



OFFICE OF INSPECTOR GENERAL  
U.S. Department of Energy

# ASSESSMENT REPORT

DOE-OIG-20-49

July 2020

**AUDIT COVERAGE OF COST  
ALLOWABILITY FOR NUCLEAR WASTE  
PARTNERSHIP, LLC  
FROM OCTOBER 1, 2014,  
TO SEPTEMBER 30, 2017,  
UNDER DEPARTMENT OF ENERGY  
CONTRACT NO. DE-EM0001971**



**Department of Energy**  
Washington, DC 20585

July 13, 2020

MEMORANDUM FOR THE ACTING MANAGER, CARLSBAD FIELD OFFICE

FROM: John E. McCoy II  
Deputy Assistant Inspector General  
for Audits  
Office of Inspector General

SUBJECT: INFORMATION: Assessment Report on “Audit Coverage of Cost Allowability for Nuclear Waste Partnership, LLC from October 1, 2014, to September 30, 2017, Under the Department of Energy Contract No. DE-EM0001971”

**BACKGROUND**

Nuclear Waste Partnership, LLC (NWP) has managed and operated the Waste Isolation Pilot Plant (WIPP) under a contract with the Department of Energy since October 1, 2012. WIPP is part of the Department’s Office of Environmental Management and was built to safely dispose of the Nation’s defense-related transuranic radioactive waste. The following table illustrates the costs incurred and claimed by NWP under Contract No. DE-EM0001971 from October 1, 2014, through September 30, 2017.

Year	Incurred and Claimed Costs
October 1, 2014, through September 30, 2015	\$224,189,088
October 1, 2015, through September 30, 2016	\$264,695,346
October 1, 2016, through September 30, 2017	\$228,956,600
<b>Total</b>	<b>\$717,841,034</b>

As an integrated management and operating contractor, NWP’s financial accounts were integrated with those of the Department, and the results of transactions were reported monthly according to a reciprocal set of accounts. NWP is required by its contract to account for all funds advanced by the Department annually on its Statement of Costs Incurred and Claimed, to safeguard assets in its care, and to claim only allowable costs. Allowable costs are incurred costs that are reasonable, allocable, and allowable in accordance with the terms of the contract and applicable cost principles, laws, and regulations.

To help ensure that only allowable costs were claimed by the Department's integrated contractors and make efficient use of available resources, the Office of Inspector General, the Department's Office of Acquisition Management, the Chief Financial Officer, and the Contractor Internal Audit Council, implemented a Cooperative Audit Strategy (Strategy). The Strategy places reliance on the contractors' internal audit function (Internal Audit) to provide audit coverage of the allowability of incurred costs claimed by the contractors. Consistent with the Strategy and as required by its contract, NWP maintains an Internal Audit activity with responsibility for conducting audits, including audits of the allowability of incurred costs. The Strategy also requires that audits performed internally must, at a minimum, meet the standards prescribed by the Institute of Internal Auditors. In addition, NWP is required to conduct or arrange for audits of its subcontractors when costs incurred were a factor in determining the amount payable to a subcontractor.

The objectives of our assessment from October 1, 2014, through September 30, 2017, were to determine, based on our limited sampling, whether:

- Internal Audit conducted cost allowability audits that complied with professional standards and could be relied upon;
- NWP conducted or arranged for audits of its subcontractors when costs incurred were a factor in determining the amount payable to the subcontractor; and
- NWP resolved questioned costs and internal control weaknesses affecting allowable costs that were identified in prior audits and reviews.

## RESULTS OF ASSESSMENT

During our assessment, nothing came to our attention to indicate that the allowable cost-related audit work actually performed by NWP's Internal Audit from October 1, 2014, through September 30, 2017, could not be relied upon. We conducted our assessment as a review attestation. A review is substantially less in scope than an examination or audit. Our review was limited and would not necessarily have disclosed all internal control deficiencies that may have existed at the time of our review. Based on our limited sampling, we did not identify any material internal control weaknesses with allowable cost audits, which generally met the International Standards for the Professional Practice of Internal Auditing prescribed by the Institute of Internal Auditors. From October 1, 2014, through September 30, 2017, NWP Internal Audit identified a total of \$19,268,758 in questioned costs through various audits, of which \$17,523,807 have not been resolved.

