of interest exist. Albuquerque approved the manual in September 1987, when the contract between DOE and the University of California was renewed. Similarly, policies and procedures for the procurement of consulting services, contained in the research center's Administrative Manual, allow the research center to determine whether conflicts of interest exist in consulting contracts. According to Los Alamos officials, the procedures in the Administrative Manual are routinely sent to DOE for review, but they could not document this practice. An Albuquerque official told us that no one could recall reviewing and approving the Administrative Manual procedures.

According to officials in Albuquerque's Contracts and Procurement Division, they permitted Los Alamos to make conflict-of-interest decisions because they believed that DOE's regulations allowed this delegation of the contracting officer's authority. As a result of our review, they discussed this issue with DOE headquarters policy officials, who informed them that the conflict-of-interest responsibility could not be delegated to the research centers. Albuquerque is bringing Los Alamos' procedures into compliance with DOE's regulations. Its target date for completion is December 31, 1990.

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**Chapter 2**  
**DOE's Policies and Procedures Governing**  
**Conflicts of Interest Have Not Been**  
**Properly Implemented**

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We found two subcontracts with possible conflicts of interest that Los Alamos did not identify.

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**Case 1**

Los Alamos awarded a sole-source subcontract, for approximately \$470,000, to a company for the evaluation of five types of inertial instruments for the Strategic Defense Initiative program. Although a company official certified that he knew of no relevant facts that could give rise to a conflict of interest, the company noted in its technical proposal that it had developed or built—or was currently evaluating, developing, or building—each of the five inertial instruments to be evaluated. Thus, the subcontractor would be evaluating systems that it had an interest in developing or marketing.

Los Alamos' written analysis of the proposal did not mention whether awarding the subcontract would create a conflict of interest. Moreover, a Los Alamos official told us that he did not think conflict of interest was an issue because the subcontract was a sole-source subcontract and the firm involved was a nonprofit company.

An official in Albuquerque's Contracts and Procurement Division told us that he was not familiar with the details of this subcontract and thus could not comment on the conflict-of-interest question we raised. This official noted that the contract had been completed and indicated that he did not think time would be productively spent reviewing the case to answer our inquiry.

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**Case 2**

Los Alamos awarded a consulting subcontract to a former Los Alamos employee and a separate support services subcontract to a company he incorporated shortly before leaving Los Alamos. One month after leaving, the former employee (not his company) received a sole-source consulting subcontract to advise and assist Los Alamos on a 3-dimensional computer graphics hardware and software system. At the end of fiscal year 1989, the former employee had billed Los Alamos approximately \$13,000 for these services.

About 9 months after the employee's departure, Los Alamos began negotiating with the former employee's company a sole-source subcontract, for approximately \$200,000, to advise and assist Los Alamos on similar aspects of the same system. Los Alamos recognized that a conflict of interest might arise, since the company's president, the former

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**Chapter 2  
DOE's Policies and Procedures Governing  
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Properly Implemented**

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employee, was already consulting for the same project. Thus, potentially, the individual could offer advice to Los Alamos that it would then pay his own company to execute. To avoid this problem, Los Alamos placed the following clause in the company's subcontract:

In order to avoid a conflict of interest, [the former employee and company president] shall not participate in any of the tasks negotiated under this subcontract. His work as a consultant shall not be charged against this subcontract. Furthermore, he shall not use his position as a consultant to influence the tasks which are performed under this subcontract.

The company did not adhere to these contractual restrictions. The employee wrote us that he had

participated in general group discussions and demonstrations [regarding the company's subcontract]. On such occasions I have made comments as to how good (sic) the project is getting along, what technologies already available at [company] might be useful to the projects, but the oversight for the project has been the task of [another employee].

The awarding of the subcontract to the former employee's company created other possible conflicts of interest that were not avoided or mitigated. First, no similar clause was included in the employee's consulting subcontract prohibiting him from becoming involved in his company's contract with Los Alamos. Indeed, the individual wrote us that he would help Los Alamos with the company's computer hardware and software contract if Los Alamos' program manager became overloaded or moved to another job. Second, the statement of work for the company's subcontract included potential evaluations of hardware and software that the employee had suggested or developed under his consulting contract. In such a situation, the employees of the company might have to evaluate work done by their company's president.

A Los Alamos official told us that Los Alamos would review the subcontracts and take whatever actions were necessary, which could include amending or terminating these subcontracts. Subsequently, Los Alamos furnished us a copy of a letter to the consultant dated July 17, 1990, stating that his consulting agreement was terminated.

