

March 6, 2006



Financial Management

Report on Vendor Pay Disbursement Cycle, Air Force General Fund: Contract Formation and Funding (D-2006-056)

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Acronyms

ACO	Administrative Contracting Officer
AB	Air Base
ACC	Air Combat Command
AFCAP	Air Force Contract Augmentation Program
CLIN	Contract Line Item Number
DFARS	Defense Federal Acquisition Regulation Supplement
DFAS	Defense Finance and Accounting Service
FAR	Federal Acquisition Regulation
FMR	Financial Management Regulation
GAO	Government Accountability Office
O&M	Operation and Maintenance
PCIE	President's Council on Economy and Efficiency
RDT&E	Research, Development, Testing, and Evaluation



INSPECTOR GENERAL
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March 6, 2006

MEMORANDUM FOR ASSISTANT SECRETARY OF THE AIR FORCE
(FINANCIAL MANAGEMENT AND COMPTROLLER)

SUBJECT: Report on Vendor Pay Disbursement Cycle, Air Force General Fund:
Contract Formation and Funding (Report No. D-2006-056)

We are providing this report for review and comment. We considered management comments on a draft of this report when preparing the final report.

DoD Directive 7650.3 requires that all recommendations be resolved promptly. The Air Force comments were partially responsive to five recommendations in finding A, and not responsive to five recommendations in finding A and two recommendations in finding B. All recommendations remain unresolved. Therefore, we request the Assistant Secretary of the Air Force (Financial Management and Comptroller) reconsider his position and provide comments to the final report on finding A, recommendation A.1. and finding B, recommendation B.1., and the Assistant Secretary of the Air Force (Acquisition, Technology, and Logistics) reconsider his position and provide comments on finding A, recommendation A.2., to the final report by April 20, 2006.

If possible, please send management comments in electronic format (Adobe Acrobat file only) to Aud.dfs@dodig.osd.mil. Copies of the management comments must contain the actual signature of the authorizing official. We cannot accept the / Signed / symbol in place of the actual signature. If you arrange to send classified comments electronically, they must be sent over the SECRET Internet Protocol Router Network (SIPRNET).

We appreciate the courtesies extended to the staff. Questions should be directed to Mr. Marvin L. Peek at (703) 325-5777 (DSN 221-5777) or Mr. John W. Barklage at (303) 676-3298 (DSN 926-3298). The team members are listed inside the back cover. See Appendix D for the report distribution.

By direction of the Deputy Inspector General for Auditing:

Patricia A. Marsh
for Paul J. Granetto, CPA
Assistant Inspector General
Defense Financial Auditing
Service

Department of Defense Office of Inspector General

Report No. D-2006-056

March 6, 2006

(Project No. D2004-D000FD-0040.000)

Vendor Pay Disbursement Cycle, Air Force General Fund: Contract Formation and Funding

Executive Summary

Who Should Read This Report and Why? Air Force contracting officers and financial managers who are responsible for purchasing goods and services should read this report. This report discusses the need to improve internal control of the formation and funding of contracts with vendors for goods and services.

Background. Management is responsible for establishing and maintaining internal control to assure effective and efficient operations, reliable financial reporting, and compliance with laws and regulations. The Inspector General Act of 1978, as amended, provides for the independent review of agency programs and operations and for audit to report on internal controls and compliance with laws and regulations. Such a review of the vendor pay disbursement cycle spans the acquisition; funding; delivery, receipt, and acceptance; payment; and recording of the financial transactions in the official accounting records. This is the first in a series of five reports on internal control of the Air Force General Fund disbursement cycle. This report identifies the weaknesses in internal control in the formation and funding of contracts used in the purchase of goods and services in compliance with laws and regulations.

Results. Internal control was not effective to assure vendors were paid with Air Force General Fund appropriations in accordance with laws and regulations (finding A, Internal Control – Contract Funding and Vendor Payment). Specifically, Air Force:

- Contracting office personnel, without congressional notice and approval, used Operation and Maintenance funds in excess of the \$750,000 statutory limit to fund minor military construction overseas. As a result, personnel improperly used Operation and Maintenance funds in excess of the amounts permitted by law.
- Contracting office personnel engaged an outside vendor to provide contract services that in actuality were for the procurement of goods, an inherently governmental function. Under the Federal Acquisition Regulation, Part 4.101, “Administrative Matters,” only contracting officers are authorized to sign contracts on behalf of the United States Government. As a result, the contracting officer improperly authorized a contractor to incur obligations against the Government to procure goods from third party vendors.
- Contracting office personnel erroneously re-obligated the unexpended balance of expired Operation and Maintenance funds to pay for services performed in subsequent periods. As a result, the contracting officer used FY 2002 and FY 2003 appropriations that were no longer available to pay for services rendered in FY 2003 and FY 2004, respectively.
- Contracting officers incrementally funded three Research, Development, Testing, and Evaluation contracts in excess of what was necessary to fund the severable services in the current contract period. In addition, in one contracting action the

vendor did not begin performance in the fiscal year the funds were obligated, thus incurring obligations against services that were not a bona fide need of the period. As a result, the contracting officers created unliquidated obligations that were eventually used to pay for services in subsequent contract periods, and used funds to pay for services that were not available by present statement of law.

- Contracting officers placed three end-of-year orders for goods and services that were not binding agreements as of September 30, 2003. As a result, contracting officers obligated FY 2003 funds on contracts that were not valid obligations of the period.
- Contracting officers did not effectively follow up to assure that vendors performed three maintenance and repair actions in accordance with the terms of the contract and DoD financial management regulations. As a result, contracting officers obligated funds to pay for maintenance and repair actions that were not properly chargeable to FY 2003.
- Contracting office personnel did not properly fund “over and above” maintenance. As a result, the vendor was improperly paid with funds that were not obligated on the contract at the time the services were authorized and was later paid with funds that were expired at the time the administrative contracting officer approved the work.

In addition, contracting officers executed two contracting actions where the vendors performed the services prior to execution of the funded orders (finding B, Internal Control – Unfunded Contracting Actions).

Management Comments and Audit Response. The Deputy Assistant Secretary of the Air Force, Financial Operations (Financial Management) partially concurred with the findings, and with one recommendation in finding A and one recommendation in finding B. The Deputy stated that a review by command and installation personnel had determined that four of the potential Antideficiency Act violations we identified in the draft report required preliminary reviews, and he directed the appointment of four preliminary review officials to determine whether potential Antideficiency Act violations occurred. We do not agree that only four require review and, based on our review of the comments and supporting documents, we believe that an additional nine deviations identified as potential violations of the Antideficiency Act require preliminary reviews because commands and installations did not thoroughly review the facts in each case.

The Associate Deputy Assistant Secretary of the Air Force (Contracting), Assistant Secretary (Acquisition), generally concurred with the recommendations in finding A, but did not respond to the recommendations in finding B. The Associate Deputy partially concurred with six recommendations and concurred with four recommendations in finding A, and stated that the recommendations deserve further examination. He will appoint a team to review the recommendations and provide a report by March 31, 2006, recommending policy or training requirements that need to be emphasized or written. While we agree that the recommendations deserve further examination, the comments were not specific enough to determine what actions will be taken to correct the internal control weaknesses identified in the report.

We request the Assistant Secretary of the Air Force, Financial Operations (Financial Management) reconsider his position and review the additional nine deviations for potential Antideficiency Act violations. We also request the Deputy Assistant Secretary of the Air Force (Contracting), Assistant Secretary (Acquisition) to reconsider his position and provide additional comments identifying specific actions to correct internal control weaknesses. We request all comments to the final report by April 20, 2006. See the Finding section of the report for a discussion of management comments and the Management Comments section of the report for the complete text of the comments.

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Background

Management is responsible for establishing and maintaining internal control to assure effective and efficient operations, reliable financial reporting, and compliance with laws and regulations. The Inspector General Act of 1978, as amended, provides for the independent review of agency programs and operations and for audit to report on internal controls and compliance with laws and regulations. Such a review of the vendor pay disbursement cycle spans the acquisition; funding; delivery, receipt, and acceptance; payment; and recording of the financial transactions in the official accounting records.

