



U.S. Department of Energy
Office of Inspector General
Office of Inspections and Special Inquiries

Inspection Report

Protective Force Contracts at the Oak Ridge Reservation

DOE/IG-0719

February 2006



Department of Energy

Washington, DC 20585

February 2, 2006

MEMORANDUM FOR THE SECRETARY

FROM: 
Gregory H. Friedman
Inspector General

SUBJECT: INFORMATION: Inspection Report on "Protective Force Contracts at the Oak Ridge Reservation"

BACKGROUND

The Department of Energy faces the significant challenge of securing some of this Nation's most sensitive facilities and materials, and doing so within stringent budget constraints. During prior reviews of the Department's Oak Ridge Reservation in Tennessee, which, in part, produces nuclear weapons components and stores special nuclear material, the Office of Inspector General noted that protective force personnel were incurring dramatically increasing amounts of overtime – at significant cost to the Department. Understandably, this trend was exacerbated by the enhanced security posture resulting from the events of September 11, 2001.

In a June 2000 report, we noted that the Department's contract with Wackenhut Services, Inc., the protective force contractor at Oak Ridge then and now, did not provide what we considered to be necessary incentives to reduce or minimize costs. The contract with Wackenhut was a non-standard contract form structured to combine the elements of a time-and-materials type contract with elements of an incentive type contract, characterized as a time-and-materials-award fee contract. The purpose of our inspection was to determine whether the protective force contracts for the Oak Ridge Reservation had been modified to include incentives to reduce overtime.

RESULTS OF INSPECTION

The Department's cost for protective force personnel to provide security at the Oak Ridge Reservation increased from about \$67 million in 2000 to over \$111 million in 2005. A significant portion of this increase was due to protective force overtime. The results of our inspection disclosed that the Oak Ridge protective force contracts did not include incentives for the contractor to reduce overtime; in fact, the contract structure had the opposite effect. Specifically, we found that:

- The protective force contracts provided the contractor with what was, in effect, additional profit from increases in labor hours incurred. Under these contracts, the contractor was supposed to receive its profit through an award fee. However, because the contract labor hour rate provided reimbursement for fixed expenses, the contractor's profit was augmented



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by monies received for hours worked after the fixed expenses were fully recovered. This is commonly referred to as “over recovery of fixed expenses.” Based on the limited information available, we estimated that, for 2005 alone, Wackenhut may receive about \$1.8 million in additional profit from the Y-12 Site Office due to over recovery of fixed expenses.

- The Department may have exceeded its self-imposed limits on contractor profit. When the initial Wackenhut contract was established, the Department applied award fee regulations for cost-plus-award-fee contracts, which require the Department to reduce the available award fee based on profit included in other areas of the contract. Although the Department initially applied these regulations, the available award fee was not appropriately reduced to reflect the over recovery of fixed expenses.
- The overtime premium, the additional 50 percent paid for overtime hours above regular hours, was included in the calculation of available award fee, resulting in an increase of almost \$1 million in the award fee available to Wackenhut for 2005. Whether intended or not, including the overtime premium in the award fee calculations in this manner provides an incentive for contractors to incur large amounts of overtime.
- The contract structure did not include effective incentives to encourage the contractor to reduce the use of overtime. For 2005, the Y-12 Site Office, a major component of the Oak Ridge Reservation, used performance metrics to measure only unscheduled overtime for its protective force personnel. The Oak Ridge Office did not have any specific performance metrics for evaluating contractor overtime.

We observed that the current protective force contracts at the Oak Ridge Reservation expired in December 2005, and that the Department plans to award new protective force contracts using the same structure as the current contracts. We believe that this decision should be further evaluated based on the findings in this review, and, the significant structural change in the protective force posture currently in process within the Department.

We made several recommendations related to our findings and conclusions. One of the primary recommendations was to recoup any over recovery of fixed expenses associated with the Oak Ridge protective force contracts from inception to 2005.

MANAGEMENT REACTION

In responding to a draft of this report, management generally nonconcurred with our findings and recommendations. Management contended that the protective force contract structure did not add profit exceeding the award fee. However, management did acknowledge that administration of changes to the contract may have led to labor rates that were higher than necessary. We believe this is a distinction without a difference. As a practical matter, over recovery of fixed expenses results in additional contractor profit.

Management also informed the Office of Inspector General that it: (1) plans to use reduced overtime rates for unpredicted overtime that will exclude reimbursement for fixed costs; and,

(2) will intensify its contract management to ensure that overtime and contract modifications are adequately monitored. We believe these are positive steps that will, at least in part, address the findings in this report.

Finally, management stated that it does not believe that the Department has any contractual or legal basis for recouping any additional profit paid under the current contracts. Thus, we anticipate no action on the Department's part to recoup the questionable contractor profits identified during this review.