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**Sandia's Practices Did Not Follow DOE's Regulations or Approved Procedures**

Sandia's purchasing instructions, approved in December 1988, required Sandia to (1) request conflict-of-interest data or no-conflict certifications from offerers for all contracts cited by the regulations as being susceptible to conflicts and (2) forward this material to DOE for a determination. But while these requirements conformed with DOE's regulations, Sandia's practices throughout 1989 and early 1990 did not. Unlike Los Alamos, Sandia did forward selected subcontracts for DOE's review. However, instead of requesting information on all subcontracts in the categories DOE specifies as susceptible to conflicts of interest, Sandia independently judged the likelihood that a subcontract could give rise to a conflict of interest before it issued a solicitation or a request for proposal. If Sandia officials decided the likelihood was slim, even for a contract in one of the designated categories, they would not require the potential subcontractor to submit conflict-of-interest data or no-conflict certifications. Only if a possible conflict was obvious would Sandia require the potential subcontractor to submit data, which it would then forward to DOE for review. As a result, from April 1989 through January 1990, Sandia forwarded to Albuquerque only 18<sup>1</sup> of an estimated 2,100 subcontracts that required DOE's review.

According to Sandia's Purchasing Planning Division Supervisor, this practice evolved after October 1988, when Sandia's contract was renewed and more emphasis was placed on conflict-of-interest requirements. According to Sandia officials, they and Albuquerque realized that compliance with the requirements would flood Albuquerque with more possible conflict-of-interest cases than Albuquerque could process in a timely manner; consequently, both parties agreed to minimize the number of cases sent to Albuquerque for review. Officials in Albuquerque's Contracts and Procurement Division told us that this practice had not been formally approved by Albuquerque, although they were aware of it.

During one of its oversight reviews, Albuquerque found that Sandia had awarded the following subcontract despite the existence of a conflict of interest. This case had not been referred to Albuquerque for a decision.

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<sup>1</sup>This number includes subcontracts from Sandia's Livermore, California, location. We audited only the Albuquerque location, but Sandia officials told us that the same procedures were used at both locations.

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**Case 3**

Sandia awarded a \$614,000 subcontract for communication services to a firm that had previously subcontracted with Sandia. According to file documents, Sandia personnel discussed whether the subcontractor had an unfair competitive advantage over other potential contractors because of its previous work with Sandia. Deciding that there was no conflict, Sandia did not refer the subcontract to Albuquerque. However, during one of its quarterly surveillance reviews, Albuquerque reviewed the subcontract and concluded that the subcontractor did have an unfair competitive advantage. Albuquerque asked Sandia to prevent such situations in future subcontracts, but did not require Sandia to act on this subcontract because it would expire in 3 months. If Albuquerque had reviewed the subcontract before it was awarded, then the conflict of interest could have been avoided or properly mitigated.

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**Los Alamos and Sandia**  
**Did Not Document Their**  
**Conflict-Of-Interest**  
**Decisions**

With Albuquerque exercising limited management control, Los Alamos and Sandia not only overlooked possible conflicts of interest but also had only limited documentation on their conflict-of-interest decisions—a problem Albuquerque identified at Los Alamos in a 1987 procurement system oversight report (see ch. 3). DOE's policies and procedures require that conflict-of-interest decisions be documented.

Of 36 subcontract files we reviewed at Los Alamos, 6 contained conflict-of-interest data reported by the subcontractor. We found no evidence that Los Alamos considered these data in deciding whether a possible conflict of interest existed. Similarly, the documentation in 45 subcontract files we reviewed at Sandia was poor. Although all of these subcontracts were in the categories that DOE defines as susceptible to conflicts of interest, Sandia did not request the relevant information from the subcontractors, document its reasons for not doing so, or document the conclusions of its review. According to Sandia officials, if they determined that the likelihood for a conflict of interest was slim, they did not document their decisions.

We did not pursue this documentation problem further because Albuquerque, not the research centers, will be making future conflict-of-interest decisions. However, poor documentation is a problem at Albuquerque as well (see ch. 4 for more details).