Three types of internal controls exist: compliance, operations, and financial reporting. In this audit, we conducted a series of control sample tests related to the three types of internal controls as presented in the Government Accountability Office (GAO) and President's Council on Integrity and Efficiency (PCIE) Financial Audit Manual. In accordance with the GAO/PCIE guidelines,¹ we randomly selected 45 contracting actions for a comprehensive examination of:

- the nature and funding of the contracts;
- delivery, receipt, and acceptance;
- payment; and
- financial recording of the related budgetary and proprietary transactions in the official accounting records.

In a sample of 45 items, one defect indicates a high risk that the relevant internal control is not effective. Depending on the type and nature of the internal control deviation, the internal control defect might be significant as a separate finding or treated as a homogeneous group of like errors and related causes.

This is the first in a series of five audit reports on the effectiveness of internal control related to the Air Force General Fund vendor pay disbursement cycle. This report examines the effectiveness of compliance controls in the formation and funding of contracts. While the 13 deviations identified in this report (finding A) are significant as separate findings, one deviation in an attribute test of 45 items is sufficient to conclude that the risk is high that internal control is not effective.

The second through fourth reports in this series (currently in various stages of draft) cover the system of internal control related to Air Force financial management, Defense Finance and Accounting Service (DFAS) vendor and contract pay, and DFAS core financial system reporting. A fifth report, which we will issue to summarize the internal control weaknesses, will assist the reader to understand how all personnel have a role in strengthening the financial management and reporting process.

¹ GAO/PCIE Financial Audit Manual, section 400, figure 450.1, "Sample Sizes and Acceptable Numbers of Deviations," July 2001.

Objectives

Our overall audit objective was to assess internal controls and compliance with laws and regulations pertaining to the vendor pay disbursement cycle in the Air Force General Fund and supported activities. See Appendix A for a discussion on the scope and methodology; Appendix B for a detailed description of the deviations identified in this assessment; and Appendix C for a complete list of the 45 contracting actions randomly selected for examination.

A. Internal Control - Contract Funding and Vendor Payment

Internal control was not effective to assure vendors were paid with Air Force General Fund appropriations in accordance with laws and regulations. Specifically, in 13 of the 45 contracting actions examined, either vendors were paid with appropriations that were not permitted by law, or the goods and services received were not a bona fide need of the period the funds were available for obligation. We attributed the deviations to internal control weaknesses in contract formation² and a lack of followup when vendors did not perform in accordance with the contract terms. As a result, we believe a material risk exists that a significant number of contracting actions were paid in FY 2004 with funds that were not properly chargeable to the appropriations used.

Sample Control Test Deviations and Applicable Criteria

As discussed in the background of this report, when more than one deviation in an internal control sample of 45 items is noted, the auditor should assess the control risk as high that internal control is not effective. We identified 13 deviations where contracting officers instructed DFAS personnel to pay vendors with funds that were not properly chargeable to the appropriations used, either by statute or by regulation. The following deviations were noted:

- Air Force personnel used Operation and Maintenance (O&M) funds in excess of the \$750,000 statutory limit to fund minor military construction overseas. Contracting personnel did not provide any evidence that the Secretary of the Air Force was provided notice, congressional approval was obtained, or why such notice and approval did not apply to the construction project. We attributed the deviation to the splitting of the construction costs between two separate task orders, each assigned to a different location, to complete a construction project at a third location. These task orders were separately funded at a cost less than \$750,000 each. As a result, personnel improperly used O&M funds to pay for minor construction in excess of the amounts permitted by law. (See Appendix B.1 for details.)
- Air Force contracting office personnel engaged an outside vendor to provide contract services that in actuality were for the procurement of goods, an inherently governmental function. Under the Federal Acquisition Regulation (FAR), Part 4.101, "Administrative Matters," only contracting officers are authorized to sign contracts on behalf of the United States. Personnel did not provide evidence as to why these

² For the purpose of this report, the term "contract formation" applies to such matters as the determination of severability and whether a contract or order was binding as defined by 31 U.S.C. 1502. The term also incorporates, by reference, any documentation that supported the contracting officer's determination (such as, determination of findings, legal reviews of sufficiency, or other documentary evidence).

services were outsourced. As a result, the contracting officer improperly authorized a contractor to incur obligations against the Government for the procurement of goods from third party vendors. (See Appendix B.2 for details.)

- Air Force contracting office personnel erroneously re-obligated the unexpended balance of expired O&M appropriations³ to pay for services performed in subsequent periods. The contracting officer re-obligated the funds because he believed the services were nonseverable, which would have allowed using the funds to pay for the services. As a result, the contracting officer used FY 2002 and FY 2003 appropriations that were no longer available to pay for services rendered in FY 2003 and FY 2004, respectively. (See Appendix B.3 for details.)
- Air Force contracting officers improperly modified the funding on three Research, Development, Testing, and Evaluation (RDT&E) contracting actions, resulting in payments for services that were not properly chargeable to the appropriations used. In addition, in one contracting action, performance or a duty to perform did not occur in the fiscal year that funds were available and obligated in order to establish a bona fide need. We attributed the deviations to improper contract formation, where the contracting officers funded the contracts as if the services were nonseverable. One contracting officer stated that all RDT&E contracts were nonseverable. In the contracting action where funds were obligated but unavailable as a bona fide need, we attributed the deviation to a lack of adequate guidance in DoD policy and regulations that clearly states that performance or a duty to perform must begin in the fiscal year the funds are available. As a result, the contracting officers created unliquidated account balances that were eventually used to pay for services in subsequent contract periods, and used funds to pay for services that were not available by present statement of law.⁴ (See Appendix B.4 for details.)
- Air Force contracting officers placed three end-of-year orders for goods and services that were not binding agreements as of September 30, 2003. We attributed the deviations to the lack of followup when vendors did not perform in accordance with the scheduled delivery dates and contracting personnel made material modifications to those delivery dates after the end of the fiscal year. As a result, FY 2003 appropriated funds improperly paid for goods and services purchased in FY 2004. (See Appendix B.5 for details.)
- Air Force contracting officers did not effectively follow up to assure that vendors performed repair and maintenance actions in accordance with the terms of the contract and DoD Financial Management Regulations (FMR).

³ Air Force, Air Force Reserve, and Air National Guard O&M appropriations were used to fund the services rendered on this contract.

⁴ On July 8, 2005, DoD General Counsel opined that, under 10 U.S.C. 2410a, performance is required to commence in the period the funds are available for obligation. That opinion, although a present statement of law, was opined applicable to past actions.

Specifically, the DoD FMR required either physical on-site evidence of performance by January 1 of the calendar year following the execution of the contract, or document evidence demonstrating the incurrence of cost prior to that date. As a result, the funds used to pay for the actions were not properly chargeable to FY 2003. (See Appendix B.6 for details.)

- Air Force contracting office personnel did not properly fund “over and above” maintenance, that is maintenance costs that were not known until the repair was identified and approved by the administrative contracting officer (ACO). This occurred because the contracting officer funded the over and above maintenance as if it was for severable services that crossed fiscal years, rather than obligating the appropriation that was current at the time the ACO approved the repair action. As a result, the vendor was paid with funds that were either not obligated on the contract or not available as a bona fide need at the time the ACO approved the work. (See Appendix B.7 for details.)

Please refer to Appendix B for the specific details related to each deviation, as referenced above, and Appendix C for a complete list of the 45-item sample.

Contracting Officer Responses and Related Causes

Contracting officer responses varied from concurrence to nonconcurrence. When at an impasse, we asked the contracting officers to seek their own attorney-advisors’ opinions. In some cases, the attorney-advisors opined in favor of audit. In others, the attorney-advisors provided a general opinion on the pertinent law or regulation, but did not provide a specific opinion on the nature of the contract and its funding in connection with those laws and regulations. Therefore, we attributed the deviations to improper contract formation and lack of followup when vendors did not perform according to the terms of the contracts. For example, contracting officers improperly formed and funded contracting actions for severable services believing the actions were for nonseverable undertakings. However, the actions did not represent a single undertaking or end item. Neither the contracting officer nor attorney-advisors offered documentation from the contract files to support their claims that the deliverables were for nonseverable items. In other instances, contracting officers formed what they believed to be binding agreements as of September 30, 2003. However, vendor action after September 30, 2003, cast doubt whether a “meeting of the minds” had been reached. The contracting officers and attorney-advisors were unresponsive regarding two of the questioned agreements. In addition, contracting officers did not follow up on FY 2003 end-of-year orders when vendors did not deliver the items ordered by the scheduled delivery date or did not start performance in accordance with DoD policy.