Attachment

cc: Deputy Secretary
Chief of Staff
Administrator, National Nuclear Security Administration
Manager, Oak Ridge Office
Manager, Y-12 Site Office
Director, Policy and Internal Controls Management (NA-66)
Director, Office of Internal Review (CF-1.2)

PROTECTIVE FORCE CONTRACTS AT THE OAK RIDGE RESERVATION

TABLE OF CONTENTS

OVERVIEW

Introduction and Objective 1

Observations and Conclusions 2

DETAILS OF FINDINGS

Background 3

Additional Profit 3

Limit on Profit 4

Overtime Premium 5

Performance Measures 5

Observation 6

RECOMMENDATIONS 7

MANAGEMENT AND INSPECTOR COMMENTS 7

APPENDICES

A. Scope and Methodology 10

B. Management Comments 11

Overview

INTRODUCTION AND OBJECTIVE

The Department of Energy (DOE) mission at the Oak Ridge Reservation requires a paramilitary protective force comprised of several hundred security police officers to safeguard the production and storage of nuclear weapons components, special nuclear material, and other sensitive work. Wackenhut Services, Inc. (Wackenhut) initially provided protective force services for the Oak Ridge Reservation under one contract. However, protective services for the Y-12 National Security Complex were segregated into a separate contract following the establishment of the National Nuclear Security Administration (NNSA). As a result, Wackenhut now provides protective services for the Oak Ridge Reservation under two essentially identical contracts. One contract, with the DOE Oak Ridge Office, covers the Oak Ridge National Laboratory, East Tennessee Technology Park, and the DOE Federal building complex in Oak Ridge. The other contract, with the NNSA Y-12 Site Office in Oak Ridge, covers the Y-12 National Security Complex. The protective force contracts were structured to combine elements of a time-and-materials type contract with elements of an incentive type contract, characterized as a time-and-materials-award fee contract.

In June 2000, an Office of Inspector General (OIG) audit, *Security Overtime at the Oak Ridge Operations Office* (ER-B-00-02), determined that the Oak Ridge Operations Office, now the Oak Ridge Office, had not developed performance measures for reducing protective force overtime. In addition, the audit found that the calculation of the available award fee for the protective force contract resulted in more available award fee for overtime hours than for regular hours. A June 2005 OIG inspection, *Protective Force Training at the Department of Energy's Oak Ridge Reservation* (DOE/IG-0694), noted that protective force personnel at the Oak Ridge Reservation incurred dramatically increased amounts of overtime in the post 9/11 period and that the trend in the use of overtime seemed to be continuing.

The purpose of our inspection was to evaluate the Department's protective force contract management activities, not to review overtime hours charged by individual protective force members. Specifically, the objective of the inspection was to determine whether incentives to reduce overtime for the protective force were included in the protective force contracts for the Oak Ridge Reservation.

OBSERVATIONS AND CONCLUSIONS

The Department's cost for protective force personnel to provide security at the Oak Ridge Reservation increased from about \$67 million for 2000 to over \$111 million for 2005. A substantial portion of this increase was due to protective force overtime. We concluded that the protective force contracts for the Oak Ridge Reservation did not include contractor incentives to reduce overtime; in fact, the contract structure had the opposite effect. Specifically, we found that:

- Modifications to the protective force contracts provided the contractor profit from increases in overtime hours in the post 9/11 environment, as well as profit from an award fee. Based on the limited information available, we estimated that, for 2005 alone, Wackenhut may be paid about \$1.8 million in additional profit by the Y-12 Site Office beyond the award fee.
- The Department may have exceeded its own self-imposed limits on profit.
- The overtime premium, which is the additional 50 percent paid for overtime hours above regular hours, was included in the calculation of available award fee, resulting in an increase of almost \$1 million in the available award fee for 2005 for the Oak Ridge Reservation. Including overtime premium in this manner provides an incentive for contractors to incur large amounts of overtime.
- Performance awards may not effectively incentivize the contractor to reduce the use of overtime.

We observed that the current protective force contracts at the Oak Ridge Reservation were to expire in December 2005, and that DOE planned to award new protective force contracts using the same structure as the current contracts. We believe that this decision should be evaluated based on the findings in this review; concerns regarding the modification of the protective force contracts currently in force; and, significant changes in the protective force posture currently in process within the Department.

Details of Findings

BACKGROUND

The Oak Ridge Reservation protective force contracts combined elements of a time-and-materials type contract with elements of an incentive type contract. DOE used the market force of competition to price the hourly rates and the award fee in the initial contract awarded to Wackenhut in October 1999, per Federal Acquisition Regulation requirements. Oak Ridge attempted to induce all of the offerors, including Wackenhut, to exclude profit from the hourly rates and include it in the available award fee. Wackenhut's proposal indicated that it did not include profit. Earning of award fee was not guaranteed. The contracts were set to expire in December 2004, but were extended without competition until December 2005. The Oak Ridge Office renegotiated the hourly rates for the 2005 extension. However, the Y-12 Site Office did not renegotiate the hourly rates.

Under the protective force contracts, the contractor was reimbursed at a fixed rate for every regular hour worked by the protective force, and was reimbursed at a fixed rate that was 50 percent higher for every overtime hour worked by the protective force. The contracts contained a maximum number of "allowable" hours that could be charged by the contractor each year. The competition requirements induced the contractor to develop hourly rates using the hourly rates paid to the protective force officers and adding agreed-upon rates to cover the contractor's estimated cost for fringe benefits, overhead expenses, and general and administrative (G&A) expenses. Although the contractor submitted cost information, the Department did not validate the accuracy of the information. Pursuant to the contract's original terms, the hourly rates in the contracts have been increased since 1999 to account for increases in protective force pay, as well as increases in certain associated fringe benefits.

ADDITIONAL PROFIT

We found that modifications to the protective force contracts provided the contractor profit from increases in overtime hours in the post 9/11 environment, as well as profit from an award fee. Specifically, the initial hourly reimbursement rates for the protective force contracts were calculated by the contractor in preparing its offer based on the number of hours required by DOE, as well as the contractor's estimate to fully recover all of the contractor's expenses, both variable and fixed, including its overhead and G&A expenses. However, after the award of the initial contract, DOE significantly increased the number of allowable hours, but maintained the same hourly reimbursement rates. In this type of contract, once the contractor has billed DOE enough hours to recoup its fixed expenses, the contractor's profit

increases with each additional hour billed. This condition is referred to as “over-recovery of fixed expenses.” As a practical matter, the over-recovery of fixed expenses is additional profit for the contractor.