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## **DOE Is Correcting Procedural Problems**

Under DOE's decentralized method of operation, DOE headquarters has delegated the responsibility for implementing and overseeing conflict-of-interest activities to the operations offices and limited its own involvement. However, after we brought the problems discussed above to headquarters' attention, headquarters intervened to inform Albuquerque of its responsibility to review subcontracts for conflicts of interest and to revise its practices accordingly. As a result, Albuquerque's Contracts and Procurement Division instructed Sandia and Los Alamos to draft new procedures incorporating this requirement. On March 17, 1990, Albuquerque approved new procedures at Sandia requiring that all subcontracts in the specified categories be sent to Albuquerque for review. Albuquerque officials expect to approve Los Alamos' new procedures—which will cover subcontracts in the required categories, including consulting services—by December 31, 1990.

Albuquerque officials are concerned that the new procedures will increase its work load—from 18 subcontracts reviewed for conflicts of interest from April 1989 through January 1990 to an estimated 4,800 subcontracts each year. During the period covered by our review, Albuquerque had only one staff person who, among other duties, reviewed subcontracts for possible conflicts of interest. DOE headquarters officials are discussing how to accommodate this increased work load.

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## **Conclusions**

At the time of our review, the Albuquerque Operations Office had improperly delegated its authority for making conflict-of-interest determinations to the Sandia and Los Alamos research centers. In doing so, it relinquished essential management controls necessary to ensure that conflicts of interest are avoided or mitigated. Having a DOE official make such a determination is a necessary management control to ensure that government officials are aware of possible conflicts of interest when the interests of the government may be jeopardized.

Albuquerque is now improving its management controls over conflicts of interest. It has already approved procedures at Sandia that comply with DOE's regulations and has instructed Los Alamos to revise its procedures. However, the effectiveness of Albuquerque's actions will be determined by the attention and resources Albuquerque devotes to the effort, which in the past were limited. At the completion of our review, Albuquerque was uncertain how it would cope with the increased work load resulting from the greater number of subcontracts it would now have to review.

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Although our review was limited to the conflict-of-interest activities at DOE's Albuquerque Operations Office, our previous work has demonstrated that conflicts of interest in subcontracting have been a problem at other operations offices and research centers. As discussed in chapter 1, previous reports have identified problems at Argonne National Laboratories and Oak Ridge National Laboratory. In view of these problems and the lack of attention given to conflict-of-interest practices at Albuquerque, we believe that it is in the government's best interest for DOE to review these practices at other locations.

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## Recommendations to the Secretary of Energy

We recommend that the Secretary of Energy

- ensure that the Albuquerque Operations Office has sufficient resources to carry out its conflict-of-interest responsibilities,
- direct the Manager of the Albuquerque Operations Office to ensure that its research centers forward subcontracts in the specified categories to Albuquerque for conflict-of-interest determinations, and
- determine whether the conflict-of-interest problems identified at the Albuquerque Operations Office exist at other operations offices.

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## Agency Comments

DOE concurred with our findings and recommendations and stated that this report will be used as a catalyst for efforts to ensure that operations offices and research centers comply with conflict-of-interest policies and procedures. Furthermore, DOE said that resource needs at Albuquerque—as well as at other operations offices—are being discussed at the senior management level in DOE. DOE agreed to direct the Manager of the Albuquerque Operations Office to ensure that its research centers forward subcontracts in the specified categories to Albuquerque for conflict-of-interest determinations.

DOE commented that, in line with other initiatives concerning conflicts of interest, it has already revised the criteria headquarters teams use in their management reviews of operations offices' procurement activities. The revised criteria, dated October 1990, includes the following as a new review step: "Is the contracting activity retaining and exercising the responsibility for OCI [conflict-of-interest] determinations and not delegating it to the contractors or subcontractors?"

# DOE's Oversight Reviews Have Been Ineffective

The oversight reviews conducted by DOE headquarters and the Albuquerque Operations Office have not been effective. DOE headquarters' procurement management organization was not aware that Albuquerque had improperly delegated its responsibility to review subcontracts for conflicts of interest to the Sandia and Los Alamos research centers. Furthermore, Albuquerque's oversight reviews of the research centers' contracting activities did not identify certain weaknesses in the research centers' implementation of DOE's conflict-of-interest regulations. Even when Albuquerque identified problems, it did not systematically follow up on the research centers' actions to ensure that the deficiencies were corrected.

## Albuquerque's Oversight Was Less Than Adequate

While retaining overall responsibility for establishing conflict-of-interest policies and procedures, DOE headquarters has delegated to its eight operations offices the responsibility for contract administration. Accordingly, contracting officers in DOE operations offices are to ensure that DOE's procurement policies and procedures, including those pertaining to possible conflicts of interest, are properly implemented.

