

Structural Features Making NNSA an Unusual Federal Agency

- **NNSA's nuclear weapons and nuclear propulsion are unusually important weapon systems.** They provide the foundations for defense deterrence, military justification for superpower status, and much freedom of action for conventional forces. In the hands of adversaries, they also present unacceptable risk. Ergo, since 1945, "nukes" have been managed at or near the top of government. In law since 1946, "nukes" cannot be designed by the military, only civilians.
- **"Nukes" are the only major weapon systems split across two Federal Agencies.** Since 1946, nuclear weapons—as full weapons systems—have been handled in two primary agencies: NNSA, responsible for warhead design, production, and parts storage; and DOD, responsible for weapons delivery systems, weapons' characteristics, employment, and storage. Particularly when involving resources, most topics today are inherently interagency issues.
- **NNSA contractor management is thinner than in relevant agencies.** This is a span of control issue. Sometimes called a hollow agency by academia, NNSA's prime contractors consume 95 percent of the funds—one Federal employee (Fed) per 20 prime contractors. As contrast, the DOD's ratio is one-to-one. An associated aphorism: In most agencies, the Feds manage the contractors; in NNSA, the contractors manage the Feds.
- **NNSA's contractors have captured the government.** Sometimes leaking into the open, internal lab emails sometimes refer to their "capture strategy" for NNSA explicitly, and the rest of government implicitly. A key part of this strategy is NNSA's significant staff augmentation from the lab contractors. NNSA authorizes that Defense Programs, fiscally half of NNSA, may have lab augmentees comprise up to 20 percent of the day-to-day workforce. This is unprecedented in government. NNSA does not employ the full 20 percent on staff, but under this authorization, it "co-funds" and details lab contractors to DOD and other agencies' key nuclear offices, often for free. There they may remain for decades, and/or later burrow into those offices as Feds. Co-funding also contributes to lab contractors blanketing EOP offices at the NSC and OSTP, and on the Hill. On the staffs of key Hill members and committees, they routinely serve as initial spearheads of lab interests and as defensive bulwarks against Administration attempts to change the status quo.
- **NNSA's contracting is competitive, but contractor regulation is antiquated.** The early nuclear program faced unprecedented scientific and technical challenges, pressing national security demands, a heavily academic workforce impatient with Federal rules and restrictions, and safety and environmental risks that were poorly understood. As a result, initial contracts were non-competitive, and regulations waived the contractors of many risks, liabilities, and management and cost controls. After a variety of scandals, in the mid-2000s Congress mandated contracting be competitive. However, in spite of a half century of risk evaluation and assessment, and the evolution of modern management and cost controls, NNSA contractor regulation remains antiquated.
- **The economic structure is uniquely disadvantageous for the government.** The government and NNSA weapons contractors form a bilateral monopoly. Under a bilateral monopoly, economic theory states that the government ensures fair pricing only if it gets adequate and accurate cost information. Federal contractors are covered by the Truth in Negotiations Act (TINA) to ensure such information; but, unlike other agencies, DOE and NNSA waive TINA.
- **NNSA contractors "have a seat in the Cabinet."** The early, academically-inclined workforce included many future Nobel Prize winners, and due to its expertise, was legislated to speak on nuclear issues to the President without agency interference. Implicitly, the contractors were given a seat in the Cabinet. They retain this authority today in spite of evolving into subsidiaries of standard defense contractors like Bechtel, Honeywell, and Lockheed. These subsidiaries may also speak formally to Congress on any issue without agency or Presidential interference, and they may be reimbursed for such lobbying under their NNSA contracts. The inherent conflict of interest is codified law.