Category	Questioned Costs	Resolved	Remaining Unresolved
Internal Audit Reports from October 1, 2014, through September 30, 2017	\$19,268,758	\$1,744,951	\$17,523,807
<b>Breakdown of Unresolved Questioned Costs</b>			
Indirect Rates			\$16,568,499
False and Inflated Temporary Living Claims			\$916,046
Unallowable Overtime Recorded for Time During Work-Related Training			\$39,262
<b>Total Unresolved</b>			\$17,523,807

In addition, we determined that NWP’s Internal Audit had not always conducted, or arranged for, audits of its subcontractors when costs incurred were a factor in determining the amount payable to the subcontractor as required. Specifically, our review identified that NWP’s Internal Audit had not ensured \$14,236,607 of subcontractor incurred costs from October 1, 2014, through September 30, 2017, had been audited. Further, NWP was not timely in closing out internal control weaknesses identified by Internal Audit that could have an impact on cost allowability.

#### Unaudited Subcontractor Incurred Costs

NWP’s Internal Audit had not always conducted, or arranged for, audits of its subcontractors when costs incurred were a factor in determining the amount payable to the subcontractor as required. Specifically, NWP’s contract contained DEAR Clause 970.5232-3(c), (DEAR Clause) which required that the contractor (NWP), with respect to any subcontracts where, under the terms of the subcontract, costs incurred are a factor in determining the amount payable to the contractor of any tier, to either conduct an audit of the subcontractor’s costs or arrange for such an audit to be performed by the cognizant government audit agency through the contracting officer. Our review found that NWP Internal Audit used a risk-based approach to auditing its subcontractors. Specifically, NWP’s *Procurement Instructions* manual required an audit of:

- All Cost-Reimbursable Subcontracts;
- Large Business Time-and-Materials subcontracts with incurred costs greater than \$1.5 million for the fiscal year; and
- Small Business Time-and-Materials subcontracts with incurred costs greater than \$1 million for the fiscal year.

All subcontracts were included in an annual sample during Internal Audit’s Fiscal Year Allowable Cost Audit. The sample methodology included sampling 68<sup>1</sup> accounts payable transactions from all of the subcontracts. If a Cost-Reimbursable Subcontract, a large business

<sup>1</sup> Population of accounts payable invoices each fiscal year under review: 2015 – 4,260; 2016 – 4,939; 2017 – 3,892

Time-and-Materials subcontract over \$1.5 million per year, or a small business Time-and-Materials subcontract over \$1 million per year did not have at least one transaction in the sample of 68 accounts, a payable transaction would be selected for inclusion in the sample transactions. As a result, more than 68 accounts payable transactions could be reviewed. If issues are identified, NWP Internal Audit will expand on the testing to include all transactions for that particular subcontract for the fiscal year under review. However, with this type of risk-based approach, an NWP subcontractor may not receive an audit of any of its incurred costs, leaving unallowable costs by those subcontractors unidentified.

In fact, our review found that NWP:

- Had 142 subcontractors with incurred costs valued at \$128,982,040 from October 1, 2014, through September 30, 2017;
- Had selected 41 of those subcontractors with incurred costs valued at \$114,475,433 and audited \$20,196,319 worth of account transactions of these incurred costs; and
- Had not audited any account transactions related to 101 subcontractors with incurred costs. The value of the unaudited subcontractors was \$14,236,607 from October 1, 2014, through September 30, 2017. Accordingly, we consider these subcontractors with \$14,236,607 incurred costs during this period unresolved pending audit.

In our prior assessment report, *Audit Coverage of Cost Allowability for Nuclear Waste Partnership, LLC, During Fiscal Years 2013 and 2014 Under Department of Energy Contract No. DE-EM0001971* (OAI-V-16-12, August 2016), we did not take exception to NWP's Internal Audit risk-based approach. However, unlike in our previous review, in this review we performed work designed to ensure that NWP had adequate audit coverage of subcontractors with incurred costs, and quantified the amount of subcontractors that had not been audited during the 3-year period of review. We became concerned when we identified that 101 out of 142 subcontractors with incurred costs valued at \$14,236,607 had not been audited.