In overseeing research centers' contracting activities, including those regarding conflicts of interest, DOE requires the operations offices to conduct three types of reviews: (1) pre-award reviews of subcontracts with large dollar values, (2) periodic contractor purchasing system reviews (CPSR), and (3) periodic surveillance reviews. The pre-award reviews, conducted by review boards, may cover conflicts of interest. The CPSRs, conducted at least once every 3 years, determine whether the operating contractor's purchasing system complies with DOE's procurement policies and procedures, including those governing conflicts of interest, organizational structure, and staffing. The CPSR team tests compliance with the research centers' policies and procedures by reviewing a sample of subcontracts.

Between CPSRs, the operations office performs periodic surveillance reviews. DOE allows the operations offices flexibility in determining the frequency of these reviews; at Albuquerque, they are generally conducted quarterly. These reviews are essentially narrower versions of the CPSRs in that they cover fewer subcontracts and follow up on problems identified during the CPSRs, including conflict-of-interest problems.

Albuquerque's oversight reviews of Los Alamos' and Sandia's procurement systems did not identify the conflict-of-interest problems we found. Furthermore, Albuquerque did not adequately follow up to

ensure that the problems it did find were corrected. An exception to this is case 3, discussed in chapter 2, in which Albuquerque identified a conflict of interest in a subcontract during a surveillance review at Sandia.

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**Albuquerque Did Not Recognize That Procedures and Practices Were Improper**

Because the Albuquerque Operations Office believed that it could delegate the authority to make conflict-of-interest determinations to DOE's research centers, neither its CPSRs nor its surveillance reviews identified the improper practices at Los Alamos or Sandia discussed in chapter 2. Instead, the reviews commented on the merits of the existing procedures. For example, Albuquerque's July 1987 CPSR at Los Alamos concluded that the research center had an effective purchasing system and had updated its instructions to reflect the changes in DOE's regulations pertaining to conflicts of interest. The CPSR report stated that the procedures and implementing instructions incorporated the regulatory requirements when, in fact, neither the Procurement Manual nor the Administrative Manual required that DOE resolve conflict-of-interest matters. These same procedures and instructions were in effect when DOE's contract with Los Alamos was renewed in September 1987 for the 1987-92 period. Albuquerque's 1988 and 1989 quarterly surveillance reviews did not report any deficiencies in Los Alamos' procedures or policies. Similarly, Albuquerque's 1988 CPSR at Sandia stated that its instructions had incorporated the required conflict-of-interest provisions. Albuquerque's quarterly surveillance review failed to note that Sandia's practices in 1989 did not conform with the procedures DOE approved in 1988.

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**Consulting Subcontracts at Los Alamos Were Inadvertently Excluded From Reviews**

Neither the 1987 CPSR nor the 1988 and 1989 quarterly surveillance reviews conducted at Los Alamos included consulting subcontracts, even though DOE considers such contracts to be particularly susceptible to conflicts of interest. According to DOE officials, they were not aware that consulting subcontracts were not included on the lists from which they selected subcontracts for review.

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**Follow-Up on Conflict-Of-Interest Recommendations Has Been Ineffective**

The Albuquerque Operations Office has not effectively followed up on actions the research centers took in response to its CPSR recommendations concerning conflicts of interest. In one instance—after a 1988 CPSR at Sandia identified three subcontracts that Albuquerque should have reviewed for possible conflicts of interest—Albuquerque accepted

actions that we believe did not adequately respond to its recommendations. For two of these subcontracts—one for approximately \$4.2 million and the other for approximately \$4.5 million—Albuquerque recommended that Sandia obtain from the subcontractors the information Albuquerque needed to determine whether a possible conflict of interest existed. (Albuquerque did not recommend similar action for the other subcontract because it was due to expire soon.) Sandia did not do so. Instead, it reported that there was no anticipated follow-on work to these subcontracts and thus no need to obtain the requested information. Albuquerque accepted Sandia's response and closed the recommendation in August 1989. Officials in Albuquerque's Contracts and Procurement Division agreed with us that the recommendation should not have been closed. They explained it as an apparent oversight.

