

**Statement of Joan B. Woodard
Executive Vice President and Deputy Director
Sandia National Laboratories**

**United States Senate
Committee on Energy and Natural Resources
May 18, 2004**

SUMMARY OF MAJOR POINTS

- Sandia National Laboratories cares very strongly about the small business community. Sandia has an excellent track record in small business contracting. Small businesses are vital partners in achieving our missions.
- The new policy guidance that prevents the Department of Energy (DOE) from including subcontracts placed by Management and Operating contractors in the Department's small business performance totals presents many difficulties. The National Laboratories Improvement Council, representing all 16 DOE labs, raised concerns about this policy.
- The new policy creates a misleading measure of DOE's true small business performance.
- It is not clear that the new policy truly serves the interests of small businesses.
- The new policy has the potential to weaken or even destroy the Government-Owned, Contractor-Operated (GOCO) contracting model used by DOE and its predecessors for more than 50 years.
- DOE cannot dramatically increase its small business prime contracts with its established business model. To accomplish that, DOE would have to break its facility M&O contracts into smaller contractual units.
- DOE is encouraging its program offices to break out requirements from existing facility management contracts in order to provide small-business prime contracting opportunities for the Department.
- This practice may ultimately destroy the existing accountability structure that holds a single integrating M&O contractor responsible.
- The preferred remedy urged by the National Laboratories Improvement Council would be to reinstate the earlier policy that allowed M&O contractors' small business subcontracts to count toward the Department's goal.
- As an alternative remedy, Federally Funded Research and Development Centers (FFRDCs)—which are recognized in the Federal Acquisition Regulations as having a “special relationship to the Government”—should be excepted from the policy.

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INTRODUCTION

Mr. Chairman and distinguished members of the committee, thank you for the opportunity to testify. I am Joan Woodard, Executive Vice President and Deputy Director of Sandia National Laboratories. Sandia is a multiprogram national security laboratory managed and operated for the National Nuclear Security Administration (NNSA) of the U.S. Department of Energy (DOE) by Sandia Corporation, a subsidiary of the Lockheed Martin Corporation.

The purpose of this hearing is to evaluate the implications of the policy prohibiting DOE from including in the Department's small business performance totals subcontracts placed by its Management and Operating (M&O) contractors. This new policy reverses previous policy articulated by the Office of Federal Procurement Policy (OFPP) in 1991. In my view, the new policy results in a misleading representation of DOE's true small business performance. I am also concerned that it has the potential to negatively impact institutional management and mission performance at DOE's Federally Funded Research and Development Centers (FFRDCs).

We at Sandia National Laboratories care very strongly about the small business community. They are vital partners in achieving our DOE missions. Many of our small business suppliers are locally based and contribute significantly to the economic well-being of our region. We have been very innovative with programs to optimize their contracting opportunities. And we do not believe the new policy truly serves the interests of small businesses.

SMALL BUSINESS CONTRACTING AT SANDIA

Sandia National Laboratories has an excellent track record in small business contracting. We are proactive in cultivating small suppliers. We don't passively wait for small businesses to come to us. Our supplier development programs offer mentoring, business training, and technical as well as business assistance. Many of our executives and procurement professionals are active in

the small business community. We seek out small, small disadvantaged, women-owned, HUB zone, veteran-owned, and service-disabled veteran-owned suppliers to compete for our contracts. Consequently, our small business programs yield good results. (Sandia's small business programs and initiatives are described in detail in Appendix A.)

As required by law, Sandia National Laboratories' management and operating contract includes a small business subcontracting plan. Socioeconomic subcontracting goals are negotiated annually with NNSA/DOE and become part of our M&O contract. DOE evaluates our actual performance against those goals in its annual assessments of Sandia's performance.

We usually meet or exceed the annual small business goals that DOE sets for us. In fiscal year 2003 we awarded \$459 million to small businesses in 94,000 procurement actions—53 percent of our total commitments of \$866 million. We awarded \$89 million to small disadvantaged businesses, topping the goal at 10.2 percent of our procurement budget. Women-owned commitments were \$69 million or 7.9 percent, and in fiscal year 2004 we are on track to hit 10 percent. Bottom line: every year, Sandia National Laboratories places well over 50 percent of its procurement dollars with small businesses.