The allowable hours under the Oak Ridge contracts significantly increased through modifications to the initial contract. For example, in 2005 the allowable regular hours were 27 percent more than the allowable regular hours in 2000, and the overtime hours were 104 percent more than in 2000. This resulted in a significant increase in the maximum amount the contractor could bill DOE, from \$67 million in 2000 to over \$111 million in 2005.¹ We believe that the pricing of these contract modifications is not fully consistent with the Department of Energy Acquisition Regulation, Section 915.903 (f), which states that a detailed analysis of profit should be completed when the dollar amount of contract modifications is very significant, or the Federal Acquisition Regulation, which requires the contracting officer when pricing contract modifications to obtain cost and price data (or identify an exception to obtaining it) and perform cost and price analysis, including profit analysis, in sufficient detail to determine that the price of the modification is fair and reasonable.

Based on the limited information available on the contractor’s cost estimates for 2005, we estimated that the Y-12 Site Office may pay the contractor about \$1.8 million more than the contractor’s cost for security police officers for 2005. This profit would be in addition to the available award fee. In contrast, the Oak Ridge Office required the contractor to submit revised hourly rates for 2005 that would only reimburse the contractor’s estimated costs. We were unable to determine whether these revised rates accurately reflected the contractor’s cost, as the cost information collected by the Oak Ridge Office was limited. In addition, the contractor’s cost information was not available to us for the years prior to 2005. Therefore, we were unable to quantify the amount of additional profit that may have been included in the prior years of the Y-12 Site Office and Oak Ridge Office contracts.

LIMIT ON PROFIT

We found that the Department may have exceeded its own self-imposed limit on profit. The Oak Ridge protective force contracts do not fit any of the standard contract types, as the contracts combine elements of a time-and-materials contract with elements of a cost-plus-award fee type contract. When the initial contract

¹ These figures include labor costs of approximately \$54.7 million in 2000 and approximately \$85.7 million in 2005.

was established, DOE applied Department of Energy Acquisition Regulation, Section 915.404-4-72, “Special considerations for cost-plus-award-fee contracts,” which requires that the available award fee be reduced based on profit included in other areas of a contract. As noted earlier in this report, the hourly rates in the initial Wackenhut contract excluded all profit. In accordance with the regulation above, DOE set the potential award fee at the maximum allowable by this regulation. However, DOE appears to have exceeded this self-imposed regulatory limit by significantly increasing the hours charged to the contract, especially the overtime hours, while maintaining the same hourly rates.

Y-12 Site Office officials acknowledged that the over recovery of fixed expenses was likely occurring, but they did not characterize the over recovery as profit. Therefore, they did not adjust the award fee. In addition, during our inspection, a DOE procurement official made the determination that the regulation above did not apply to the contracts because the contracts were hybrid contracts and not cost-plus-award-fee contracts. Therefore, the limits on profit were self-imposed limits rather than regulatory required limits.

OVERTIME PREMIUM

We found that the overtime premium, which is the additional 50 percent paid for overtime hours above regular hours, was included in the calculation of available award fee. We believe that the practice of including overtime premium in the calculation of the contractor’s award fee has the effect of incentivizing contractors to incur large amounts of employee overtime. The OIG previously reported this issue in its June 2000 audit report. DOE calculated the available award fee based on a percentage of proposed labor costs, including the overtime premium. Since overtime hours were priced at a 50 percent higher rate than regular hours, the contracts included 50 percent more available award fee for overtime hours than for regular hours. For 2005, the award fee available to the contractor was \$8.9 million. Of this, almost \$1 million was based on the overtime premium that the contractor could receive from the Department.

PERFORMANCE MEASURES

We found that performance awards may not effectively incentivize the contractor to reduce the use of overtime. We determined that the contractor’s available award fee for 2005 was over \$3 million higher than the available award fee for 2000, primarily as a result of increased overtime. The Federal Acquisition Regulation, Section 16.601(b)(1) advises agencies that for time-and-materials contracts “appropriate Government surveillance of contractor

performance is required to give reasonable assurance that efficient methods and effective cost controls are being used.” This requirement is necessary because a time-and-materials contract makes a labor hour a unit of sale, but does not make efficiency or successful performance a condition of payment. These features reward a contractor for inefficiency, since the more hours the contractor uses the more profit the contractor makes.

In 2005, the Y-12 Site Office developed a performance measure to reduce unscheduled overtime at the Y-12 National Security Complex to an average program annual rate of no more than 15 percent. Although this was a good first step, the performance measure addressed only unscheduled overtime, and not planned overtime. We did not find a performance measure regarding planned overtime.

For the Oak Ridge Office, DOE implemented general performance criteria that directed the contractor to “Execute the day-to-day Protective Services Program in a safe, cost effective manner . . .” However, the criteria did not include specific performance measures regarding the use of overtime.

In addition to the lack of effective performance measures to control use of overtime, DOE allowed the contractor to exceed the recommended 60 hour per week limit on overtime set by the DOE’s *Protective Force Program Manual*. In May 2002, DOE approved a variance for the Oak Ridge Reservation that allowed protective force officers to work up to 72 hours in any work week. This variance remains in effect.