In another case, Albuquerque did not adequately monitor the corrective action that Los Alamos was supposed to take after a 1987 CPSR. The CPSR report noted that the documentation in subcontract files showing actions taken on possible conflict-of-interest cases was poor and recommended that Los Alamos' contract administrators improve their documentation. Subsequently, Los Alamos indicated that it would provide training to its personnel and revise the relevant instructions. DOE indicated it would close the recommendation upon issuance of the new instructions. In reviewing the instructions, we found that the guidance still did not indicate how the reviewing official was to fully document the rationale for a decision that no possible conflict of interest existed.<sup>1</sup>

Although Albuquerque requires surveillance review staff to follow up on previous recommendations, the surveillance review performed after Los Alamos issued its new instructions in February 1988 did not address whether these instructions adequately responded to the recommendations. According to Albuquerque officials, these reviews usually focus on particular problem areas by examining the relevant subcontracts or types of subcontracts. They said conflicts of interest were not considered a problem at that time.

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<sup>1</sup>Our focus in this example is on Albuquerque's inadequate follow-up on its recommendations. As discussed in chapter 2, Los Alamos has been instructed to revise its procedures so that Albuquerque will be responsible for conflict-of-interest determinations.

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## DOE Headquarters' Oversight Has Been Limited

Under DOE's decentralized management style, DOE headquarters' oversight of the Albuquerque Operations Office has been limited. Headquarters oversees its operations offices' contracting activities, including those pertaining to conflicts of interest, primarily through periodic Procurement Management Assistance Reviews (PMAR) and reviews of the operations offices' CPSRS. PMARS—conducted on-site about once every 3 years by a team led by headquarters staff—cover all elements of an operations office's contracting activity, including management and staffing, policies and procedures, source selection and award, employees' standards of conduct, the results of and responses to external management reviews, and the implementation of recommendations resulting from previous PMARS. Headquarters performs "desk reviews" of draft and final CPSR reports to ensure that they cover all required areas, including conflicts of interest.

Our review of a recent PMAR of the Albuquerque Operations Office showed that it did not identify any problems with Albuquerque's oversight of Los Alamos' and Sandia's contracting activities. According to the Director of the Office of Management Review and Assistance at DOE headquarters, the PMAR is a very intense oversight activity, but limited with regard to CPSRS.<sup>2</sup> The PMARS focus primarily on whether the operations offices are performing CPSRS and surveillance reviews. According to the Director, the control program for evaluating the quality of the CPSRS is the headquarters' desk reviews, conducted by his staff. However, when evaluating CPSRS, his staff relies on self-disclosures by the operations offices to identify subcontracting problems.

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## Conclusions

DOE headquarters and the Albuquerque Operations Office have directed little attention to the propriety of how DOE's conflict-of-interest requirements have been implemented. As already discussed in chapter 2, Albuquerque inappropriately delegated its responsibility to review subcontracts for possible conflicts of interest to the research center contractors. Although Albuquerque is now correcting its practices, it is still dependent on the operating contractors to identify subcontracts susceptible to conflicts of interest and to advise those subcontractors that they must submit the relevant information to DOE for a resolution, as required in DOE's policies and procedures. Albuquerque needs to ensure that the contractors carry out these responsibilities, which it can do by

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<sup>2</sup>This Office replaced the Office of Procurement Management Reviews on August 23, 1990.

improving its oversight reviews. Furthermore, until changes are effectively instituted, DOE headquarters needs to be especially attentive to Albuquerque's conflict-of-interest activities in its oversight reviews.

While our review focused only on Albuquerque's activities, the conflict-of-interest oversight activities at the other operations offices may also need to be improved—especially since DOE headquarters generally relies on the operations offices for self-disclosures of subcontracting problems. We believe that DOE headquarters should pay more attention to conflict-of-interest activities regarding subcontracts in its oversight reviews at DOE operations offices.

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## **Recommendations to the Secretary of Energy**

We recommend that the Secretary of Energy direct the Manager of the Albuquerque Operations Office to ensure that (1) Albuquerque's oversight reviews focus on the adequacy of Sandia's and Los Alamos' implementation of conflict-of-interest requirements and (2) operations office officials follow up on research centers' actions to ensure that identified weaknesses are corrected.

We also recommend that the Secretary ensure that the Director of Procurement, Assistance, and Program Management revises DOE headquarters' oversight procedures so that they rely less on self-disclosures by the operations offices to identify problems with the implementation of conflict-of-interest policies and procedures.

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## **Agency Comments**

DOE concurred with our findings and recommendations. According to DOE, Albuquerque's recently completed CPSR at Los Alamos identified problems similar to those discussed in this report and contained recommendations to correct them. DOE also commented that the Manager of the Albuquerque Operations Office will be directed to ensure that weaknesses identified during oversight reviews are corrected.