IMPACT OF THE POLICY CHANGE

By excluding Sandia's excellent small business results (and those of other M&O contractors), DOE's true small business performance is grossly understated. In 1999, prior to the policy change, DOE met its Small Business Administration (SBA) goal of 16.7 percent with 18 percent small-business participation. In 2000, when the change was implemented, the figure dropped to around 3 percent. Although SBA adjusted DOE's goal downward to 5 percent, DOE is now well short of its target. And it is now in the unfair position of having to meet a goal that is based on a percentage of the total value of its prime contracts without being able to include the small business portion of all its prime contracts.

Is this what the law intended? The language of 15USC644(g) states that the "goal for participation by small business concerns shall be established at not less than 23 percent of the total value of all prime contract awards for each fiscal year." Subcontracts do indeed constitute "participation by small business" in the prime contracts with which they are associated. You don't have to be the prime contractor to participate in a prime contract. However, SBA's inter-

pretation of the statute is that only contracts awarded directly by the agency may be counted toward the agency's assigned goal.

In order to comply with this policy, DOE is compelled to take small business contracts that in the past would normally be placed by the M&O contractors and award them directly from the agency. The plan is that DOE will novate or assign the contracts back to the M&O contractors to administer after they are signed.

The National Laboratories Improvement Council (NLIC)—a forum of the sixteen DOE FFRDCs created to promote “laboratory management excellence for the U.S. Department of Energy”—raised objections to this plan in 2002 in a letter to DOE's chief financial officer [Appendix B]. NLIC identified several “serious contract management and operational problems” with the novation concept, which I will paraphrase:

- Will the vendor's performance (good or bad) be imputed to the M&O contractor in DOE's assessment process?
- Will the M&O contractor be forced to bear the costs for vendor claims and liabilities?
- Can the M&O contractor (a private entity) administer contracts that use federal terms and conditions in novated contracts as opposed to industrial standard terms and conditions?
- Will the M&O contractor have the authority to execute contract modifications and extensions, and if so, will the socioeconomic credit accrue to DOE or to the M&O?
- Will the M&O contractor be exposed to liability, fines, penalties, etc. for work done under permits, regulatory notices, and orders (including Price-Anderson) by the vendor?

In addition to these contract management issues identified by NLIC, we are also concerned that the new policy may negatively impact mission performance. One concern is timeliness: Federal agency procurements take much longer to place. Mission performance may be delayed by the longer procurement cycle. The M&Os' industrial/commercial terms and conditions (as augmented by required flow-down clauses) permit faster placement. Disputes and protests that can delay or stop a program are handled more expeditiously as well.

Another concern is control over requirements: The M&O will have less say in the formulation of the contract's scope of work and less flexibility to adjust the scope of work to changing

needs. Consequently, the negotiated contract may not be fully responsive to mission requirements.

My biggest concern with the new policy is that it destroys the chain of accountability for facility management performance. You can't fairly hold the prime contractor accountable for the overall management and operation of a facility—including security, safety, health, and environmental compliance—when it does not have the hire-and-fire authority over the subcontractors at the site. If we can't choose our vendors, we can't be confident that we can control them.

Here's an analogy that illustrates the problem this situation presents: If you were having a house built, you would almost certainly work through a general contractor who would hire the subs, integrate the work, resolve any difficulties along the way, and achieve the result you envision. You would not presume to hire the subcontractors yourself and then turn them over to him to supervise. Most general contractors would not accept such an arrangement because it would saddle them with accountability without control.

At Sandia, we have already seen problems emerge with implementation of the new policy. Two of our procurements were transferred to DOE so that they could get the benefit of the small business credit. This created confusion with the contractors over whom they were really working for and who was defining the deliverables.

Another contract posing difficulties involves the design of a water system at Sandia National Laboratories' Tonopah Test Range in Nevada under DOE's initiative to place Facilities and Infrastructure Revitalization Project (FIRP) contracts. We provided the technical requirements to DOE, and DOE negotiated the procurement. It took longer to place than we would expect for a contract of that size and type. DOE has not novated the contract to us, and we are not sure that they intend to do so. Decisions are being made by DOE administrators rather than our own facility engineers, who would normally work closely with the Sandia procurement officer. DOE management of a construction contract on assets under the management of the M&O creates authority and accountability confusion with regard to environment, safety, health, and security issues as well as performance and acceptance.