OBSERVATION

We observed that the current protective force contracts at the Oak Ridge Reservation expire in December 2005, and that DOE plans to award new protective force contracts using the same structure as the current contracts. This is of concern in view of our findings regarding the structure and past administration of the protective force contracts. In addition, current acquisition regulations do not specifically address a time-and-materials with award fee type contract, such as the Oak Ridge protective force contracts. Instead, the regulations contain separate sections addressing either time-and-materials type contracts or cost-plus-award fee type contracts, neither of which are applicable to the Oak Ridge protective force contracts according to procurement officials. We were not able to identify any additional guidance developed by DOE regarding non-standard type contracts, such as the Oak Ridge protective force contracts.

DOE management officials at the Oak Ridge Office acknowledged the weaknesses in the current contract structure that allowed the contractor the potential to receive profit from the over-recovery of fixed expenses. They advised that they would attempt to include provisions in the new protective force contracts at the Oak Ridge Reservation to compensate for these weaknesses.

RECOMMENDATIONS

We recommend that the Manager, Y-12 Site Office, and the Manager, Oak Ridge Office:

1. Recoup any “over recovery of fixed expenses” associated with the Oak Ridge protective force contracts from inception to 2005;
2. Ensure that the forthcoming protective force contracts for Oak Ridge address possible changes to the scope of the contracts; and,
3. Ensure that overtime premium is not included in the calculation of available award fee for the forthcoming protective force contracts for Oak Ridge.

We recommend that the Director, Office of Procurement and Assistance Management, in coordination with the Deputy Director, Office of Acquisition and Supply Management:

4. Develop and issue guidance on administering non-standard contracts, such as the Oak Ridge Reservation protective force contracts; and,
5. Review the appropriateness of using the current contracting structure for future contracts at the Oak Ridge Reservation and other locations.

MANAGEMENT AND INSPECTOR COMMENTS

Management’s comments are summarized below and included in their entirety as Appendix B of this report.

Recommendation 1

The DOE Oak Ridge Office and NNSA non-concurred with the recommendation and were of the opinion that there was no contractual or legal basis for recoupment under the fixed pricing arrangement.

Inspector Comment: We believe this situation makes it all the more important that guidance on administering non-standard contracts be issued to ensure that future contract modifications are not administered in a similar fashion.

Recommendation 2

The DOE Oak Ridge Office non-concurred with the recommendation; however, management's comments indicated that the recently issued Request for Proposals for the new contracts included language indicating that reduced overtime rates, which will exclude reimbursement for fixed costs, will be used for unpredicted overtime hours.

NNSA concurred with the recommendation and stated that contract management plans will be developed to ensure that overtime and contract modifications are adequately monitored to prevent the over-recovery of fixed expenses.

Inspector Comment: We consider management's actions to be responsive to the recommendation.

Recommendation 3

The Oak Ridge Office and NNSA non-concurred with the recommendation. The Oak Ridge Office and NNSA indicated that they work closely with the contractor to monitor overtime and that no regulatory requirement exists to eliminate the overtime premium from award fee calculations. The Oak Ridge Office also indicated that award fee on the overtime premium may be reasonable for the associated increment of risk to a contractor. In addition, the Oak Ridge Office believed that total exclusion from the available award fee may not necessarily be prudent because the contractor may seek the same end result via a higher overall award fee percentage. NNSA believed that the Government, not the contractor, was controlling the contractor's use of overtime. Consequently, NNSA did not agree that calculating available award fee by including consideration for overtime costs incentivizes the contractor to incur overtime or that performance awards should emphasize the contractor's reduction of overtime.

Inspector Comment: We disagree that the award fee calculation does not incentivize the use of overtime. Because the Government does not control the contractor's overtime on a daily basis, the structure of the contract and award fee is the Government's primary management tool for controlling overtime. We believe that removing the premium portion of overtime from the award fee

calculation would remove an incentive to the contractor to keep overtime levels high.

Recommendation 4

The DOE Director, Office of Management, and NNSA non-concurred with the recommendation, stating that sufficient guidance exists for administering hybrid contracts and that the issues raised stemmed from not adhering to the existing guidance for pricing of contract modifications, rather than from the lack of guidance.

Inspector Comment: We agree that policy exists regarding contract modifications, some of which is discussed on page 4 of this report. Despite the existence of these regulations, numerous knowledgeable contracting officers from 2000 to 2005 did not identify the need to review the rates used for the contract modifications made continually throughout this period. As Oak Ridge may not be the only site with these issues, we believe it would be prudent to distribute guidance addressing the implementation of the existing policy.

Recommendation 5

The DOE Director, Office of Management, concurred with the recommendation and stated that the overall contract structure was reviewed and determined to be appropriate. A special overtime rate was added to address unpredicted overtime.

NNSA non-concurred with the recommendation, as the contract structure had already been reviewed as a result of discussions held regarding the draft report. The contract structure was determined to be appropriate with the inclusion of strong contract management plans. Both the DOE Director, Office of Management, and NNSA indicated that the contract structure did not cause an over-recovery of fixed expenses or additional profit, rather the administration of changes to the contract may have led to labor rates that were higher than necessary.

Inspector Comments: We consider management's actions to be responsive to the recommendation.

Appendix A

SCOPE AND METHODOLOGY

The fieldwork for this inspection was conducted in August and September 2005. The inspection included reviewing the request for proposals and resulting contract awarded to Wackenhut, as well as subsequent modifications to the Wackenhut contract. The inspection also included:

- Reviewing audit reports prepared by the Defense Contract Audit Agency regarding Wackenhut;
- Reviewing the Federal Acquisition Regulation and the Department of Energy Acquisition Regulation; and,
- Interviewing Federal and contractor personnel.