According to DOE, senior management officials are discussing the problem that headquarters relies on self-disclosures by the operations offices to identify subcontracting problems. However, they have not yet decided on a solution.

# Management Control Problems Need Attention

DOE has developed conflict-of-interest policies and procedures that follow internal control standards for the management of federal agencies. However, we were unable to test how effective they were in practice because the Albuquerque Operations Office had not properly implemented them. Nevertheless, our review of the policies and procedures that were in place indicated two management control problems that need attention. First, Albuquerque does little to ensure that the certifications submitted by subcontractors stating that they have no possible conflicts of interest are reliable. Yet officials rely on these certifications, as permitted by DOE's regulations, to decide whether a conflict of interest exists. In a review of 36 subcontract files at Los Alamos that contained a certification, we found that 12 files also contained other information regarding a possible conflict of interest. Better management controls—such as random verification of the information provided in the certifications against the information in the subcontract files—could be instituted to improve the certifications' reliability. Second, although DOE's policies and procedures require that conflict-of-interest decisions be documented, we found that the files contained limited documentation. Without reliable certifications and more complete documentation, Albuquerque cannot ensure that conflicts of interest are identified and avoided in the subcontracts Los Alamos and Sandia award.

## Purpose of Internal Controls

Internal control systems for the management of federal agencies ensure that programs are consistent with the relevant laws, regulations, or agency goals. Internal controls further ensure that resources are used only for intended purposes and are safeguarded from fraud, waste, and abuse. Good internal controls call for, among other things, explicit policies and procedures describing how operations are to be conducted, the clear assignment of duties and responsibilities, adequate supervision, and proper documentation to show that the agency's operations are in accordance with senior management's direction. For the management of activities concerning conflicts of interest, the overall measure of the adequacy of an internal control system is whether DOE can provide reasonable assurance that conflicts of interest are identified and avoided.

## DOE's Regulations Rely on Subcontractors' Self- Reporting for Identifying Possible Conflict of Interest

DOE's regulations rely on a contractor's or subcontractor's cooperation, judgment, and integrity in providing information on possible conflicts of interest. According to an official in DOE headquarters' Office of Procurement Policy, the regulations were intended to make the subcontractors responsible for identifying possible conflicts of interest. As discussed in chapter 2, before a contract or subcontract is awarded, the contractor must provide either (1) pertinent data on other relevant work in which it is, has been, or will be involved that could have a bearing on a possible conflict of interest or (2) a statement certifying that there is no relevant information bearing on the existence of a conflict. Specifically, DOE's regulations require that the following clause be placed in all proposals for contracts in the categories DOE has identified as particularly susceptible to conflicts of interest:

The offeror shall provide a statement which describes in a concise manner all relevant facts concerning any past, present or currently planned interest...relating to the work to be performed ...and bearing on whether the offeror has a possible organizational conflict of interest.... The offeror may also provide relevant facts that show how its *organizational structure and/or management systems* limit its knowledge of possible organizational conflicts of interest...and how that structure or system would avoid or mitigate such organizational conflict.

According to the regulations, the subcontractor should furnish a list of past, present, and currently planned interests, including (1) the name of the company for which the work was, is being, or will be performed; (2) the nature of the work; (3) the period of performance; and (4) the dollar value of the work. The regulations let the contractor decide which of its other interests are "relevant" or have a "bearing" on a proposed contract.

Under DOE's regulations, if a subcontractor does not disclose the relevant facts or misrepresents them, DOE can impose administrative sanctions. For example, DOE can terminate the contract, change the contract's scope or terms to avoid the conflict, disqualify the contractor from subsequent DOE contracts, or impose civil fines. When there is cause, DOE can refer the matter to the Department of Justice for civil or criminal penalties under other sections of the law.

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## Albuquerque Does Not Ensure That Subcontractors' Certifications Are Reliable

Although Albuquerque and the research centers have relied on subcontractors' self-certifications for conflict-of-interest determinations, these certifications may not always be accurate. Verification of, at a minimum, a random sample of subcontractors' certifications would help Albuquerque ensure that they are more reliable.

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## Certifications Are Not Always Reliable

We reviewed 36 subcontract files at Los Alamos that contained certifications by subcontractors that they knew of no facts relevant to possible conflicts of interest. However, these certifications were not always accurate. In 12 files, we found information that was relevant to possible conflicts of interest. This information, which for the most part was contained in the contract proposals, usually disclosed that the subcontractors were employed by other companies that had subcontracts with Los Alamos. Two examples follow.