MEASURING TRUE SMALL BUSINESS PARTICIPATION

There is major flaw in the contract-and-novate plan that falls into the “emperor’s new clothes” category: It is likely to be a zero-sum game. When DOE awards a small-business contract that previously would have been awarded to a small business anyway (by the M&O contractor), there is no net gain for small businesses. Unless DOE is able to convert a good portion of the M&Os’ large-business subcontracts into small-business prime contracts, there will be little net gain for the small business community. I doubt that there is much potential for this, because the M&O contractors are already trying to maximize their small business awards. Indeed, local and regional small businesses may actually lose contracts because federal agencies are required to conduct competitions on a nationwide scale. An existing supplier based in New Mexico or a neighboring state could lose out to a small business based thousands of miles away.

If the real goal is to increase small business’s share of contracting in DOE programs, then approaches other than the contract-and-novate stratagem must be developed. We strongly support the federal government’s policy to optimize small business participation in federal contracts. Elements of Sandia’s outreach programs described in Appendix A of this statement could be applied at other DOE locations, and even by the agency itself, to increase small business participation across the board. There is no reason the M&O contractors and the Department can’t work together to make true net gains for the small business community, and in fact we are doing so.

But how will DOE know that it is making progress? A fundamental management principle is that you must have valid metrics to know how well you are doing. Unfortunately, we know that the new metric is a misleading representation of small business participation. The small business rate reported to SBA can rise without a real increase in net small business contracting.

One alternative measure would be the total value of contracts awarded to small businesses by DOE, the prime contractors, and subcontractors. This would be a much more meaningful indicator. It would show the volume of business actually received by small business elements, not just the prime contract component. The difficulty with this alternative is that the data get harder to collect the further down the chain you go. Consequently, DOE would have to develop a better data collection system and a reliable small business contract information system.

Another alternative measure would be the use of econometric models that quantify the economic impact of prime contract dollars in a given geographical region. These models generally determine a multiplier that can be applied to the prime contract value to yield the total economic impact to the region. These models are somewhat complicated, due to the multiplier differences in payroll dollars and dollars spent on materials and other subcontracts, but they do provide a very direct measure of the economic value to the communities in which DOE operations reside. Several M&O contractors utilize these models currently and periodically publish official reports.

An alternative measurement system for small business contracting performance could be offered in parallel with the SBA-reported figure as a means to offer a more accurate representation of small business contracting performance for those who may be interested in that information.

GOCO CONTRACT MODEL IN JEOPARDY

The new policy has the potential to weaken or even destroy the Government-Owned, Contractor-Operated (GOCO) contracting model that has been used by DOE and its predecessors for more than 50 years. There is no mathematically possible way for DOE to meet the 23 percent target of 15USC644(g) without breaking the facility M&O contracts into smaller pieces. Although the fiscal year 2004 goal for DOE is only 5.06 percent, we believe the intent is to make progress toward the 23 percent government-wide goal every year. DOE cannot approach the 23 percent target with its established business model.

If DOE ultimately breaks apart some or all of its facility M&O contracts, it will have to assume the integrating role now performed by the M&O contractors. It is hard to imagine that a reputable industrial corporation or academic institution would accept the risk and responsibility for managing and operating a facility as a whole when it does not have general procurement authority for the goods and services required for that mission. Returning to my analogy of building a house, it would be as if you had to act as your own general contractor. Most homeowners don't have the requisite knowledge of the building trades or the management skills to do this successfully. Similarly, DOE does not have the in-house technical and managerial expertise to run high-technology multiprogram laboratories on its own. Realizing this, DOE's predecessors

wisely chose to contract for those responsibilities from among the nation's leading industrial firms and research universities.