Also, pursuant to the “Government Performance and Results Act of 1993,” we examined performance measurement processes as they relate to overtime incentives.

This inspection was conducted in accordance with the “Quality Standards for Inspections” issued by the President’s Council on Integrity and Efficiency.

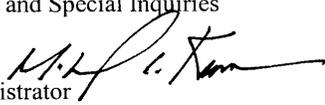


Department of Energy
National Nuclear Security Administration
Washington, DC 20585



JAN 06 2006

MEMORANDUM FOR Alfred K. Walter
Assistant Inspector General
for Inspections and Special Inquiries

FROM: Michael C. Kane 
Associate Administrator
for Management and Administration

SUBJECT: Comments to Protective Force Contracts Draft
Inspection Report; S05IS043/2005-35129

The National Nuclear Security Administration (NNSA) appreciates the opportunity to review the Inspector General's (IG) draft inspection report, "Protective Force Contracts at the Oak Ridge Reservation." We understand that, based on work that was done in June of 2000 on protective force overtime and again in June of 2005 on increased overtime, the IG wanted to determine whether incentives to reduce overtime for the protective force were included in the protective force contracts for the Oak Ridge Reservation. We further understand that this Inspection was out of the norm in that it was based on work that had already been completed.

NNSA does not agree with the conclusions (Observation) nor with the recommendations as they are written. As a result of our participation with other affected offices in discussions related to the original draft inspection report, we provided some detailed and comprehensive background and advice on the actions taken at Oak Ridge and the underlying Federal procurement policy constructs. While the IG did take our advice on some subjects, there are still areas that we feel are inaccurate--either explicitly or by inference--that should be restated in the draft inspection report.

General Comments:

As we have discussed with your office, the contract structure did not cause an over-recovery of fixed expenses or additional profit. The administration of changes to the contract, which did not adhere entirely to Federal Acquisition Regulation requirements for pricing contract modifications, may have led to labor rates that were higher than necessary.

Overtime has been at elevated levels for several years because it has taken the Government time to determine the impact of the new security environment, develop an implementation approach using infrastructure changes, and increase security. We believe that the Government--not the contractor--is controlling the contractor's use of overtime. Consequently, we do not agree that calculating available award fee including consideration for overtime costs incentivizes the contractor to incur overtime. And we do not agree that performance awards should emphasize the contractor's reduction of overtime.

Specific Comments:

Page 3, BACKGROUND, first paragraph, replace sentences two through four with:

"DOE used the market force of competition to price the hourly rates and the award fee in the initial contract, awarded to Wackenhut in October 1999, per Federal Acquisition Regulation requirements. OR attempted to induce all of the offerors, including Wackenhut, to exclude profit from the hourly rates and include it in available award fee. Earning of award fee was not guaranteed."

Page 3, BACKGROUND, second paragraph, replace last three sentences with:

"The competition requirements induced the contractor to develop hourly rates using ... Although the contractor submitted cost information, the Department did not validate the accuracy of the information since the construct of the award was that competitive market forces would drive the successful offeror offer its lowest price. Per the contracts' original terms, the hourly rates ...

Page 3, ADDITIONAL PROFIT, first paragraph, revise second sentence by adding "by the contractor in preparing its offer" after "calculated".

Page 3, ADDITIONAL PROFIT, first paragraph, replace fourth sentence with:
"Assuming fixed expenses remained fixed over the period, once the contractor has billed DOE enough hours to recoup its fixed expenses, the contractor's profit increases with each additional hour billed."

Page 4, ADDITIONAL PROFIT, first paragraph, replace last sentence with:
"We believe the pricing of these contract modifications is not fully consistent with the Federal Acquisition Regulation, which requires the contracting officer when pricing contract modifications to obtain cost and pricing data (or identify an exception to obtaining it) and perform cost and price analysis (including profit analysis) in sufficient detail to determine the price of the modification is fair and reasonable."

3

Pages 5 and 6, OVERTIME PREMIUM AND PERFORMANCE MEASURES--we do not have specific changes since we believe that the premise of both these sections is flawed, that is, we believe that the Government--not the contractor--is controlling the contractor's use of overtime. Consequently, we do not agree that calculating available award fee including consideration for overtime costs incentivizes the contractor to incur overtime. We do not agree that performance awards should emphasize the contractor's reduction of overtime.

As you know, the nature of the work under the protective services contract necessitates routine use of overtime. That use was contemplated during the solicitation and evaluation phases of the competition. After contract award, DOE issued new mandates and significant increases in work occurred. DOE, its major prime contractors, and Wackenhut collaborated on impacts to staffing and costs. In many cases, especially in FY 2005, DOE's prescribed implementation milestones did not allow time for new personnel to be hired, trained, cleared, and Human Reliability Program (HRP) approved prior to staffing a particular post. The result was that the contractor was required to staff posts using employees already in possession of the requisite security clearance and HRP approval. The award fee process and its Performance Evaluation Plan clearly evaluated the contractor on major performance objectives. Since the inception of the contract, DOE staff assigned to the contract have effectively monitored the contract as a whole using contract deliverables and the Performance Evaluation Plan, which included specific objectives related to reduction of overtime. DOE considers the contractor's performance and staffing management excellent as reflected in performance evaluations assessed twice per year.