Symptoms of NNSA's Unusual Structural Features

- **NNSA lab contractors have an extremely high cost structure.** Vis-à-vis remuneration, lax oversight has encouraged NNSA contractors to benefit handsomely. Compared to DOD's Research and Development (R&D) sector, fully loaded per capita costs at the NNSA labs are 70 percent higher than DOD's comparable costs, even DOD's purchase of nuclear R&D services from other sources. As a telltale, a market survey of 2010 census data found that Los Alamos had more per-capita millionaires than any other significantly-sized U.S. community. Relevant since high-precision conventional weapons became competitive for some nuclear offensive missions, an aphorism voiced in DOD about the cost structure is, "The labs are pricing nukes out of existence, and we have some substitutes now."
- **NNSA has unusually poor acquisition program performance.** Schedule slips and cost overruns by large amounts are common, and worse than other defense agencies. NNSA has been on GAO's high risk list for potential fraud, waste, and abuse since its inception—unique among Federal agencies. Senator Feinstein maintains a list of NNSA "[O]verruns and schedule delays on every major project." In a particularly bad case, the MOX project is 15 years late, and the lowest estimate of the projected cost overrun is 500 percent.
- **NNSA's Feds and legal framework for its contractors "accept the unacceptable."** This quote is from comments on NNSA by a renowned national expert on Federal defense contracts. Today's legislation, regulation, orders, and contracts under NNSA management still effectively waive standard risk liability, cost, and management controls required under the Federal Acquisition regulations (FAR) for other government contracts. Both internal and external reviews note a pattern: NNSA's culture accepts waivers of standard best business practice, and then substandard outcomes arise that are traceable to the waiver(s). As contrast, NNSA's contractors—companies like Lockheed, Bechtel, and Honeywell—routinely accept conventional FAR constraints under DOD management.
- **An 80-year-old nun breaches a nuclear site, but no Fed is held responsible.** An after-action DOE IG report stated that Federal employees believed they lacked the authority to force the contractors to fix the security problems. No Fed was ever terminated, but a documented chain of evidence exists demonstrating explicit Federal weakening of contractor oversight prior to the breach.
- **Lab contractors constantly lobby Congress, and Congress lobbies the Executive Branch on nuclear issues.** Today it is warhead upgrades, and recapitalization of the stockpile and infrastructure. Six years ago it was security, pension mismanagement, and the New START Treaty. Typically, the Hill is being goaded by near-constant contractor lobbying, which—again unique in the government—is reimbursed by the government.
- **NNSA process lacks program evaluation and mature cost estimation.** As contrast, DOD has had such processes in place for 50 years. Currently, DOD is helping NNSA to initiate some of them. DOD's acquisition performance, while also imperfect, is demonstrably better than NNSA's. NNSA's efforts at better cost estimating are several years old, but they have few staff and incomplete jurisdiction over major NNSA expenditures. NNSA still lacks a DOD-like independent program review. Prior attempts to stand up such capabilities in NNSA and DOE have often been hobbled by lab-generated legislation or scuttled by lab lobbying as soon as the labs became aware of them.
- **If threatened, the lab contractors resort to nuclear blackmail.** The lab contractors certify weapons and annually assess the stockpile's readiness for the President and Congress. In testimony and in senior Executive Branch meetings, when they deem funding to be insufficient, the labs attempt to stampede the government community by hinting and sometimes explicitly articulating that in the future they may not be able to approve stockpile readiness.

Acronym/Abbreviations

DOD	Department of Defense
DOE	Department of Energy
EOP	Executive Office of the President
Feds	Federal employees
Hill	Congress, Congressional staffs, committees and committee staffs
IG	inspector General
Lab(s)	Laboratory(ies); reference to contractors running the Sandia, Lawrence Livermore, or Los Alamos sites
MOX	Mixed oxide facility at Savannah River, South Carolina
NNSA	National Nuclear Security Administration
NSC	National Security Council
Nukes	nuclear weapons and/or nuclear weapons affairs and issues
OSTP	Office of Science and Technology Policy
R&D	research and Development
TINA	<i>Truth in Negotiations Act</i> , enacted 1962 and/or its upgrade in 41 U.S.C. Chapter 35 by P.L. 111-350, enacted 2011, and titled the <i>Truthful Cost or Pricing Data Act</i> .