These unaudited subcontractor incurred costs occurred because the Carlsbad Field Office Contracting Officer approved NWP's Internal Audit's risk-based approach for auditing subcontracts. The approval established thresholds for auditing subcontractors incurred costs. According to an NWP official, while not every subcontractor got audited on a yearly basis, this risk-based audit methodology ensured a reasonable approach for subcontractor auditing based on available audit resources. However, nearly all of the 101 unaudited subcontracts with incurred costs were Time-and-Material subcontracts under \$1 million, which were considered to be lower risk based on NWP Procurement's thresholds for auditing Time-and-Material subcontracts. We disagree with this categorization. Specifically, in the 2017 NWP allowable cost audit, NWP Internal Audit identified and questioned potentially fraudulent subcontractor incurred costs of \$916,046 on a single Time-and-Material subcontract, putting the low-risk categorization into question. According to the Carlsbad Field Office, this particular Time-and-Material subcontract was audited due to meeting the high-risk \$1 million threshold, though this type of fraud can occur on any subcontract with incurred costs, even those considered low-risk. In addition, any

risk-based approach to auditing subcontractors with incurred costs must still meet the requirements of the DEAR Clause to either conduct an audit of its subcontractors with incurred costs, or arrange for such an audit to be performed. We determined that NWP's Internal Audit's risk-based audit methodology did not meet the DEAR Clause audit requirement since there were 101 unaudited subcontracts with incurred costs valued at \$14,236,607.

In addition, the past two peer reviews conducted in 2011 and 2016 by the Department Contractors Internal Audit Directors identified several opportunities for improvement in NWP's Internal Audit Department, including addressing its limited resources. For example, the 2011 peer review stated NWP Internal Audit needed to consider hiring an entry level auditor or contracting for audit services. Likewise, the 2016 peer review stated the need to reevaluate the benefits of additional audit staff resources. Despite these recommendations, during our review, the Internal Audit staff still consisted of only two individuals. According to an NWP Internal Audit official, some of the responsibilities taking up resources of the NWP Internal Audit were shifted to other people. However, the official also stated that in order to get audit coverage of all subcontractors, as required by the DEAR Clause, more staff would be needed. As a result of not complying with the DEAR Clause requirement, there was an increased risk that unallowable costs would not be identified, such as the potentially fraudulent subcontractor incurred costs of \$916,046 related to false and inflated temporary living claims identified by NWP Internal Audit.

### **Internal Control Weaknesses**

NWP was not timely in closing out internal control weaknesses identified by NWP Internal Audit that could have an impact on cost allowability. The OIG is required to report on any unresolved internal control weaknesses that could impact cost allowability. During our review, we found that NWP had identified a number of internal control weaknesses that could impact cost allowability. Specifically:

- NWP had not arranged for an external audit firm to audit subcontractor indirect rates. This internal control weakness originally had not been closed out because the Department had not approved a Purchase Agreement request for external audit support. The Purchase Agreement request was not approved because the cost estimate for performing the external audit support was considered unreasonably high. However, in April 2019, Defense Contract Audit Agency began auditing the indirect rates. As a result, according to a NWP Internal Audit official, the external audit support would not be needed. However, the internal control weaknesses would remain open until Defense Contract Audit Agency completed the subcontractor indirect rate audits.
- NWP's internal controls did not ensure that overtime costs for defined training and education activities were not charged to the Department's contract unless they had been pre-approved by the Department. Not all of the recommended actions to fix these weaknesses had been completed because the Carlsbad Field Office Contracting Officer has requested additional information from NWP.

## RECOMMENDATIONS

We recommend that the Acting Manager, Carlsbad Field Office, direct the Contracting Officer to ensure that NWP:

1. Make a determination regarding the allowability of questioned costs identified in this report and recover those costs determined to be unallowable;
2. Provide assurance that the reviews performed by NWP Internal Audit are sufficient to ensure that all unallowable costs are identified and, where possible, recovered;
3. Reevaluate their subcontract audit strategy and the resources allocated to the audit function to ensure audit coverage of subcontracts; and
4. Resolve all internal control weaknesses identified in this report that have an impact on cost allowability.