Conclusion

Air Force internal controls were not effective to assure that DFAS personnel paid

vendors in accordance with laws and regulations. Although we cannot project the total number of actions and related dollar amounts that might have been improperly paid, we believe that a significant number of the 15,096 contracting actions executed between July 1, 2003, and September 30, 2003, were paid with funds that were not available when the goods or services were rendered. To improve compliance with laws and regulations, the Air Force needs to determine, on a case-by-case basis, whether RDT&E funded contracts are severable, and follow up on end-of-year orders to assure binding agreements have been reached and vendors perform in accordance with the terms of the contracts.

Management Comments on the Finding and Audit Response

The Air Force Deputy Assistant Secretary, Financial Operations (Financial Management) partially concurred with the finding and recommendations, and directed preliminary reviews of four of the potential Antideficiency Act violations. He stated that comptroller personnel at commands and installations had thoroughly researched each issue and, based on their results and a followup review done by the Deputy General Counsel (Fiscal & Administrative Law), he directed the four preliminary reviews. After the preliminary reviews are completed, the Deputy General Counsel will determine whether formal Antideficiency Act investigations are necessary.

The Air Force Associate Deputy Assistant Secretary (Contracting), Assistant Secretary (Acquisition) did not comment on the finding, but stated he believes the recommendations in some areas could be valid and deserve further examination. He also stated that he will establish a team to review the recommendations and write a report by March 31, 2006, recommending policy or training requirements that need to be emphasized or written.

Audit Response. In the finding, we reported that a high risk existed that Air Force internal control was not effective to assure compliance with laws and regulations in the formation and funding of contracts. The Air Force Deputy Assistant Secretary, Financial Operations (Financial Management) did not acknowledge the ineffectiveness of internal control and the risk that a material internal control weakness existed throughout Air Force contracting. Instead, the Air Force Deputy Assistant Secretary focused on whether Air Force personnel violated the Antideficiency Act. The 13 deviations identified in this finding were the consequence of a lack of effective internal control. The Air Force Associate Deputy Assistant Secretary (Contracting) Assistant Secretary (Acquisition) comments were only generally responsive in that a team will be established to review the recommendations, but he did not provide specific detail on what contracting actions the review will cover. Management should positively affirm the importance of internal control and make a commitment to ensure compliance with appropriation laws in the formation and funding of contracts related to the issues represented by all of the deviations and possible violations of the Antideficiency Act.

Recommendations, Management Comments, and Audit Response

A.1. We recommend that the Assistant Secretary of the Air Force (Financial Management and Comptroller):

a. Direct the applicable commands and installations to:

(1) Reverse the appropriations used to improperly fund the orders for goods and services identified in this report and apply the appropriations that were available by law to pay for the goods and services.

Management Comments. The Air Force Deputy Assistant Secretary, Financial Operations (Financial Management) did not comment on the recommendation. The Air Force Associate Deputy Assistant Secretary (Contracting), Assistant Secretary (Acquisition) partially concurred with the recommendation, stating, “We understand appropriations cannot be reversed until a determination of the Anti-deficiency Act (ADA) has in fact occurred.” He reiterated the results of the Air Force Deputy Assistant Secretary, Financial Operations (Financial Management) research that four alleged violations had been identified for Antideficiency Act preliminary reviews.

Audit Response. Management comments are not responsive. The Air Force Deputy Assistant Secretary, Financial Operations (Financial Management) and the Air Force Associate Deputy Assistant Secretary (Contracting), Assistant Secretary (Acquisition) should direct the reversal of the charges against the appropriations for all 13 deviations based on a thorough review of the contract file and vendor performance and payment documents, and the applicable laws and regulations. Based on a review of the supporting documentation from the commands and installations, we do not believe they thoroughly reviewed the facts in each case. Further, management should not base a charge reversal against an improper appropriation solely on whether an Antideficiency Act violation occurred. They should direct the reversal if the expenditure violated any appropriation law or regulation, and whether personnel violated the Antideficiency Act.

(2) Conduct an investigation on those appropriations to determine whether adequate funds remained available in the period available by law to pay for the goods or services. If adequate funds were not available, the commands and installations should report violation(s) of the Antideficiency Act.

Management Comments. The Air Force Deputy Assistant Secretary, Financial Operations (Financial Management) and Associate Deputy Assistant Secretary (Contracting), Assistant Secretary (Acquisition) partially concurred and directed four preliminary Antideficiency Act reviews. The preliminary review officials are to provide their results to the Air Force Deputy General Counsel (Fiscal and Administrative Law), who will then have 90 days to confirm whether formal Antideficiency Act investigations are necessary.

Audit Response. Management comments are partially responsive in that officials will initiate preliminary reviews of four of the deviations in this finding. However, based on our review of the command and installation comments, eight additional deviations identified in this finding require an Antideficiency Act review.

b. In coordination with the Assistant Secretary of the Air Force (Acquisition, Technology, and Logistics), establish policy:

(1) Stating that RDT&E funded contracting actions may be either severable or nonseverable, and requiring contracting officers to determine severability on a case-by-case basis.

(2) Recognizing that performance or a duty to perform must occur in the fiscal year that funds were available and obligated in order to establish a bona fide need for services rendered under United States Code, title 10, section 2410a. The policy should require documentation of work in the fiscal year that the funds were available and obligated, sufficient to meet the requirements of the law (31 U.S.C. 1502(a)).

(3) Requiring contracting officers and fund holders to follow up on end-of-year orders for goods and services to assure that vendors execute the orders in accordance with the terms of the contract.

(4) Including reviews of the internal control related to contract formation and funding as part of the FY 2006 implementation of the Office of Management and Budget, Circular A-123, "Management's Responsibility for Internal Control," December 21, 2004.

Management Comments. The Air Force Deputy Assistant Secretary, Financial Operations (Financial Management) did not respond to this recommendation. The Air Force Associate Deputy Assistant Secretary (Contracting), Assistant Secretary (Acquisition) partially concurred with the recommendations, and he believes our opinions on severability and nonseverability, bona fide need, end-of-year funding, and contract formation have merit. He also believes the contracting officer's opposing opinion has merit. He further states his team will review existing regulations, policies, procedures, and training to see what information is being conveyed to the Administrative Contracting Officers about followup and tracking contract execution.

Audit Response. Management comments are partially responsive. We agree that management should review existing regulations, policies, procedures, and training to determine what information is being conveyed to contracting personnel, but we need to know what actions will be taken to address the internal control weaknesses we have identified in the report.

c. In coordination with the DoD Comptroller, clarify what constitutes performance against minor repair and maintenance actions as a bona fide need.

Management Comments. The Air Force Associate Deputy Assistant Secretary (Contracting), Assistant Secretary (Acquisition) concurred with the recommendation, and he will conduct a review relative to performance against minor repair and maintenance as a bona fide need.

Audit Response. Management comments are partially responsive. We agree that management should conduct a review of existing procedures relative to minor repair and maintenance as a bona fide need. However, we need to know what actions will be taken to address the internal control weaknesses identified in the report.

A.2. We recommend that the Assistant Secretary of the Air Force (Acquisition, Technology, and Logistics):

a. Direct the applicable commands and installations to require all contracting office personnel to receive training in appropriations law and its applicability to contract formation and execution.

b. Issue guidance on what constitutes inherently governmental activities and advise personnel to identify other contracting actions where inherently governmental activities were outsourced.

c. Coordinate with the Assistant Secretary of the Air Force (Financial Management and Comptroller) to develop regulations to recognize when end-of-year contracts or orders risk not being binding agreements (such as, post award modifications or evidence of counteroffers) or performance conflicts with DoD policy.

Management Comments. The Air Force Associate Deputy Assistant Secretary (Contracting), Assistant Secretary (Acquisition) concurred with the recommendation and stated that, in coordination with Assistant Secretary of the Air Force (Financial Management and Comptroller), he will emphasize the need for training in appropriations law and provide continuous learning in contracting. In addition, he would emphasize inherently governmental activities and the team will review regulations, policies, and procedures relative to end-of-year contracting.

Audit Response. Management comments are partially responsive. We need to know what specific actions will be taken to address the internal control weaknesses we have identified in the report.

We request the Air Force Deputy Assistant Secretary, Financial Operations (Financial Management) and the Air Force Associate Deputy Assistant Secretary (Contracting), Assistant Secretary (Acquisition) reconsider their positions and provide additional comments to the final report by April 20, 2006.