I suppose it would be possible for DOE to take the existing M&O contracts for its FFRDCs and evolve them over time into suites of smaller contracts awarded to unrelated entities, many of which would be small businesses. But by doing so, it would destroy the existing accountability structure. What will happen if there is a security incident, or a safety problem, or misuse of government property, or an environmental violation? Will DOE be able to hold anyone accountable, or will the contractors trade accusations of blame? And more importantly, who is going to develop the corporate policies and apply the corporate discipline across the facility to prevent such incidents from happening in the first place? DOE nuclear facilities are being held to a much more rigorous Design Basis Threat (DBT) than they were in the past. You need a single responsible and accountable contractor with general authority if you want to address the DBT and other security, safety, and environmental issues effectively.

The scenario I have outlined here is not so far-fetched as it might sound. In fact, DOE is actively encouraging its program offices to break out requirements from existing facility management contracts to provide small-business prime contracting opportunities for the Department. DOE has even created an annual "Small Business Breakout Award" which it presents to the program office that pursues this most aggressively.

RECOMMENDATIONS

My statement has described several troubling implications and concerns regarding the new policy and its potential impact, many of which I share with the managements of other DOE facilities as represented through the National Laboratories Improvement Council (NLIC). How to resolve these concerns is primarily a question for Congress to decide; I offer the following recommendations for consideration.

- The National Laboratories Improvement Council (NLIC) urged reinstatement of the earlier OFPP policy that allowed M&O contractors' small business subcontracts to count toward the Department's goal. We regard this recommendation as the preferred solution.

- If reinstatement of the earlier policy is denied, the Department of Energy should develop an alternative measure of small business contracting participation, based on a full accounting of small business contracts and subcontracts, or on an economic analysis of regional economic impact, or some other legitimate method, to be published as supplementary information.
- DOE and its M&O contractors should continue to work together to increase small business participation at all levels of contracting through small business development and outreach programs deployed throughout all Department elements.
- The Federal Acquisition Regulations (Part 35.017) recognize that Federally Funded Research and Development Centers (FFRDCs) have a “special relationship to the Government” and enjoy “access, beyond that which is common to the normal contractual relationship, to Government and supplier data” and to other resources of the sponsoring agency. Consequently, “the FFRDC is required to conduct its business in a manner befitting its special relationship with the Government.” Because FFRDCs have a unique, close, and long-term relationship with a federal agency, it would seem appropriate to include their small business contracting results with those of the sponsoring agency. FFRDCs are a unique and very limited class; thus, any exception to the new policy for them would not apply to M&O contractors generally.
- Alternatively, excluding FFRDCs from federal agencies’ procurement baselines, as the Small Business Administration allowed NASA to do with its Jet Propulsion Laboratory prior to 1998, would also solve the problem. This would have the effect of removing FFRDC management contracts from the denominator when calculating an agency’s small business prime contracting rate.

Mr. Chairman, this concludes my statement.

APPENDIX A

SANDIA NATIONAL LABORATORIES SMALL BUSINESS PROGRAMS AND INITIATIVES

Sandia National Laboratories sponsors an array of programs and initiatives intended to maximize opportunities for small businesses to become suppliers for the goods and services we require to accomplish our national missions.

Small Business Outreach Activities

Sandia's supplier outreach effort begins with executive management. Top management engages in supplier outreach programs through participation in various activities, as well as strategic planning and resource allocation to support outreach programs. A major outreach initiative by Sandia's management was the creation of a Supplier Community Advisory Council in 1999.

The charter of the Supplier Community Advisory Council is to obtain local supplier feedback and advice on procurement policies, procedures, and practices that impact the supplier community. Council members include community leaders and local suppliers, as well as Sandia's chief financial officer and procurement and partnership managers.

The Community Advisory Council is a forum for dialogue with Sandia regarding the use of regional purchasing strategies and the establishment of measurable goals to support economic growth, strengthen regional business enterprises, and stimulate greater regional employment and infrastructure. The Council's activities are intended to foster mutual understanding, cooperation, and trust between the local business community and Sandia National Laboratories.

In addition to the outreach activity conducted through the Community Advisory Council, several Sandia executives are active with community organizations that support economic development. For example, Sandia's Executive Vice President, Joan Woodard, serves on the board of directors of the Greater Albuquerque Chamber of Commerce. Sandia's manager of supplier relations participates with the Rio Grande Minority Purchasing Council.