## MANAGEMENT RESPONSE AND AUDITOR COMMENTS

Management generally concurred with our recommendations and indicated that corrective actions are planned to address the issues identified in the report.

Management's comments are included in Attachment 3.

## SCOPE AND METHODOLOGY

This assessment was performed from October 2018 to May 2019 on the Carlsbad Field Office and NWP offices, located in Carlsbad, New Mexico. The assessment was limited to Internal Audit's activities, audit coverage, and resolution of questioned costs and control weaknesses that impact costs claimed by NWP on its Statement of Costs Incurred and Claimed from October 1, 2014, through September 30, 2017. The assessment was conducted under the Office of Inspector General Project Number A19AL002. To accomplish our objectives, we:

- Assessed allowable cost audit work conducted by NWP Internal Audit that included a review of allowable cost audit reports, workpapers, auditor qualifications, auditor independence, audit planning, including risk assessments and overall internal audit strategy, and compliance with applicable professional auditing standards;
- Conducted interviews with NWP Internal Audit and the Carlsbad Field Office Contracting Officer;
- Reviewed policies, procedures, and practices to identify subcontracts that required interim or post award audit coverage;

- Retested a sample of incurred cost transactions tested by Internal Audit in its allowable costs audits. We judgmentally selected a sample of transactions that Internal Audit reviewed from FY 2015 through FY 2017. Because the sample selection was not statistical, the results and overall conclusions are limited to the transactions retested and cannot be projected to the entire population of transactions.
- Assessed the status of subcontract audit coverage; and
- Evaluated resolution of questioned costs and control weaknesses affecting cost allowability that were identified in prior audits and reviews conducted by the Office of Inspector General, Internal Audit, and other organizations.

We conducted our assessment in accordance with generally accepted government auditing standards for attestation engagements. Those standards require that we plan and perform the review to obtain sufficient, appropriate evidence to provide a reasonable basis for our conclusions based on our objectives. We believe that the evidence obtained provides a reasonable basis for our conclusions based on our objectives. A review is substantially less in scope than an examination or an audit where the objective is an expression of an opinion on the subject matter, and accordingly, for this review, no such opinion is expressed. Additionally, because our review was limited, it would not necessarily have disclosed all internal control deficiencies that may have existed at the time of our review. We conducted a limited assessment of computer-processed data relevant to our assessment objectives and deemed the data to be not sufficiently reliable for the purposes of our assessment. As a result, we relied on additional data from original sources to make our assessment conclusions.

An exit conference with Management was conducted on June 3, 2020.

Attachments



### Summary of Questioned Costs for Nuclear Waste Partnership, LLC

Category	Questioned Costs	Resolved	Remaining Unresolved
Internal Audit Reports from October 1, 2014, through September 30, 2017	\$19,268,758	\$1,744,951	\$17,523,807
<b>Breakdown of Unresolved Costs:</b>			
Indirect Rates			\$16,568,499
False and Inflated Temporary Living Claims			\$916,046
Unallowable Overtime Recorded for Time During Work-Related Training			\$39,262
<b>Total Unresolved</b>			\$17,523,807

**PRIOR REPORT**

*Audit Coverage of Cost Allowability for Nuclear Waste Partnership, LLC, During Fiscal Years 2013 and 2014 Under Department of Energy Contract No. DE-EM0001971* (OAI-V-16-12, August 2016). This assessment noted that nothing came to our attention to indicate the allowable cost-related audit work performed by Nuclear Waste Partnership, LLC Internal Audit for fiscal years 2013 and 2014 could not be relied on. We did not identify any material control weaknesses with the cost allowability audits, which generally met International Standards for Professional Practice of Internal Auditing prescribed by the Institute of Internal Auditors. Internal Audit questioned \$392,468, all of which had been resolved.