B. Internal Control - Unfunded Contracting Actions

Internal control was not effective to assure that vendors performed services under properly funded orders. Specifically, in 2 of the 45 contracting actions examined⁵, vendors performed services before the contracting officers executed the orders. In one instance, Government laboratory personnel directed the vendor to perform services several months before the services were funded and on contract. In the second instance, the contracting officer, by memorandum, improperly authorized the vendor to perform “at risk” prior to formal execution of the funded order. In both cases, the vendors incurred costs that financial managers did not report as unfunded liabilities. As a result, funds may not have been available when the work was directed, and a violation of the Antideficiency Act may have occurred.

Control Sample Test Deviations and Applicable Criteria

Internal control was not effective to assure that vendors performed services under properly funded orders. Further, the costs incurred were not recorded as unfunded liabilities, as required by the Statement of Federal Financial Accounting Standards, SFFAS No. 1, “Accounting for Selected Assets and Liabilities.”⁶

Sample Number 4. The task order, which the contracting officer executed on September 26, 2001, provided funding for five separate projects that the vendor performed prior to the execution and funding of the order,⁷ thus constituting an unfunded liability. The vendor stated that Government personnel from the laboratory directed the work.⁸ However, according to FAR 1.602-3, an unauthorized commitment is an agreement that is not binding because the Government representative who made it lacked the authority to enter into the agreement on behalf of the Government. In our opinion, the contracting officer’s later funding of the projects did not meet the FAR 1.602-3 ratification requirements, which as an internal control would discourage personnel from entering into unauthorized commitments. As for the recording of the unfunded

⁵ Sample number 4, contract F41624-97-D-6004 task order 0032 and sample number 26, contract GS35F4668G, order F19628-02-F-8197.

⁶ The Statement of Federal Financial Accounting Standards, SFFAS No. 1, “Accounting for Selected Assets and Liabilities,” requires the recognition of liabilities as an accounts payable even when budgetary resources are not available at the time the vendors incurred the liabilities. The United States Treasury reporting requirements for the United States Standard General Ledger require the recording of the accounts payable, although no budgetary entries are made.

⁷ Unlike the two principal contract line items on the delivery order (0001 and 0003) that required performance in the future, the contract action for the five projects provided for “Funding Information Only.”

⁸ The vendor provided completion dates on two of the projects. The remaining projects, which provided for test, set up and preparation, consultation, and equipment operation, were more than likely completed prior to the date of the funded order.

liability, no record existed of the cost incurred prior to September 26, 2003, to support an accounting entry. Even then, we were not able to determine if the vendor actually invoiced for the cost incurred against the five funded projects against the task order.⁹ Thus, the Air Force did not record an unfunded liability for the value of the services.

Sample Number 26. The contracting officer executed the task order on July 23, 2002, but backdated it to June 1, 2002. The contracting officer had issued a memorandum authorizing the vendor to start work at risk on June 2, 2002.¹⁰ In the memorandum, the contracting officer advised the vendor that any work performed was at risk and the Government assumed no responsibility for any cost incurred related to performance until the order was issued. If funds were available, the orders should have been executed and funded prior to performance. The presence of a contracting warrant does not authorize contracting officers to give direction to vendors to proceed at their own risk on the assumption that the Government will pay them later.

Circumstances

Sample Number 4. Air Force personnel did not disclose who, specifically, among laboratory personnel directed the vendor to perform the projects prior to execution of the funded order or why the work was not funded when directed. In addition, personnel did not provide evidence that the projects were subsequently funded in accordance with required ratification procedures. The formal process of investigation and ratification is an effective internal control to discourage personnel from entering into agreements that only contracting officers can legally enter into and bind the government to an action.

Sample Number 26. The Air Force attorney-advisor stated that he did not review the memorandum before it was issued but stated that, had he reviewed it, he would have advised against issuing it. However, the attorney-advisor stated there was once an Air Force Materiel Command Supplement to the FAR, Part 5304, that explicitly addressed this issue and permitted such letters. The attorney-advisor believed the provision was deleted in 1999 or 2000, but the reasoning was still valid. He stated, "There are circumstances when a contractor may proceed on risk so long as there is no commitment on the part of the government and no obligation of funds."

⁹ The vendor submitted the first invoice against the September 26, 2003, task order on February 7, 2004, for services rendered during the period January 1, 2004, through January 31, 2004. The \$1,667.68 billed was not sufficient to cover the five project costs, valued at \$46,226.00. Assuming the vendor completed the five projects prior to January 1, 2004, we expected the initial invoice to be for at least \$46,226.00. In our opinion, the vendor performed the services as stated; however, the actual charges were billed against another task order.

¹⁰ Electronic Systems Center, Hanscom Air Force Base, Massachusetts Memorandum, subject "Effective Date, "ESC/SR Information Technology Services Program," June 3, 2002.

Unfunded Liabilities

Statement of Federal Financial Accounting Standards require liabilities to be recognized when goods or services are received, regardless of whether budgetary resources are available or whether an obligation was previously recorded. Recording unfunded liabilities as an accounts payable provides management oversight of the unfunded liabilities. Recognizing unfunded liabilities is a financial control that could indicate a potential violation of the Antideficiency Act, as well as violations of other relevant statutes and regulations. Moreover, vendors should not be performing at risk except as a matter of law.¹¹ While payment cannot be made without a recorded obligation, the absence of an obligation should not prohibit recognizing the liability as a matter of record.

As a result of the potential unauthorized commitment and contracting officer direction to start work prior to the execution of the funded delivery order, funds may not have been available when the work was directed and a violation of the Antideficiency Act may have occurred. For sample number 26, the attorney-advisor determined that funds were available and the vendor was subsequently paid for the services rendered. However, for sample number 4, Air Force personnel did not provide information about the unauthorized commitment or whether funds were available at the time the work was performed.

Recommendations, Management Comments, and Audit Response

B.1. We recommend that the Assistant Secretary of the Air Force (Financial Management and Comptroller), in coordination with the Assistant Secretary of the Air Force (Acquisition, Technology, and Logistics):

a. Direct an investigation into the unauthorized commitments identified in this report and determine whether the Antideficiency Act was violated at the time of performance.

Management Comments. The Air Force Deputy Assistant Secretary, Financial Operations (Financial Management) partially concurred with the recommendation, but did not direct a preliminary review of either deficiency identified in this finding. He had directed comptroller personnel at commands and installations to thoroughly research each issue and ordered preliminary Antideficiency Act reviews based on their results and a followup review done by the Deputy General Counsel (Fiscal & Administrative Law). The Air Force Assistant Secretary (Acquisition, Technology, and Logistics) did not comment on this recommendation.

¹¹ For example, the U.S. Army Corps of Engineers has the statutory authority for vendors to perform “at risk” in advance of an appropriation.

Audit Response. Management comments are not responsive. We do not agree that an investigation is not required for these samples. We made the recommendation in two parts: (1) investigate what appeared to be an unauthorized commitment, and (2) determine whether personnel violated the Antideficiency Act at the time of vendor performance. We believe an investigation is required into both contracting actions, although an Antideficiency Act preliminary review is not required for sample number 26.

b. Determine to what extent contracting officers should be directing contractors to perform at risk and provide guidelines related to such direction, reviews for legal sufficiency, and the financial reporting requirements in recognizing the unfunded liabilities.

Management Comments. The Assistant Secretary of the Air Force (Financial Management and Comptroller) and Assistant Secretary of the Air Force (Acquisition, Technology, and Logistics) did not provide comments on the recommendation.

Audit Response. Management comments are not responsive.

We request the Assistant Secretary of the Air Force (Financial Management and Comptroller) and the Assistant Secretary of the Air Force (Acquisition, Technology, and Logistics) reconsider their positions and provide comments to the final report by April 20, 2006.

Appendix A. Scope and Methodology

This report is the first in a series of reports examining internal control and compliance with laws and regulations of the Air Force General Fund vendor pay disbursement cycle. In this report, we discuss the outcome of our tests related to execution and funding of 45 contracting actions. The internal control tests were performed to determine whether the Air Force general fund appropriations used to pay the vendors were obligated in accordance with applicable laws and regulations. Our sample of 45 contracting actions was randomly selected from a universe of 15,096 items reported during the period July 1, 2003, through September 30, 2003. The audit test period extended from October 1, 2003, through June 30, 2004. In a control sample test of 45 items, one deviation represents a high risk that internal control is not effective.