Pages 6, OBSERVATION--We do not have specific changes since we believe that the premise of this section is flawed, that is, we believe the contract structure and the regulations are sufficient. The weaknesses the IG found were the result of contract administration errors.

The NNSA does not agree that the recommendations are appropriate as they are written and further the recommendations, as they pertain to NNSA, are directed to the wrong management official. Our comments to the recommendations are as follows:

1. **“Recoup any “over recovery of fixed expenses” associated with the Oak Ridge protective force contracts from inception to 2005.”**

Non-concur

There is no legal requirement for the contractor to refund any money. The corollary is also true--if the contractor loses money on a contract, there is no legal requirement for the Government to refund any money. The

recommendation, as written, ignores the basic fundamentals that the Protective Force contracts are not cost reimbursable contracts, positive cost variances do not convert to profit, and overtime cost is an acceptable fee base element. Also, there is no legally binding option in the former or current Protective Force contracts to recoup any instances of “over recovery of fixed expenses;” just as there is no mechanism for Wackenhut (WSI) to recoup any loss it incurs in the non-recovery of such expenses, whether fixed or variable.

2. **“Ensure that the forthcoming protective force contracts for Oak Ridge address possible changes to the scope of the contracts.”**

Concur

The current solicitation for protective force services has been reviewed to ensure that the statement of work adequately describes the required services. The necessity for overtime has been reviewed as well as the contract type and the current solicitation structure will be maintained. However, contract management plans will be developed prior to award to ensure that overtime and contract modifications are adequately monitored to prevent the over-recovery of fixed expenses.

3. **“Ensure that overtime premium is not included in the calculation of available award fee for the forthcoming protective force contracts for Oak Ridge.”**

Non-concur

No regulatory requirement exists to eliminate the overtime premium from the award fee calculations. If the contracts were pure cost reimbursement we would include it in the fee calculation. There is no reason to eliminate it here. The premium also has a large impact on the amount of available award fee. Currently the contractor is averaging 29% of their direct labor hours in O/T. They are hiring additional guards and striving to lower the amount of O/T, however, significant reductions in the amount of O/T are not expected in the near future. Note that the contractor does not get fee on materials, consistent with a T&M contract. Using the current ratio of straight time/over time costs, taking O/T out of the calculation will reduce the fee by a little over 20%.

A reasonable amount of overtime will decrease the overall cost to the government. The contract was awarded with the assumption that

approximately 20% of the hours would be O/T. It jumped considerably after 9/11, but both the contractor and the site offices have been working to reduce it and will continue to work the issue. The contractor conducts reoccurring training using O/T after the normal shift is completed. Two hours of training using O/T costs the equivalent of 3 hours of straight time. The time required for a guard to be relieved, travel to the training facility, and return to duty takes more than an hour. When adding the cost of bringing in an additional guard for relief (using straight time), it costs more than to pay the existing guard O/T.

Another example of a good use of O/T is at shift change. There is an increased requirement for guards to man additional portals at shift change (a 1-2 hour surge twice a day) which is easily managed by having some guards extend their shift. It is impracticable to replace 40 hours a week of O/T with one additional guard. It represents 2 hours a day, 5 days a week, at 4 locations. It takes approximately one year from the time a new guard is hired until he/she is fully trained. The government must pay both salary and training costs for this time. Although the guard is not in training full time during this year, until they are fully trained there are limited positions that they can fulfill. If the guard in training does not already possess a "Q" clearance, their work availability is even further reduced. It normally takes more than a year before a new guard has a significant impact on reducing O/T. In the interim the government pays the costs of the new guard and must utilize existing guard through O/T to handle all of the activities the new hire is unable to do.

Examples of WSI past and current efforts to reduce overtime experience that are not mentioned in the report include:

- Shortly after assumption of the Protective Services Contract, WSI requested and received funding to hire 23 Protective Force personnel to staff positions that had been exclusively worked on overtime by the previous contractor.
- Conducted two major overtime studies in 2000-2001 to identify overtime drivers and formulate a Protective Force Management Plan to reduce overtime rates. This plan was briefed to us and WSI was praised for its proactive efforts in this area. As a result, overtime was reduced from approximately 47 percent at the inception of the contract to the mid-20 percent range in September 2001. As of the end of Fiscal Year 2005, the overtime rate was approximately 25 percent, even though significant requirements have been imposed since Fiscal Year 2000.

6

- Requested and received authority to arm trained and qualified Security Police Officers awaiting clearances and HRP approval, and to use them in Perimeter Sector Posts/Patrol positions; thereby freeing-up cleared/HRP personnel to work in the Protected Area and reduce overtime.
- Hired 80 Protective Force personnel to meet additional post 9/11 security requirements.
- Negotiated a change to the bargaining unit sick leave policy resulting in reduced sick leave and backfill overtime. This resulted in not only a lower equitable adjustment after the collective bargaining unit agreement changes, but also the use of direct productive labor hour overtime to offset increased post 9/11 overtime drivers.
- Hired 31 Protective Force personnel to meet additional 2003 DBT security requirements.
- Hired 5 Training Instructors, built an outdoor range, and proposed an indoor range to be built in Fiscal Year 2006 to increase class sizes for both new hires and current employees' weapons qualifications in order to reduce the amount of training performed on overtime because of range limitations.
- Hired 15 Protective Force personnel to support increased D&D work.
- Hired 5 Protective Force personnel to support new research facilities.
- Hired 75 Protective Force personnel to meet additional 2005 DBT security requirements.
- Requested funding to hire over 200 additional Protective Force personnel in the next three years to meet additional security requirements currently being identified by BWXT Y-12, L.L.C. and YSO.