- In one case, a former Los Alamos employee had a subcontract, at \$242 per day, to document the operational aspects of a computerized central facility for producing hard copies of data. The consultant certified that he had no possible conflicts of interest. However, our review of the subcontract file showed that this former employee was also an employee of a computer firm that had subcontracts with the research center, totaling approximately \$601,000, to provide consulting and maintenance services for computer hardware and software. Furthermore, the file for the research center's subcontract with the computer firm did not disclose that the firm had a former Los Alamos employee on its staff.

Los Alamos officials acknowledged that a conflict of interest could occur. They now plan to monitor the individual's work closely to ensure that he will not get involved in any decisions for future courses of action concerning the firm's subcontract. Our review of file documents and our discussions with research center officials did not reveal any conclusive evidence that the consultant's work actually overlapped with the firm's work.

- In another case, a consultant had been working with Los Alamos staff on laser physics research since 1984. His contractual rate of pay at the time of our review was \$207 per day. Information in the subcontract file showed that the consultant was also employed during this period by a firm that had contracted with Los Alamos in 1985 to study and design a

laser system. At the end of fiscal year 1989, the firm's contracts with Los Alamos totaled approximately \$879,000. The individual was using the firm's facilities and studying the same type of laser. The subcontract files for both the consultant and the firm designing the laser system contained certifications that there were no conflicts of interest.

Los Alamos officials told us that the consultant had limited involvement with the design project in recent years. Because both the consultant's and the firm's subcontract files lacked documentation showing what services the individual actually performed, we could not tell whether the consultant had influenced—or had been influenced by—the firm's work with Los Alamos.

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### **Albuquerque's Procedures to Verify the Accuracy of Certifications Are Not Effective**

Albuquerque generally has not verified the accuracy of subcontractors' certifications that they know of no relevant facts that could give rise to a possible conflict of interest. As discussed earlier, from April 1989 through January 1990, Sandia officials forwarded 18 possible conflict-of-interest cases to DOE's Albuquerque Operations Office for review. The DOE official responsible for reviewing these subcontracts explained that if the subcontractor provided no data other than a certification—as they did in 12 of the 18 cases forwarded to Albuquerque—he would generally inform Sandia's contracting officials that there was little or no likelihood of a possible conflict of interest. He said that he usually had no basis for questioning a subcontractor's certification, and unless a Sandia official made him aware of relevant data, he took no other steps to obtain additional information from the subcontractor. According to this official, in 1989 management began to focus more on activities pertaining to conflicts of interest, but Albuquerque has not decided on the extent of documentation needed for decisions of no conflict based on subcontractors' certifications.

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### **Options Exist to Improve Information Provided by Subcontractors**

Options exist to ensure that subcontractors' certifications are more accurate. For example, a more careful review of the information subcontractors submit with their work proposals could reveal contradictions with their certifications. Albuquerque officials are concerned, though, that the verification of every certification would burden the staff. As already discussed in chapter 2, Albuquerque estimates that its compliance with DOE's regulations will increase the number of subcontracts that it has to review for conflicts of interest from 18 to about 4,800 each year. At the time of our review, Albuquerque had only 1 staff member who reviewed Sandia's subcontracts for conflicts of interest, whereas

Sandia had 60 staff members (both Albuquerque's and Sandia's staff had other responsibilities). Headquarters and Albuquerque officials agreed that verifying subcontractors' data in all cases would be impractical. However, closer review of even just a random sample of the subcontract files—which might be more feasible—would better ensure that certifications are accurate. Albuquerque officials said that selective verification might be feasible but that this option had not been considered.

The use of administrative sanctions or other penalties could also help ensure that subcontractors submit information and certifications that are complete and accurate. Albuquerque officials said that, to the best of their knowledge, their office had not exercised these options.

## Albuquerque's Documentation of Conflict-Of-Interest Decisions Could Be Improved

DOE requires that conflict-of-interest decisions be documented. However, our review showed that Albuquerque's documentation was limited.

DOE's requirement for documentation is consistent with standards for effective internal control systems, which require that all significant events be documented. Previous work by GAO and by DOE has shown that the documentation of conflict-of-interest decisions was a problem. For example, GAO reported that research centers did not obtain relevant information from contractors before awarding a contract and that Albuquerque's oversight reviews had noted that research centers poorly documented their decisions.