In our examination of the 45 contracting actions (which included funding modifications^{A-1}), we examined the contract file documentation for each sample to determine the timing, nature, character, and terms and conditions related to the action. We also obtained copies of the funding documents related to the item. Based upon the contract data gathered, we traced the delivery of the goods and services through receipt and acceptance by the Government, invoice certification and payment, and recognition of the related transactions in the budgetary and proprietary general ledger accounts in the official accounting records. Where potential deviations were identified in the execution of an applicable law or regulation, we made inquiries to the Air Force personnel who were involved in the contracting action.

We performed this audit from January 2004 through June 2005 in accordance with generally accepted government auditing standards. Our review of the transactions related to the deliveries and payments made against the contracting actions during the period October 2003 through June 2004, except for those actions that were funding modifications. We reconstructed the funding and payment histories on all funding modifications back to the inception of the basic order.

Use of Computer-Processed Data. We did not use computer-processed data to perform this audit segment.

Use of Technical Assistance. The Office of Legal Counsel, Office of the Inspector General assisted in the review of the legality of the contracting actions and funds used to pay vendors identified in this report. In addition, personnel from the Quantitative Methods Division, Office of the Inspector General assisted in the development of the statistical analysis presented in this report.

Government Accountability Office High-Risk Area. The Government Accountability Office has identified several high-risk areas in DoD. This report provides coverage of the Defense Financial Management high-risk area.

^{A-1} The FAR does not define a funding modification as a contracting action.

Prior Coverage

No prior coverage has been conducted on the Air Force General Fund vendor pay disbursement cycle during the last 5 years.

Appendix B. Sample Control Test Deviations and Applicable Criteria

B.1. Assessment Deviation - Minor Military Construction

Air Force personnel used O&M funds in excess of the \$750,000 statutory limit to fund minor military construction overseas. Air Force personnel exceeded the statutory limit when they obligated over \$1.36 million of O&M funds for making electrical modifications of 44 billets erected at Al Udeid Air Base (AB), Qatar. In September 2003, the contracting officer increased the funding on each of the Shaikh Isa AB, Bahrain, and Thumrait AB, Oman, task orders by \$680,028 to pay for the modifications needed for personnel to use the 16 Shaikh Isa billets and the 28 Thumrait billets that were moved to Al Udeid. The Air Force did not have any evidence that the Secretary of the Air Force was provided notice, congressional approval was obtained, or why such notice and approval did not apply to the construction project.^{B-1} When we questioned the use of the Shaikh Isa AB and Thumrait AB task orders to fund the work at Al Udeid AB, the contracting officer stated the funding of the work was within the scope of those task orders. On July 15, 2003, the contracting officer modified the task orders to change the place of performance from Shaikh Isa and Thumrait to Al Udeid. The contracting officer provided the following rationale:

The basic nature of this task was to provide accommodations for Air Force troops. The determination to move those troops was, of course, made by Commanders in theatre. The function of the end item was not changed by the movement; however, that function would have been changed if NOT moved.

The splitting of the funding of the Al Udeid AB modifications between the task orders for Shaikh Isa and Thumrait was misleading. The Air Force Contract Augmentation Program (AFCAP) program manager, who requested the O&M funds for funding the two task orders, acknowledged that the \$750,000 statutory limit^{B-2} applied to the modifications. We believe that Air Force personnel, outside of AFCAP, and the contracting officer did not know that the statutory limit was at risk and congressional notice and approval was required. Air Combat Command (ACC) personnel would not have known because by splitting the funds between task orders the individual amounts were less than \$750,000 and the accounting records were not reliable to capture the specific construction project cost to reflect the changed use of O&M funds. As a result, we believe Air Force personnel violated section 2805, title 10, United States Code, when they funded over \$1.36 million for the construction project at Al Udeid AB without providing the Secretary of the Air Force notice and obtaining congressional approval.

^{B-1} Sample number 17, contract F08637-02-D-6999.

^{B-2} The AFCAP program manager acknowledged only that the \$750,000 statutory limit applied, not that the task orders were split in order to accommodate the spending limit.

Criteria for Funding Minor Construction

Section 2805 of title 10, United States Code, requires the Secretary of the Air Force to notify and obtain approval in advance from the appropriate congressional committees for minor construction projects that cost more than \$750,000.

Public Law. Section 1901 of Public Law 208-11, “Emergency Wartime Supplemental Appropriations Act of Fiscal Year 2003,” April 16, 2003, authorized the transfer of \$150 million to carry out construction of military projects not otherwise authorized by law. The legislation also changed the meaning of military construction under 10 U.S.C. 2801 to include construction in a foreign country. This law requires DoD to provide written notice to Congress of construction projects and costs that are proposed under the law’s provisions. The Air Force did not explain why notice was not required, or, if required, did not provide documentation that notice was given.

Regulatory. Air Force Instruction 65-601, “Budget Guidance and Procedures,” volume 1, March 3, 2005,^{B-3} requires Air Force personnel to submit a request to Headquarters, United States Air Force for processing requests to Congress for advance approval of minor construction projects that cost over \$750,000.

Personnel Responses and Related Causes

On January 26, 2005, the ACC Chief of Budget Integration informed us that ACC planned to answer the two questions that we had asked about the applicability of Public Law 208-11 to the Al Udeid, Qatar construction. Specifically, we asked ACC personnel if the construction at Shaikh Isa AB, Bahrain; Thumrait AB, Oman; and Al Udeid AB, Qatar, were projects funded as part of the \$150 million transfer for construction authorized by Public Law 208-11 and whether the \$750,000 statutory limit under 10 U.S.C 2805 applied to the work. While ACC stated that the limit did apply, they have not responded to our question regarding Public Law 208-11; therefore, we do not know whether Congress was notified for approval. We believe ACC personnel could not support the contract action because they did not know the statutory limit was at risk.

^{B-3} The March 5, 2005 revision superseded AFI 65-601, volume 1, December 22, 2002. The references cited were not changed from the December 22, 2002, criteria for Congressional notice and approval.

B.2. Assessment Deviation - Inherently Governmental Functions

Air Force contracting office personnel engaged an outside contractor to obtain contract services that in actuality were for the procurement of goods, an inherently governmental function.^{B-4} FAR, Part 4.101, states that only contracting officers are authorized to sign contracts on behalf of the United States. Specifically, the contracting officer contracted for contract services by creating a contract line item (CLIN) to reimburse a vendor who purchased the parts for Air Force detachments. Air Force detachment personnel submitted their requisitions to the vendor, who in turn ordered the parts from third parties. The vendor was reimbursed on a cost-plus fixed-fee basis.

In addition, the contracting officer established the CLIN with a period of performance that crossed fiscal years, which violated 31 U.S.C. 1502. As a CLIN for severable services, the \$845,236 in FY 2003 O&M funds obligated in FY 2003 was available to pay for severable services that crossed fiscal years as codified in 10 U.S.C. 2410a. However, the service rendered was for the requisition of parts, which the vendor ordered after Air Force personnel submitted their request. Some of the requests were submitted after the end of the fiscal year to which the funds applied. The Air Force requisitions were subject to 31 U.S.C. 1502, which states:

The balance of an appropriation or fund limited for obligation to a definite period is available only for payment of expenses properly incurred during the period of availability or to complete contracts properly made within that period of availability and obligated consistent with section 1501 of this title. However, the appropriation or fund is not available for expenditure for a period beyond the period otherwise authorized by law.

The funding of the CLIN for services should not affect the requirement to comply with the bona fide need rule for the purchase of parts. Consequently, the requisitions submitted after October 1, 2003, were paid for with funds that were not available for obligation under 31 U.S.C. 1502(a). As a result, the vendor was paid \$114,625 in FY 2003 O&M funds for parts requisitioned in FY 2004.

Criteria for Determining Inherently Governmental Functions

Procurement Authority, Inherently Governmental Activities. FAR, Part 4.101, states, "Only contracting officers shall sign contracts on behalf of the United States." Office of Management and Budget Circular A-76 states that an inherently governmental activity involves binding the United States to take an action by contract, policy, regulation, authorization, or order. Such actions fall in

^{B-4} Sample number 2, contract F33657-00-G-4029.

one of two categories: (1) the exercise of sovereign government authority or (2) the establishment of procedures and processes related to the oversight of monetary transactions.