## MANAGEMENT COMMENTS

DOE XXX

United States Government

Department of Energy

**memorandum**Carlsbad Field Office  
Carlsbad, New Mexico 88221

DATE: March 20, 2020

REPLY TO  
ATTN OF: CBFO:OOM:WB:GS:20-0008:UFC 2300.00

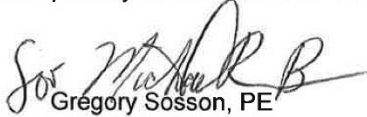
SUBJECT: Draft Assessment Report on "Audit Coverage of Cost Allowability for Nuclear Waste Partnership, LLC from October 1, 2014, to September 30, 2017, Under the Department of Energy Contract No. DE-EM0001971"

to: Bruce Miller, Assistant Inspector General for Audits and Inspections, Office of Inspector General

This letter provides the Carlsbad Field Office (CBFO) response to the OIG Draft Assessment on "Audit Coverage of Cost Allowability for Nuclear Waste Partnership, LLC from October 1, 2014, to September 30, 2017, under the Department of Energy Contract No. DE-EM0001971". The objectives of this assessment were to determine, based on our limited sampling, whether:

- Internal Audit conducted cost allowability audits that complied with professional standards and could be relied upon;
- NWP conducted or arranged for audits of its subcontractors when costs incurred were a factor in determining the amount payable to the subcontractor; and
- NWP resolved questioned costs and internal control weaknesses affecting allowable costs that were identified in prior audits and reviews

The CBFO appreciates the OIG' assessment of our controls to ensure only allowable costs were recorded and paid. As noted in our attached comments, we generally concur with the OIG recommendation. Our comments are designed to ensure the report is technically correct and that past practices accepted by the OIG are considered particularly as it relates to the acceptability of "Risk Based Auditing".



Gregory Sosson, PE  
Acting Manager  
Carlsbad Field Office

## Attachment

cc:  
L. Jackson, EM \*ED  
K. Lackman, CBFO ED  
J.R. Stroble, CBFO ED  
C. Gadbury, CBFO ED  
W. Bauer, CBFO ED  
P. Hester, NWP ED  
D. Arvin, EMCBC ED  
J. Brownlee, EMCBC ED

CBFO OM File  
CBFO M&RC

\*ED denotes electronic distribution

AttachmentCarlsbad Field Office Comments on Draft Report  
Project Code: A19AL002Section: RESULTS OF ASSESSMENT

**P. 3: Comment 1:** The first sentence of the first paragraph states that “In addition, we determined that NWP’s Internal Audit had not always conducted, or arranged for, audits of its subcontractors when costs incurred were a factor in determining the amount payable to the subcontractor as required.”

**CBFO Response to Comment 1:** Our Procurement organization is responsible for making other arrangements for auditing of subcontracts. For this reason, it would be more technically accurate to state “In addition, we determined that NWP had not always conducted, or arranged for, audits of its subcontractors when costs incurred were a factor in determining the amount payable to the subcontractor as required.” For the same reason, the next sentence in the paragraph should read “Specifically, our review identified that NWP had not ensured \$14,236,607 of subcontractor incurred costs from October 1, 2014 through September 30, 2017 had been audited.” Again, for the same reason, the first sentence of the second paragraph should read “NWP had not always conducted, or arranged for, audits of its subcontractors when costs incurred were a factor in determining the amount payable to the subcontractor as required.”

Moreover, we feel that the “goal posts” have been moved on the acceptability of “Risk Based Auditing.” The Office of Inspector General (OIG) audit report titled Audit Coverage of Cost Allowability for Nuclear Waste Partnership, LLC during Fiscal Years 2013 and 2014 under Department of Energy Contract No. DE-EM0001971 (report number OAI-V-16-12 dated August 2016) stated the following:

Based on our assessment, nothing came to our attention to indicate that the allowable cost-related audit work performed by NWP’s Internal Audit for FYs 2013 and 2014 could not be relied upon. We did not identify any material internal control weaknesses with the cost allowability audits, which generally met the International Standards for the Professional Practice of Internal Auditing prescribed by the Institute of Internal Auditors. Furthermore, while NWP’s Internal Audit did not perform individual audits of each subcontractor due to staffing limitations, it performed statistical sampling of all subcontractor purchase order transactions in its testing of allowable costs.

NWP’s Internal Audit also performed sample testing of purchase order transactions for all subcontractors with incurred costs over \$1 million. We did not identify any material internal control weaknesses with audit coverage of subcontractor costs. During FYs 2013 and 2014, NWP’s Internal Audit identified \$392,468 in questioned costs, all of which had been resolved.