Sandia's vice president of Manufacturing Systems, Science and Technology, Lenny Martinez, is very active with the Albuquerque Hispano Chamber of Commerce, where he sits both on the board of directors and the small business committee. Sandia National Laboratories and our operating contractor, Lockheed Martin Corporation, are corporate members of that organization, which has an emphasis on small business. Mr. Martinez is co-leader of a small business initiative called "e-mercadoNM," which proposes to use the Barelás Job Training Center as an incubator where small businesses can grow their e-commerce capabilities as well as to develop a state-wide program for building capacity throughout the region and providing additional small business contracting opportunities. Sandia's Office of Advocacy and Small Business Development is supporting this effort by sponsoring a needs assessment, developing the program parameters, and conducting a pilot program for the Hispano Chamber and the small business community.

Many other Sandia executives, managers, and staff are active in a variety of community organizations that support the growth and sustainability of small businesses. Three individuals, including the laboratory director, are members of the Economic Forum, a group of CEOs from both large and small businesses that is very influential on regional economic policy development. Four Sandians serve in committee leadership positions in the Greater Albuquerque Chamber of Commerce. Other groups supported by Sandia volunteers include Albuquerque Economic Development, which recruits new businesses to the area; the Association of Commerce and Industry; the Albuquerque Business Education Compact; The Mesilla Valley Economic Development Association; The High Technology Consortium of Southern New Mexico; The New Mexico Rural Development Response Council; The Women's Economic Self-Sufficiency Team Corporation; and Next Generation Economy Initiative, a statewide organization promoting high-tech economic clusters.

Sandia has been active with numerous outreach efforts to encourage minority businesses in marketing their products and services to the national laboratories, including trade fairs, business community forums, the DOE Small Business Conference, and other activities. Our Supplier Relations Department sponsors a Business Partners Program, which performs outreach with the supplier community with specific emphasis on local chambers of commerce and business development organizations. Sandia contracting representatives meet with members of such groups to discuss business opportunities. The program is a communication vehicle to give the community general information on how to do business with Sandia, to provide awareness of marketing opportunities, and to meet face-to-face with Sandia's procurement staff.

Sandia has collaborated with the Small Business Administration and the New Mexico Small Business Development Centers (SBA/SBDCs) to provide information and assistance to minority, disadvantaged, and women-owned small businesses. For example, in partnership with these agencies we have invited women entrepreneurs to informational workshops on Sandia's New Ventures entrepreneurial program. We have also developed and delivered an in-house Small Business Innovation Research (SBIR) informational training package for use by the SBA/SBDCs in targeting rural, predominantly Hispanic, small businesses. We have benefited by sharing information and materials with the SBA/SBDCs so that they can pass information about opportunities at Sandia to its population of small businesses, a population heavily composed of minority, disadvantaged, and women-owned companies. Sandia has also partnered with the Regional Development Corporation to provide assistance through the SATOP program.

Small Business Orientation Activities

Many newer small businesses are unfamiliar with the procedures for doing business with national laboratories. Sandia sponsors and conducts forums, workshops, trade fair presentations, and individual supplier orientations on how to do business with Sandia. One-on-one supplier orientations are frequently conducted with small businesses, and suppliers are given opportunities to demonstrate their goods and services to appropriate buyers and users in Sandia's technical organizations. Brochures, supplier guides, and our web site provide information and training on how to do business with Sandia.

Sandia started a supplier web site in 1996 that has proved to be a wonderful resource for small businesses (www.sandia.gov/supplier). The site is a user-friendly tool that provides a vari-

ety of procurement information, such as notices of subcontracting and bidding opportunities and contract status, payment, and delivery data. The web site also includes a comprehensive supplier reference guide with essential information for new suppliers on how to initiate business with Sandia National Laboratories, how to develop a marketing strategy, and how to take advantage of opportunities for supplier training and outreach activities. We post a schedule of supplier training and networking classes and events sponsored by Sandia and local or regional business development organizations. Our quarterly supplier newsletter is also available on-line, with timely information on Sandia's procurement activities.