Bona Fide Need Rule. The DFAS Denver Interim Guidance on Accounting for Obligations, November 4, 2004, states:

One of the basic principles of obligating appropriations is the bona fide need rule. Appropriations may be used only for bona fide needs of the period of availability. It is possible that a particular obligation is for a purpose properly chargeable to a specific appropriation under the law but may not be for a bona fide need of the FY in which the funds were appropriated. Determination of what constitutes a bona fide need of a FY depends largely on the facts and circumstances of the specific case, and there is no general rule applicable to all situations.

Under 31 U.S.C. 1502(a), the balance of an appropriation is only available to pay for expenses properly incurred, or to complete contracts that were properly made, within the period of availability.

Personnel Responses and Related Causes

On February 18, 2005, the Chief, Contracting Division Office Reconnaissance Wing, Wright-Patterson Air Force Base, Ohio, informed us that an attorney-advisor had agreed with the actions taken by the contracting officer. However, the chief of the Contracting Division did not provide us a copy of the opinion. Consequently, we do not know why the contracting officer contracted for contract services to purchase parts or issued a contracting action that provided for using expired funds.

B.3. Assessment Deviation - Contract for Severable Services

An Air Force contracting officer erroneously re-obligated the unexpended balance of expired O&M appropriations^{B-5} to pay for services performed in subsequent periods.^{B-6} The contracting officer re-obligated the unexpended balance of appropriations because he believed the services were nonseverable, which would have allowed using the funds to pay for the services. Upon our request, the contracting officer coordinated with financial managers and the attorney-advisor and determined the contract was for severable services. The contracting officer informed us that he planned to reverse the obligations. The vendor was paid \$272,000 in FY 2002 and \$2.8 million in FY 2003 from Air Force O&M funds for services performed in subsequent fiscal years.

Criteria for Determining Severability of Services

Nonseverable Service. Defense Federal Acquisition Regulation Supplement (DFARS), Part 204.7101, states that a nonseverable deliverable is one that is a single product or undertaking, entire in nature, that the contracting officer cannot feasibly subdivide into discrete elements or phases without losing its identity.

Funding Contracts for Severable Services. 10 U.S.C. 2410a (2003) states that DoD “may enter into a contract for procurement of severable services for a period that begins in one fiscal year and ends in the next fiscal year if (without regard to any option to extend the period of the contract) the contract period does not exceed one year.” In addition, funds available for a fiscal year may be obligated for the total amount of a contract that crosses fiscal years.

Personnel Responses and Related Causes

On August 13, 2004, the contracting officer responded to our inquiry stating that, “it is the consensus of all parties in attendance that this contract is, in fact, a severable services contract.”

^{B-5} Air Force, Air Force Reserve, and Air National Guard O&M appropriations were used to fund the services rendered on this contract.

^{B-6} Sample number 19, contract F42600-01-D-0027.

B.4. Assessment Deviations - Severability of Research, Development, Testing, and Evaluation Contracts

Air Force contracting officers improperly determined that three Research, Development, Testing, and Evaluation (RDT&E) contracting actions^{B-7} were nonseverable. The contract statements of work, and other contract file information, did not show evidence that the contracting actions were for nonseverable services. In addition, the contracting actions contained specific payment instructions that directed disbursing officials to pay vendors using the oldest unexpended balance of obligations first, rather than the obligations to which the charges applied. In one of the contract delivery orders, the contracting officer executed the order in FY 2001, but the vendor did not report services commencing until January 2002. As a result, over \$511,000 was paid for services performed in FY 2004 that were not properly chargeable to the appropriations used. In addition, over \$11,000 in FY 2001 funds were used to pay for services that did not start until January 2002.^{B-8}

Criteria for Determining Severability of RDT&E Tasks

Severable Services. 10 U.S.C. 2410a (2003) states that a contracting officer may enter into a contract to procure severable services for a period that begins in one fiscal year and ends in the next year as long as the contract period does not exceed one year. The funds made available for the originating fiscal year may be obligated to pay the total amount of the contract.

Comptroller General. In 23 Comp. Gen. 370, 371 (1943), the Comptroller General stated:

A contract which is viewed as 'entire' is chargeable to the fiscal year in which it was made, notwithstanding that performance may have extended into the following year. The determining factor for whether services are severable or entire appears to be whether they represent a single undertaking.

Government Accountability Office (GAO). GAO Appropriations Law Manual, volume 1, chapter 5, explains that contracts are severable when the services are continuing and recurring in nature, and the contracting officer should charge the services to the fiscal year(s) in which rendered. GAO states that research can be severable or nonseverable, depending on the facts. GAO provides an example related to cancer research, observing that even though personnel viewed the

^{B-7} Sample number 4, contract F41624-97-D-6004; sample number 12, contract F29607-97-C-0115; and sample number 26, contract 35F-4668G, order F19628-02-F-8197.

^{B-8} DoD O&M funds in the amount of \$69,200, and working capital funds of \$15,000 were also obligated on this delivery order.

research contract as nonseverable, the contract was severable since the actual research was for ongoing work with no contemplated required outcome or end item.

DoD Policy. The Defense Federal Acquisition Regulation (DFARS), Part 204.7101, defined a nonseverable deliverable as one that is a single product or undertaking, entire in nature, that the contracting officer cannot feasibly subdivide into discrete elements or phases without losing its identity.

Present Statement of Law. On July 8, 2005, attorneys representing the DoD General Counsel and the DoD IG General Counsel reached an agreement as to the application of 10 U.S.C. 2410(a) to the bona fide needs rule. From that agreement, which established the criteria for auditors to apply in audits of the funding of contracts for severable services that cross fiscal years, the following statements were germane to this audit:^{B-9}

It is a misnomer to categorize 10 USC 2410a simply as “an exception to the bona fide need rule,” as this can be misinterpreted as being a general exception or waiver of the rule, and lead to bypassing of the threshold bona fide needs analysis. Rather, 2410a permits the extension of funds available in a current fiscal year into the succeeding fiscal year on contracts for severable services originating in the prior fiscal year, where a bona fide need for the severable services existed for the prior fiscal year at the time of contracting. While the period of performance of the services is a significant indicator of bona fide need, it may not always be the determining factor. The actual performance of services in the earlier fiscal year may not be required, provided the contractual duty to perform commences in the earlier fiscal year, which inherently includes the contractor’s preparation, mobilization, and deployment requirements.

With regard to performance:

Where the performance commencement date is specified by the contract (to be on contract award or a date after contract award), performance must commence in the fiscal year of the funds used and may not exceed 12 months. Performance is presumed to be performance of services unless the contract specifies required mobilization, deployment, etc., prior to performance of actual services. Conversely, if a contract were to specify that severable services were not to commence until the new fiscal year without a specified requirement for mobilization/deployment in the earlier fiscal year (such as for a fiscal year option renewal), the bona fide needs rule would preclude funding any portion with the prior fiscal year appropriations regardless of 2410a.

^{B-9} E-mail from Office of General Counsel, DoD IG; subject: DRAFT Review of Final Audit Report: DoD Purchases Made Through the GSA, Project No. D2004-D000CF-0238: FOUO; July 13, 2005.

Moreover,

Where the period of performance is not specified, the obligation to perform the services is presumed to commence on the award date, in the earlier fiscal year, and may not exceed 12 months from the award date.

Although the agreement was reached on July 8, 2005, DoD General Counsel presented the quoted interpretation of 10 U.S.C. 2410(a) as that which applied to contracts entered into under the statute during the time period covered by this audit.

Air Force Policy. Air Force Instruction 65-601, “Budget Guidance and Procedures,” volume 1, March 3, 2005, differentiated between funding Research and Development multi-year contracts that provided for requirements beyond one year and those that provided only for the requirements of the current fiscal year. Although the words “nonseverable” and “severable” were not used, we concluded that the reference to multi-year contracts that provided for requirements beyond a year meant “nonseverable,” while the reference to those that provided for requirements of the current fiscal year meant “severable.”