For the recommendations directed towards the Director, Office of Procurement and Assistance Management, in coordination with the Deputy Director, Office of Acquisition and Supply Management, the recommendation, as it relates to NNSA should read; "NNSA's Head of the Contracting Activity should..."

1. **"Develop and issue guidance on administering non-standard contracts, such as the Oak Ridge Reservation protective force contracts."**

7

Non-concur

Sufficient policy and guidance exist to administer this type (or any other type) of hybrid contract. Contract management plans will be developed to specifically address the issues of overtime utilization and contract modifications in addition to other contract administration issues. The issues raised in this audit were not the result of a lack of policy or inappropriate policy.

2. **Review the appropriateness of using the current contracting structure for future contracts at the Oak Ridge Reservation and other locations.**

Non-concur

The contract structure has already been reviewed as a result of discussions held regarding the draft audit. The contract structure was determined by the Contracting Officer and program officials to be appropriate with the inclusion of strong contract management plans. The acquisition strategy for the new security contracts has been approved, the Request for Proposals has been issued and proposals are due January 6, 2006. No additional review will be conducted at this time

Should you have any questions about this response, please contact Richard Speidel, Director, Policy and Internal Controls Management.

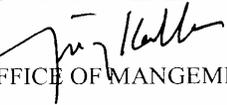
cc: William Brumley, Y-12 Site Office Manager
Robert Braden, Senior Procurement Executive
Karen Boardman, Director, Service Center



Department of Energy
Washington, DC 20585

DEC 23 2005

MEMORANDUM FOR ALFRED K. WALTER
ASSISTANT INSPECTOR GENERAL
FOR INSPECTIONS AND SPECIAL INQUIRIES
OFFICE OF INSPECTOR GENERAL

FROM: INGRID KOLB 
DIRECTOR, OFFICE OF MANAGEMENT

SUBJECT: Draft Inspection Report on "Protective Force Contracts at the
Oak Ridge Reservation"

Thank you for your December 9, 2005, memorandum in which you asked the Office of Procurement and Assistance Management for comments on the subject draft inspection report, which included two recommendations (4 and 5) directed to that office.

As a result of the Office of Procurement and Assistance Management's participation with other affected offices in discussions related to the earlier version of the draft inspection report, that office became involved in supporting the Office of Inspector General (OIG) efforts to review the Protective Force Contracts at Oak Ridge. It provided background and advice on the actions taken at Oak Ridge and the underlying Federal procurement policy constructs. While the OIG accepted advice on some subjects, there are still areas that we feel should be restated in the draft inspection report, and they are addressed below under Specific Comments.

General Comment:

As discussed with your office, the contract structure did not cause an over-recovery of fixed expenses or additional profit. The administration of changes to the contract, which did not adhere entirely to Federal Acquisition Regulation requirements for pricing contract modifications, may have led to fixed labor rates that were higher than necessary.

Specific Comments:

Page 3, BACKGROUND, first paragraph, replace sentences two through four with:
"DOE used the market force of competition to price the hourly rates and the award fee in the initial contract, which was awarded to Wackenhut in October 1999, per Federal Acquisition Regulation requirements. DOE attempted to induce all of the offerors, including Wackenhut, to exclude profit from the hourly rates and include it in available award fee. Earning of award fee was not guaranteed."

Page 3, BACKGROUND, second paragraph, revise last three sentences as follows: "The original competition requirements induced the contractor to develop hourly rates using the hourly rates paid... Although the contractor submitted cost information, the Department did not validate the accuracy of the information since the construct of the



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award was that competitive market forces would force the successful offeror to offer its lowest price. Per the contract's original terms, the hourly rates ...

Page 3, ADDITIONAL PROFIT, first paragraph, revise second sentence by adding "by the contractor in preparing its offer" after "calculated".

Page 3, ADDITIONAL PROFIT, first paragraph, replace fourth sentence with:
"Assuming fixed expenses remained fixed over the period, once the contractor has billed DOE enough hours to recoup its actual (versus previously estimated) fixed expenses, the contractor's actual (versus previously estimated) profit increases with each additional hour billed."

Page 4, ADDITIONAL PROFIT, first complete paragraph, replace last sentence with:
"We believe the pricing of these contract modifications was not fully consistent with the Federal Acquisition Regulation, which requires the contracting officer when pricing a contract modification to obtain cost and pricing data (or identify an exception to obtaining it) and perform cost and price analysis (including profit analysis) in sufficient detail to determine the price of the modification is fair and reasonable."

Pages 5 and 6, OVERTIME PREMIUM AND PERFORMANCE MEASURES: We do not have specific changes since we believe that the premise of both these sections is flawed, that is, we believe that the Government, rather than the contractor, is the primary driver of the contractor's use of overtime. Consequently, we do not agree that calculating available award fee based in part on overtime costs motivates the contractor to incur overtime. As you know, the nature of the work under the protective services contract necessitates routine use of overtime. That use was contemplated during the solicitation and evaluation phases of the competition. After contract award, DOE significantly increased the contract's scope. In many cases, DOE's prescribed implementation milestones did not allow time for new personnel to be hired, trained, cleared, and Human Reliability Program approved. The result was that the contractor was required to staff posts using employees already in possession of the requisite security clearances. The award fee process and its Performance Evaluation Plan clearly evaluated the contractor on major performance objectives. DOE staff continually monitored the contract, and DOE determined the contractor's performance and staffing management were excellent. That determination was reflected in performance evaluations that were performed twice per year.