Small Business Advocacy Office

In fiscal year 2000, Sandia established an Office of Small Business Advocacy to improve our interface with New Mexico and regional small businesses and to raise the awareness of small business capabilities among our internal program organizations. The goal of the Small Business Advocacy Office is to increase small business competencies and capabilities through mentoring, training, technical assistance, and networking. This office works with Sandia's technical organizations and procurement departments to offer technical and managerial advice to help small businesses become better suppliers and increase the awareness of small business capabilities within Sandia's internal organizations.

The C. Paul Robinson Awards

The C. Paul Robinson Award was created in 2003 as an in-reach initiative to raise awareness of small business among Sandia employees and to encourage and reward utilization of small business suppliers. The C. Paul Robinson Awards acknowledge project and program managers, teams, and individuals who excel in the utilization of regional small suppliers or who demonstrate excellence in community development through procurement opportunities. The first C. Paul Robinson Awards were announced on February 24, 2004, at a ceremony in Albuquerque. A reception was held in conjunction with the Supplier Showcase Event, sponsored by the City of Albuquerque and Sandia National Laboratories.

Supplier Development Programs

Sandia offers a variety of supplier development resources. They include: training opportunities for local suppliers in various aspects of business efficiency and product marketing; quality assurance training in accordance with ISO 9000 standards; and a mentor-protégé program offered by Sandia's Office of Advocacy and Small Business development.

Business Training Opportunities

In conjunction with Los Alamos National Laboratory and the Albuquerque Technical Vocational Institute, Sandia has helped develop workshops supporting the Small Business Innovation Research and Small Business Technology Transfer Programs (SBIR/STTR) of the Small Business Administration. We provide support to these workshops by contributing trainers and consultants, time, expenses, and assistance with workshop organization. SBIR/STTR workshops have been offered in several locations throughout the West that have large representations of minority-owned and women-owned small businesses, as well as several rural communities.

Sandia also offers workshops for suppliers in principles of lean manufacturing and in patent application principles and procedures. Other training events by Sandia or other organizations are posted on Sandia's small business programs and supplier relations web site.

ISO 9000 Training

The International Organization for Standardization (ISO) is a worldwide federation of national standards bodies from approximately 90 countries, including the United States. ISO promotes international standards to facilitate global trade. The ISO 9000 series is a set of standards on quality management and quality assurance.

There are many benefits for a company to implement ISO 9000 standards in its operations. Increasingly, industrial customers throughout the United States and worldwide are requiring ISO 9000 certification for their suppliers. Government agencies such as the Department of Defense and NASA are also beginning to require ISO certification. Because we are committed to emulating best industrial practices, it is Sandia's intent to adopt the ISO 9000 methodology as well.

Sandia National Laboratories is a principal member and participant in the New Mexico ISO 9000 Program, an alliance that also includes the New Mexico State Economic Development Department, Honeywell International, and Los Alamos National Laboratory. New Mexico 9000 was created to provide assistance to small business in achieving compliance with the ISO 9000 quality standards.

The New Mexico 9000 program takes small groups of companies and prepares them for certification through a year-long series of classes. The program began three years ago with 23 companies participating in Los Alamos, Santa Fe, and Albuquerque. A seminar recently conducted in Albuquerque drew 68 companies and more than 100 participants. The program gives a price break to small businesses.

Mentor-Protégé Program

Sandia offers a Mentor-Protégé Program with the intent to establish long-term advisory relationships with small businesses focused on improving their business practices and processes. The goals of the Mentor-Protégé Program are to strengthen the competencies and capabilities of our regional supplier base; create an active support system for regional small business; improve communication among businesses in the region through business-to-business networking; and to create a positive regional economic impact through increased utilization of small businesses.

In conducting the Mentor-Protégé Program, we are careful not to create unrealistic or inappropriate expectations for what Sandia can do for a small business. Sandia's mentors cannot be involved in writing or reviewing proposals for a business, for example. The program should not be interpreted as implying a promise to award a contract at the end.

Technical Assistance

During the 1990s, Sandia had been a participant in the Defense Programs Small Business Initiative (SBI), which offered technical assistance in the form of up to \$5,000 of consultation by Sandia scientists or engineers. However, DOE discontinued this program effective with fiscal year 2001.