Personnel Responses and Related Causes

The contracting officers did not respond to our conclusion the RDT&E contracts were for severable services. They also did not provide any evidence to support their claim of nonseverability. With regard to the DoD General Counsel July 8, 2005, opinion on when services should commence in accordance with 10 U.S.C. 2410(a), we believe that DoD policy was unclear on when the services were to begin in order to use the prior year funds under the bona fide needs rule. Otherwise, in our review of the three contracting actions, we noted the following:

- **Sample Number 4.** The first contracting action provided for the contractor to perform simulations of various life support systems and equipment, and related travel. The contracting officer described the work done under this nonpersonal services^{B-10} contract as “an array of support for a wide band of technical specialties, and associated support activity, which performance was on a short schedule and with limited funding.” Based on the contracting officer’s description of the services and our own review of the contract statement of work, we believe the contract was for severable services that should have been funded on an annual basis. In addition, the contracting officer, who executed the delivery order on September 26, 2001, improperly funded the order by obligating over \$69,000 in FY 2001 DoD O&M funds for services that did not begin until

^{B-10} We believe that the services were potentially personal in nature. For example, we noted that contractor employees had performed certain tasks that someone other than the contracting officer had directed prior to the execution of the order that funded payment.

January 2002, which did not constitute a bona fide need under the present statement of law. As a result, over \$273,000 was paid for services

that were not applicable to the appropriation used, which included the \$69,000 in DoD FY 2001 O&M (if the funds were not used to pay for the intended purpose.^{B-11})

- **Sample Number 12.** The second contracting action provided for nonpersonal services in performing technical and engineering analyses, experimental test plans, operations evaluation, and interactions with other service and governmental agencies, which the contracting officer funded on a level-of-effort basis. The contracting officer established separate line items for travel and material. On February 23, 2005, the contracting officer restated her belief that the contract was nonseverable and that the “full benefit to the lab is only obtained when all these efforts are considered as a combined whole and the end result would be a final scientific and technical report.” She implied that because the basic line item was nonseverable, the travel and material costs were nonseverable. However, we believe the vendor’s issuance of a technical report would not prove the vendor was engaged in a single undertaking or production of an end item. In fact, the contract scope of the technical and engineering analyses, experiments, operations evaluation, and interactions spanned several subject matter areas^{B-12} as opposed to one single undertaking. Consequently, we believe the contract was for severable services that personnel should have funded on an annual basis. As a result, over \$138,000 was paid for services that were not applicable to the appropriations used.
- **Sample Number 26.** The third contract was an order placed against a General Services Administration, General Purpose Commercial Information Technology Equipment, Software, and Services contract. The major deliverables stated on the contract were for nonpersonal services, labor, and travel. Although contracting office and financial management personnel agreed the O&M funded line items were severable, counsel for the contracting officer maintained the RDT&E funded line items were nonseverable. Counsel asserted that “even though some of the services may be severable in and of themselves, they all directly support RDT&E efforts which are not severable.” However, the contracting officer did not provide evidence the service provided was itself a single undertaking. We believe the contract action was for severable services that should have been funded on an annual basis. As a result, over \$180,000 was paid for services that were applicable to the appropriations used.

^{B-11} As noted in finding B, we were unable to trace the vendor’s billings for the five projects to payments made against the funded task order. We must believe the vendor performed as stated. However, since we were unable to identify where the funds added to pay for those five projects were invoiced and paid against the task order, we could only conclude the \$69,000 was diverted to pay for other services. As a result, the \$69,000 in funds used to pay for services rendered after January 2002 would have violated the bona fide needs rule under the present statement of law.

^{B-12} Lidar and passive chemical systems, gas and solid lasers, passive and active imaging systems, and satellite vulnerability and modeling.

B.5. Assessment Deviations - Binding Agreements

Air Force contracting officers placed three end-of-year orders for goods and services that were not binding agreements as of September 30, 2003.^{B-13} Contracting personnel did not know the agreements were not binding because they did not:

- follow up with vendors when they did not perform in accordance with the contract terms; and
- seek legal counsel on the impact of their modifications made to the orders after September 30, 2003.

Personnel agreed that one of the orders was not binding as of September 30, 2003, and the contracting officer subsequently modified the order to obligate \$206,530 in FY 2004 O&M funds to pay the vendor. However, Air Force personnel disagreed with our assessment of the other two orders, stating that a bona fide need existed in FY 2003. Their comments did not state whether the orders were binding agreements as defined in 31 U.S.C. 1501. They provided no evidence to support their claim that the orders were legally binding with supporting documents as of September 30, 2003. The contracting officers obligated over \$590,000 in FY 2003 O&M appropriations that were not valid obligations of that period.

Criteria for Recording Binding Agreements

Binding Agreement. Section 1501 of title 31, United States Code, states that an amount must be recorded as an obligation of the United States only when it is supported by documentary evidence of a binding agreement between an agency and another person. GAO Appropriations Law Manual, volume 1, chapter 7, states that a binding agreement consists of an offer, acceptance, and consideration, and is made by a contracting officer. Chapter 7 also states,

Each contract must have incorporated the terms and conditions of the respective bid without qualification. Otherwise, it must be viewed as a counteroffer and there would be no binding agreement until accepted by the contractor.

Regarding the obligation of available balances, 31 U.S.C. 1502 (2003) states,

The balance of an appropriation or fund limited for obligation to a definite period is available only for payment of expenses properly incurred during the period of availability and obligated consistent with

^{B-13} Sample number 35, contract GS-06F-0007J, order F61521-03-F-A494; sample number 23, contract F64133-03-P-0242; and sample number 57, contract GS-07F-6337, order FA2550-03-F-A122.

section 1501 of this title. However, the appropriation or fund is not available for expenditure for a period beyond the period otherwise authorized by law.

Excusable Delays. FAR 52.249-14, “Excusable Delays,” states the contractor is liable for default unless nonperformance is caused by an occurrence beyond the reasonable control of the contractor and without its fault or negligence. Causes include acts of God or public enemy, acts of the Government in its sovereign or contractual capacity, fires, floods, epidemics, quarantine restrictions, strikes, unusually severe weather, and delays of common carriers.

Personnel Responses and Related Causes

Air Force personnel from one base^{B-14} agreed that the FY 2003 end-of-year order was not binding, and the contracting officer subsequently modified the order to charge the \$206,530 cost of equipment against the FY 2004 O&M appropriation. The contracting officer modified the funding because the vendor had not delivered the equipment in late October 2003, as specified in the September 30, 2003, order and there was not a meeting of the minds among all parties regarding the equipment specifications. However, Air Force personnel did not agree with our assessment of the other two orders.

- **Sample Number 23.** Air Force personnel disagreed that a September 30, 2003, contract for equipment was not a binding agreement as of that date. They believed a bona fide need existed in FY 2003 and a subsequent modification that the contracting officer made in October 2003 corrected an administrative error. Specifically, on September 30, 2003, contracting office personnel issued an order, valued at \$89,708, after receiving the vendor’s quotation on the manufacture and delivery of refrigeration equipment. The vendor stated the delivery on two of the ordered items would take sixteen weeks from the receipt of the order. However, the contracting officer wrote the order requiring delivery of all items by November 29, 2003. On October 2, 2003, the company representative received the order and immediately notified the contracting officer that the vendor could not meet those terms. On October 20, 2003, the contracting officer modified the order to reflect the delivery schedule as 16 weeks after receipt of order. Personnel concluded the contracting officer had a meeting of the mind with the vendor on price and performance. The contracting officer only adjusted the delivery schedules.

We do not believe that the contracting officer and vendor had a meeting of the minds because the Government did not accept the delivery schedule without qualification. A disagreement on delivery schedule is a material term and condition that requires unconditional acceptance for an agreement to exist. The Government’s order, written with delivery terms other than those quoted, presented a counteroffer, which the vendor

^{B-14} Sample number 35.

subsequently rejected. The delivery terms were material to the vendor, and the vendor would not have performed without the October 2003 modification. As a result, we believe a binding agreement did not exist as of September 30, 2003, and that the \$89,708 equipment cost was improperly charged against the FY 2003 O&M appropriation. Contracting personnel should have funded the order from the FY 2004 O&M appropriation.

In addition, the vendor provided information on a second order^{B-15} with an equipment cost of \$93,582 that also did not recognize the quoted delivery dates and required later modification before the vendor agreed to perform. As a result, a total of \$183,290 in FY 2003 O&M funds was improperly used.