The risk-based subcontract audit methodology used was not new and was thought to be acceptable based on the results of previous IG reviews. Limited resources is the main reason for using a risk-based approach for auditing of subcontract costs. The risk-based approach ensures that high risk subcontract costs are covered every year and that low risk/low dollar subcontracts are audited through statistical sampling. Even though lower risk/low dollar subcontracts may not specifically be audited in a given year, there is an equal chance every subcontract could be chosen in the statistical sample. The NWP low dollar time and material subcontracts generally include small or no cost reimbursable elements.

**P. 4: Comment 2:** The first sentence of the first paragraph on page 4 states “All other subcontracts are statistically sampled annually during Internal Audit’s Fiscal Year Allowable Cost Audit”.

**CBFO Response to Comment 2:**

The sentence should be modified to read, “All subcontracts are statistically sampled annually during Internal Audit’s Fiscal Year Allowable Cost Audit.” Internal Audit’s testing methodology for subcontract costs includes statistical sampling of all subcontract costs where every subcontract, no matter the type, has an equal chance of being included in the testing. The statistical sample is pulled first. In addition, Internal Audit tests all subcontracts with incurred costs for the fiscal year equal to or greater than one million dollars no matter the type (e.g., fixed price, cost reimbursable, time and material, etc.). Internal Audit also performs additional judgmental sampling depending on potential issues identified during the audits (e.g., other subcontracts with temporary living costs reimbursements when issues with temporary living costs reimbursements have been found on a subcontract). Internal Audit also expands testing when issues are identified to ensure other subcontracts do not have the same issues.

**P. 4: Comment 3:** The sentence in the third paragraph of page 4 that states: “Specifically, in the 2017 NWP allowable cost audit, NWP Internal Audit identified and questioned potentially fraudulent subcontractor incurred costs of \$916,046 on a single Time-and-Material subcontract, putting the low risk categorization into question.”

**CBFO Response to Comment 3:**

This sentence is misleading. The potential fraud identified was not on a subcontract that was considered to be low risk. The potential fraud was discovered on a subcontract that was considered to be high risk due to the cost incurred for the fiscal year being greater than one million dollars. The use of this as an example would indicate that risk-based auditing does in fact work. The potential fraud of \$916,046.45 is made up of costs that were incurred during Fiscal Years 2015, 2016, 2017, and 2018. The potential fraud was identified on 47 invoices totaling \$8,632,858.04. It is noted that the potential fraud was committed by individuals that intended to deceive and hide/cover-up their activities by submitting supporting documentation that appeared to be valid.

**P. 5: Comment 4:** The first bullet on Page 5 and the first bullet under the "MONETARY IMPACT REPORT" which states "NWP had not arranged for an external audit firm to audit subcontractor indirect rates needs to be updated".

**CBFO Response to Comment 4:**

NWP has arranged for audits of the first tier subcontractor's subcontract indirect rates. The audits are pending the availability of the external auditing firm (e.g., the external auditing firm has to work the audit into their schedule). In addition, the DCAA has completed the audits for the first tier subcontractor and, as a result, \$904,163.11 of the questioned indirect costs have been cleared.

**P. 5: Comment 5:** The third bullet on page 5 and the third bullet of the Monetary Impact Report that states that "NWP Legal Services had not periodically reviewed the Terms of Engagement to ensure compliance with contract requirements, nor had they followed all federal laws related to submittal and approval of invoices for payment" .

**CBFO Response to Comment 5:**

This sentence should be removed as all of the findings for the Legal Services Audit 17NWP04 have been closed. NWP Legal Counsel had a discussion with the DOE Carlsbad Field Office (CBFO) Legal Counsel about the revised Legal Management Plan. As a result of that discussion, the CBFO Legal Counsel sent an e-mail to NWP's Legal Counsel stating that the updated Legal Management Plan should be tabled until the CBFO requests the plan to be updated and submitted for approval.

The DOE agrees with the recommendations provided within the draft report and corrective actions will be developed and completed on or before September 30, 2020. Please contact Wendy Bauer, Contracting Officer, at (208) 351-4638 if you have any questions or comments concerning the report.

## **FEEDBACK**

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

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