The 2000 New Mexico State Legislature provided resources for Sandia's small business assistance by passing the "Laboratory Partnership with Small Business Tax Credit Act." Because Sandia National Laboratories is operated by Sandia Corporation, a subsidiary of an industrial corporation, it does not qualify as a not-for-profit entity. Consequently, transactions between it and its suppliers are subject to the New Mexico Gross Receipts Tax. This legislation provided a limited gross receipts tax rebate to Sandia for assisting small businesses in New Mexico.

Sandia created its New Mexico Small Business Assistance Program just one month after the tax credit became law. The program is funded by gross receipts tax rebates (up to a cap of \$1.8 million per year). We provide technical assistance to qualified New Mexico small businesses up to a value of \$5,000 for businesses located in Bernalillo County and up to \$10,000 for businesses in rural areas of the state. The program has been enormously successful, and over 1,100 assistances have been provided since it began in July 2000.

New Ventures Program

Sandia's New Ventures program was established to help spin off new companies based on the laboratory's technology, personnel, or activities. Several years ago, Sandia began offering entrepreneurial separations for employees who wanted to venture into the private sector to start a business based on technology in their area of expertise. Entrepreneurial ventures are notoriously risky, and Sandia's entrepreneurial separation policy made it possible for a former employee to return if a venture failed.

New Ventures matches technologies to markets, champions laboratory policies on behalf of entrepreneurs, and assists in the formation of new business enterprises. More than 120 Sandia employees have taken the Entrepreneurial Separation to Transfer Technology (ESTT) since the inception of the program.

Regional Economic Development

Many studies have demonstrated the importance of technology clusters to the economic progress of a region. It is an unfortunate paradox that New Mexico is home to several world-class institutions of science and technology and yet it remains one of the most economically disadvantaged states in the nation. Several years ago, Sandia championed a vision to pilot the cluster concept in New Mexico to create a more integrated technological community that can attract greater investment by high-technology industry.

We call this concept the New Mexico Technology Corridor, stretching from Los Alamos National Laboratory in the north to New Mexico State University in Las Cruces. This corridor contains a world-class array of technology-based organizations, including Sandia and Los Alamos national laboratories, the Air Force Research Laboratory, the Santa Fe Institute, White Sands Missile Range, the Lovelace Respiratory Research Institute, the University of New Mexico, New Mexico State University, and the New Mexico Institute of Mining and Technology.

Sandia advanced the concept of a Science and Technology Park to be situated at the crossroads of this corridor adjacent to Sandia National Laboratories and Kirtland Air Force Base. The development effort for the park is now under the direction of the independent Sandia Science and Technology Park Development Corporation (STPDC), a tax-exempt 501(c)(3) company. The facilities of the research park will be designed to accommodate the needs of high-technology

companies and bring them into close proximity to Sandia's extensive reservoir of scientific research, technical talent, and world-class facilities.

We believe the technology cluster concept, centered on a high-technology research park and involving the New Mexico national laboratories, will be a continuing stimulus to regional economic development and offer greater opportunities for the growth and success of small businesses. Sandia also actively participates with economic development organizations throughout the region in providing support to build small business capacity in the region.

APPENDIX B

(Following three pages)

Robert L. Van Ness, Chair
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Office of the President
1111 Franklin Street, Floor 5
Oakland, California 94607-5206

Members:

Ames Laboratory
Argonne National
Laboratory
Brookhaven National
Laboratory
NNSA Defense Programs
DOE Office of Science
DOE Office of Strategic
Planning and Program
Evaluation
Fermi National
Accelerator
Laboratory
Idaho National
Engineering and
Environmental
Laboratory
Lawrence Berkeley
National Laboratory
Lawrence Livermore
National Laboratory
Los Alamos National
Laboratory
National Energy Technology
Laboratory
National Renewable
Energy Laboratory
Oak Ridge Institute
for Science and
Education
Oak Ridge National
Laboratory
Pacific Northwest
National Laboratory
Princeton Plasma
Physics Laboratory
Sandia National
Laboratories
Stanford Linear
Accelerator Center
Thomas Jefferson
National Accelerator
Facility
University of California