Page 6, OBSERVATION: We do not have specific changes since we believe that the premise of this section is flawed, that is, we believe the contract structure and the regulations are sufficient. The weaknesses the OIG found in the pricing of the contract modifications were the result of contract administration that did not fully comply with the applicable regulations.

Page 7, Recommendations: **Recommendation 4.** Non-concur. Sufficient guidance exists for administering this type (or any other type) of hybrid contract. The issues raised in this audit did not result from a lack of guidance. They resulted from not adhering to applicable guidance (for pricing of contract modifications) and from the OIG's disagreement with applicable guidance (for calculating available award fee).

Page 7, Recommendations: **Recommendation 5.** Concur. The appropriateness of the current contract structure was reviewed as a result of discussions held regarding the draft

audit. The overall contract structure was determined to be appropriate (although a special unpredicted overtime rate was added to address the potential unintended consequences of unpredicted overtime), the acquisition strategy for the new security contracts was approved, and the Request for Proposals issued. Proposals are due January 6, 2006. Since this is a competitive procurement, we expect the market forces of competition to compel the offerors to submit their best prices.

Thank you again for the opportunity to provide comments on the subject report.

(2-92)
United States Government

Department of Energy
Oak Ridge Office

memorandum

DATE: December 21, 2005

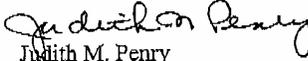
REPLY TO
ATTN OF: AD-423:Jackson/FM-733:Miller

SUBJECT: **COMMENTS ON DRAFT OFFICE OF INSPECTOR GENERAL INSPECTION
REPORT**

TO: Richard H. Hopf, Director, Office of Procurement and Assistance Management,
MA-60/FORS

Attached are the Oak Ridge Office's comments on the draft Office of Inspector General (OIG) inspection report entitled, "Protective Force Contracts at the Oak Ridge Reservation." Please include these comments in your overall response to the OIG.

If there are any questions regarding these comments, please contact either me at (865) 576-4446 or Judith Wilson at (865) 576-0786.


Judith M. Penry
Chief Financial Officer

Attachment

cc w/attachment:
M. L. Riglii, MA-61/FORS
M. R. Thornock, SC-31
M. L. Lewis, CF-1.2
D. F. Thress, OS-20
J. S. Wilson, AD-42

Attachment

OAK RIDGE OFFICE COMMENTS
DRAFT OFFICE OF INSPECTOR GENERAL INSPECTION REPORT
ENTITLED
“PROTECTIVE FORCE CONTRACTS AT THE OAK RIDGE RESERVATION”

General Comments:

The United States Department of Energy (DOE) Oak Ridge Office (ORO) takes exception to the Office of Inspector General (OIG) inspection report related to the Oak Ridge contract DE-AC05-00OR22690 for protective services with Wackenhut Services, Inc. We noted several inaccuracies and misconceptions related to the fixed-price nature of a time-and-material contract type expressed in the subject report.

Contrary to OIG opinion, ORO works closely with the contractor to monitor overtime and other management issues. Routine monthly overtime reports provide information by job categories for trend analysis. The monthly cost management reports are scrutinized for discrepancies by DOE staff. Labor and fringe rates changes are made only as necessitated by the Service Contract Act/collective bargaining agreement changes in accordance with the contract terms. Indirect rates were audited prior to the execution of the contract modification which extended the contract for the one-year period in 2005.

Our responses to the recommendations of the OIG are as follows:

That the Manager, Oak Ridge Office:

Recommendation 1: *Recoup any “over recovery of fixed expenses” associated with the Oak Ridge protective force contracts from inception to 2005.*

NON-CONCUR

The recommendation is contrary to the foundations of time-and-materials pricing and the terms of the contract. The Government accepted the rates for overhead which were fixed and incorporated into the proposed prices. The contract was not structured to be a cost reimbursement type contract, as previously recommended by the OIG, which would allow for retroactive adjustments in response to actual cost experience. The Government has no right to recover positive or negative variances from the proposed amounts when using a fixed unit time-and-materials pricing arrangement unless defective pricing or some other type of prohibited activity was involved (it was not). There is no contractual or legal basis for recoupment.

Recommendation 2: *Ensure that the forthcoming protective force contracts for Oak Ridge address possible changes to the scope of the contracts.*

NON-CONCUR

The Source Evaluation Board (SEB) addressed both planned and unpredicted overtime in the Request for Proposals which was issued November 22, 2005. Specific language was included for the offerors to specify the percentage of normal overtime they propose to use. If that level is exceeded, reduced unpredicted overtime rates which have excluded all fixed costs from the indirect rate, will take effect.

Recommendation 3: *Ensure that overtime premium is not included in the calculation of available award fee for the forthcoming protective force contracts for Oak Ridge.*

NON-CONCUR

The nature of security at a facility responsible for protection of nuclear materials and information requires the use of overtime for unforeseen and unpredictable requirements. The use of overtime is a more cost effective method than asking a contractor to propose prices and personnel to cover any possible contingency. Overtime, and its legally mandated premium, is an allowable cost. Award fee on the overtime premium may be reasonable for the associated increment of risk to a contractor. Total exclusion from available award fee may not necessarily be prudent because the contractor may seek the same end result via a higher overall award fee percentage. ORO has not found any regulation that would require such elimination on the premium portion. The acquisition strategists on the SEB, who are knowledgeable of the entire scenario and its associated tradeoffs, have addressed overtime and fee issues.

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