Our present review demonstrated that Albuquerque poorly documented its appraisals of the 18 subcontracts that Sandia forwarded from April 1989 to January 1990. In 13 of the 18 subcontract files, no documents indicated (1) whether Albuquerque officials had even reviewed these cases or (2) how they decided that little or no conflict was likely. Another file was simply annotated to say that there was no conflict, and still another contained a note stating that the proposed scope of work did not present a conflict situation.

In one of the cases not documented, the subcontractor indicated that he had other contracts with Sandia and DOE's Lawrence Livermore Laboratory, as well as with the private sector. Although the DOE reviewing official could not recall reviewing the facts for possible conflicts of interest until we inquired about it, he told us that he did not inform Sandia that it could award the subcontract. Nevertheless, the subcontract was awarded a few days after the data were sent to Albuquerque for review. The Albuquerque official, subsequent to our discussion of the case,

included that subcontract in his March 1990 periodic review and concluded that Sandia should not have awarded the subcontract before DOE approved it.

Albuquerque analyzed in detail three other cases and documented them. According to an Albuquerque official, these cases were reviewed closely because of the data the subcontractors submitted. Albuquerque informed Sandia that it could award two of these subcontracts provided it included clauses restricting future work in the same areas.

In the remaining case, for which the subcontractor provided both a certification and data on his contractual affiliations, Albuquerque instructed Sandia not to award the subcontract. According to Albuquerque's written determination, the awarding of this subcontract would create a possible conflict of interest because of the subcontractor's affiliations, other contracts, and knowledge of proprietary data.

Albuquerque's reviewing official told us that he did not have the time to verify subcontractors' data or to document conflict-of-interest decisions in all cases. Moreover, according to this official, Albuquerque is still debating how to best document decisions.

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## Conclusions

DOE's written conflict-of-interest policies and procedures provide for an internal control system appropriate for ensuring that conflicts of interest are detected in subcontracts at DOE's research centers. While we were unable to test how effective these policies and procedures were in practice because the Albuquerque Operations Office had not properly implemented them, our review of those that were in place indicated that two management control problems need attention. The Albuquerque Operations Office and its research centers have relied extensively on subcontractors to report facts regarding possible conflicts of interest. However, the certifications that subcontractors submit stating that no relevant facts exist concerning possible conflicts of interest may not always be reliable. Therefore, the Albuquerque Operations Office needs to investigate options for improving their reliability. Since the large number of subcontracts awarded by the two research centers annually would make it difficult for DOE to review each subcontract in detail, DOE could randomly review selected submissions. DOE could also impose administrative sanctions on subcontractors that either fail to disclose or misrepresent relevant data. Such enforcement would send a clear signal

to potential subcontractors that DOE plans to improve its review of conflict-of-interest submissions.

The Albuquerque Operations Office also needs to improve its documentation of conflict-of-interest decisions so that it is in accordance with existing policies and procedures. Documentation of important management decisions is a fundamental internal control necessary to ensure that conflict-of-interest determinations are complete and accurate.

Again, as discussed in the previous chapters, our past work indicates that the problems we identified may not be unique to the Albuquerque Operations Office and may possibly exist at other DOE field offices. Thus, it seems prudent for DOE to determine whether these same problems exist at its other operations offices.

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## Recommendations to the Secretary of Energy

We recommend that the Secretary of Energy direct the Manager of the Albuquerque Operations Office to explore options to improve the reliability of the conflict-of-interest information that its research centers' subcontractors submit. In exploring options, Albuquerque should consider reviewing a randomly selected sample of submissions and imposing administrative sanctions on subcontractors that submit incomplete or inaccurate information. We also recommend that the Secretary direct the Manager of the Albuquerque Operations Office—and the managers of its other operations offices, if appropriate—to take the necessary measures to ensure that conflict-of-interest decisions are well documented.

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## Agency Comments

DOE concurred with our findings and recommendations. Along with ongoing initiatives for improvements in the conflict-of-interest area, it will consider options to improve the reliability of the conflict-of-interest information that subcontractors provide. According to DOE, its initiatives include the following:

- DOE has initiated an extensive training program concerning the proper administration of conflict-of-interest policies and procedures for all DOE staff—including operations office staff—involved in conflict-of-interest determinations. The training, when offered, will include guidance on the documentation appropriate for these determinations.
- Forms and instructions, including those used for contractors disclosures or representations, are being revised to ensure clarity and to make other needed improvements.

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