October 21, 2002

Dr. Bruce M. Carnes
Director and Chief Financial Officer
Office of Management, Budget and Evaluation
U. S. Department of Energy, ME-1
1000 Independence Avenue, S.W.
Washington, DC 20585

Dear Dr. Carnes:

I am writing on behalf of the members of the DOE National Laboratories Improvement Council (NLIC) about their concerns regarding recent proposals by DOE to comply with revised guidance by the Office of Federal Procurement Policy (OFPP) regarding the implementation of 15 USC 644(g). We understand that DOE is no longer permitted to count subcontract awards to small businesses awarded by its Management and Operating (M&O) contractors toward the agency's statutory goal, and that as a result there is active consideration of having the DOE award contracts and then novate (transfer) them to the M&O contractors.

We want to make it clear that the members of NLIC strongly support the government's policy to ensure that a certain percentage of government funding be used to support small businesses. However, due to the special nature of M&O contractors and their operational relationship to the DOE, NLIC believes that the earlier OFPP policy that included M&O contractor subcontract awards in DOE's goal is a more appropriate practice than that understood to be currently contemplated. We would like to assist you and DOE in any way you deem appropriate to have that approach reinstated and/or to develop alternative approaches. DOE is unique in the extent to which the agency's appropriations are expended principally through site contractors. I believe we all agree that, although M&O contractors are not purchasing agents of the government, it is appropriate that their subcontract awards should be included in determining the extent to which the agency's appropriations are expended with small business.

The concerns that have been raised by the NLIC members regarding DOE and NNSA contract awards to small businesses, including later novation to M&O contractors, are as follows:

- Novation of DOE awarded contracts to the M&O contractors raises issues that would create serious contract management and operational problems, including:
 - Imputing vendor performance to the M&O contractor both for performance assessment and "past performance" scores for extension/competition.
 - Cost treatment for vendor claims and liabilities.
 - Administering contracts that use federal terms and conditions in novated contracts as opposed to industry practices in M&O-awarded subcontracts.
 - Apportioning socioeconomic "credit" between the M&O contractor and DOE in modifications and extensions of a DOE-awarded contract.
 - Exposure to fines, penalties and other legal liabilities for work done under permits, regulatory notices, and orders as well as for work subject to Price Anderson.

- DOE administration of prime contracts as an alternative to novating to M&O contractors would require adding DOE resources that are not now available and would complicate site operations and performance.
- Accomplishment of the novation process itself will result in increased overhead costs.
- DOE award of small business contracts in lieu of M&O subcontract awards appears to be inconsistent with recent efforts of DOE to reduce governmental oversight costs and obtain greater economies in operation for both the agency and its M&O contractors.

As a possible path forward, NLIC offers the following:

- DOE and M&O laboratory personnel work together to develop appropriate near-term alternative approaches.
- DOE and a coalition of M&O contractors work to promote a “common sense” long-term outcome that enables the Congress and the public to see clearly the proportion of funds appropriated to DOE that are ultimately expended with small business whether through prime or subcontracting.
- The DOE Small Business Committee that reports directly to Secretary Abraham act as the champion of a DOE and M&O contractor integrated small business award reporting system.
- DOE and M&O contractors work together to demonstrate to the Office of Federal Procurement Policy and key Congressional members that an integrated approach will best assure that small businesses are getting the results that the law intends.

The current framework of federal agency goals and M&O contractor goals tends to result in arbitrary binning of expenditure data, and a resultant lack of transparency in the extent to which DOE appropriated funds are being spent with small business. We believe that DOE and the M&O contractors have a solid record of accomplishment in this regard, and we should work together to develop an integrated and sensible approach to setting goals and to small business award reporting that is appropriate given the realities of how work is conducted by DOE. Please let us know how we can help DOE to accomplish this objective. We would welcome an opportunity to meet with you to discuss this.

Sincerely,



Robert L. Van Ness
Chair

cc: Under Secretary Card, S
Chief of Staff McSlarrow, S
Director Orbach, SC-1
Acting Administrator Brooks, NA-1
Deputy Administrator for Defense Programs Beckner, NA-10
Acting Chief Operating Officer Przybylek, NA-3.1
Director Magwood, NE-1
Director Hopf, ME-60
Director Braden, NA-63
Director Speake, ED-1