- **Sample Number 57.** Air Force personnel disagreed that a September 26, 2003, order for the purchase and installation of playground equipment was not binding. Personnel believed a bona fide need existed in FY 2003 and provided copies of playground designs prepared in FY 2003 to support that claim. Personnel referred to a design consultant's e-mail acknowledgement that she received the order on September 27, 2003, as proof that the order was received prior to the end of the fiscal year. Specifically, on September 26, 2003, contracting personnel issued an order for the purchase and installation of playground equipment. The contracting officer e-mailed a copy of that order to the design consultant, an independent contractor, who reviewed the design specifications and forwarded the order to the company that was to purchase and install the equipment by November 19, 2003. There is no evidence that the independent design consultant had any authority to bind the contractor to perform the order. However, on November 17, 2003, the contracting officer extended the period of performance from November 19, 2003, until May 31, 2004, citing FAR 52.249-14, "Excusable Delays," as authority for the modification. The contracting officer modified the order when advised that the normal temperatures for the region were not conducive for installation. On May 21, 2004, the contracting officer modified the period of performance a second time because of additional delays in completing the project. The vendor completed the work on June 15, 2004.

The issue was not whether a bona fide need existed in FY 2003, but whether a binding agreement was in place at the end of FY 2003. We agree a bona fide need existed in FY 2003. If the contract was binding, the vendor was in default. The contracting officer should have either terminated the contract or sought some remedy to protect taxpayer interest. We do not believe the September 27, 2003, order was binding given the contracting officer's later modification to extend the period of performance instead of either terminating or seeking remuneration. In addition, we believe the contracting officer's extension of the delivery date, citing FAR 52.249-14 as authority, was improper. Had the vendor

^{B-15} Order F64133-03-P-0214.

performed by November 19, 2003, as originally called for, the playground equipment would have been installed prior to the weather becoming an issue.

B.6. Assessment Deviations - Maintenance and Repair

Air Force contracting officers did not effectively follow up to assure that vendors performed maintenance and repair actions in accordance with the terms of the contract and DoD regulations.^{B-16}

- In sample number 11, the contracting officer did not follow up to assure the vendor started work or incurred cost by January 1, 2004, to meet the bona fide need rule, even though the contracting officer issued the notice to proceed on September 30, 2003. Actual on-site work and costs were not incurred until February 2004.
- In sample number 24, the contracting officer believed the vendor performed after the vendor made the material submittal and six trips to Okinawa, Japan, prior to January 1, 2004. However, the contracting officer did not issue the notice to proceed until June 14, 2004. We determined the material submittal and trips related to the basic contract, not the task order.
- In sample number 27, the contracting officer did not follow up to assure the vendor started work or incurred cost by January 1, 2004, to meet the bona fide need rule, even though the contracting officer issued the notice to proceed on October 10, 2003. The vendor did not start work on-site or incur cost until after January 15, 2004.

In each sample, the circumstances differed slightly as to what was considered performance. We attributed the deviations to a lack of clarity in the DoD FMR regarding what supported a significant start based on cost and the lack of enforcement to the notices to proceed. As a result, we do not believe any of the three orders for the repair and maintenance activities were a bona fide need of FY 2003.

Criteria for Recording Maintenance and Repair

DoD FMR, volume 3, chapter 8, provides specific guidelines on whether maintenance and repair activities are a bona fide need of the period that the funds are available for obligation. DoD policy allows contracting officers to obligate current year appropriations for repair and maintenance contracts awarded near the end of the year, even though the contractor's performance may not begin until the following fiscal year. However, work must begin before January 1 of the following calendar year in order to constitute a bona fide need of the prior fiscal year. In the event a contractor defaults, the contracting officer can terminate the contract for default, and use the previous appropriation to fund a replacement contract.

^{B-16} Sample number 11, contract F62321-00-D-0007; sample number 24, contract F62321-03-D-0010; and sample number 27, contract F65262-03-C-0049.

Air Force Regulation 170-8, “Comptroller Accounting for Obligations,” October 15, 1985. While this regulation is now obsolete, we believe the following excerpt remains true today on what constitutes performance:

Contractor planning and scheduling are not normally considered contractor performance except when a design/construction contract calls for a specific design, planning, or scheduling performance milestones. A performance bond by itself is not evidence of contract performance. Ordering of materials, mobilization, or actual work at the site are evidence of performance for bona fide need purposes. These procedures do not apply to cases where an activity or contracting officer is required to place an order or contract with a foreign government agency under provisions of a treaty or other international agreement.

FAR 52.249-10 “Default (fixed price construction).” According to subparagraph (2) of FAR 52.249.10,

The contractor, within 10 days from the beginning of any delay (unless extended by the Contracting Officer), notifies the Contracting Officer in writing of the causes of delay, the contracting officer shall ascertain the facts and extent of the delay. If, in the judgment of the Contracting Officer, the findings of fact warrant such action, the time for completing the work shall be extended.

Personnel Responses and Related Causes

- **Sample Number 11.** On September 16, 2003, the contracting officer executed task order 5130, valued at \$142,000, for the repair of exterior piping. The contracting officer issued the notice to proceed on September 30, 2003. The vendor was to perform the work within 240 calendar days, with performance to start within 5 days of receipt of the notice. However, the work did not start until February 3, 2004. The vendor completed the repair and maintenance action on June 1, 2004. Contracting office personnel did not provide a reason why work did not start until February 2004 or evidence of any significant costs incurred prior to January 1, 2004. The contract progress reports did not show work performed until February 2004.

The DoD FMR is specific on requiring that work be started or cost incurred before January 1 to be able to use prior fiscal year funds for maintenance and repair activities. However, the regulation is silent on what impact the contracting officer’s failure to enforce the notice would have on bona fide need. We believe the regulation implied enforcement when stating the contracting officer, through the execution of a Termination for Default, could use the FY 2003 funds on a replacement contract. Yet the contracting officer did not pursue that course of action. Since the DoD FMR is silent related to the issue of enforcement presented in this action, we believe that clarification is in order.

-
- **Sample Number 24.** The contracting officer believed that bona fide need was established when the vendor presented material submittals and made six trips to Okinawa, Japan, to negotiate prices with suppliers and subcontractors, and to survey storage areas and staff living quarters prior to January 1, 2004. Specifically, on September 27, 2003, the contracting officer awarded an \$83,000 contract to repair an electrical distribution system in Okinawa, Japan. The contract terms required the issuance of a notice to proceed within 30 days of the execution of each task order. The contracting officer did not issue the notice until June 21, 2004, and extended the period of performance from 150 to 210 calendar days. In this case, the contracting officer stated the material submittal was considered performance, and, even though the notice to proceed on the task order was not issued until June 2004, the notice to proceed could not be issued until the material submittal on the basic contract was done. Therefore, the contracting officer believed that the funding of the task order using the FY 2003 appropriation was bona fide.

We do not believe that performance against the basic contract established a bona fide need related to the task order, since the notice to proceed on the task order was not issued until June 2004. The costs incurred by the vendor prior to issuance of the notice to proceed, and the trips made to Okinawa, benefited all of the potential task orders issued against the contract. We could not assume that such costs established the bona fide need for all future task orders using the FY 2003 O&M appropriation as the source of funds. However, because the DoD FMR is silent related to the issues presented in this action, we believe that clarification is in order.

- **Sample Number 27.** On September 19, 2003, the contracting officer awarded a \$620,000 contract for the replacement of a heating, ventilation, and air conditioning system. The vendor was to install the system within 120 calendar days from the date the contracting officer issued the notice to proceed. The contracting officer issued the notice to proceed on October 10, 2003. On December 1, 2003, the contracting officer extended the period of performance from 120 to 180 calendar days citing FAR 52.249-10, "Default (fixed price construction)." According to the contracting officer, the extension was made for the convenience of the Government because of an Air Force Inspector General, Unit Compliance Inspection. On January 15, 2004, the contracting officer reported only 1 percent of the preparation work was accomplished and provided a copy of one invoice paid by the vendor to purchase a pipe, valued at \$11,495. The vendor completed the job on April 8, 2004.

The repair and maintenance action did not meet the intent of the DoD policy as a bona fide need. The contracting officer's explanation of what work was done by January 1, 2004, which represented 1 percent of the preparation phase, did not reflect a significant start. The work done consisted of Air Force personnel obtaining and approving the progress work schedule, material, and bond submissions. We do not believe one invoice paid by the vendor, valued at \$11,495 (or .018 of the total contract value) in this instance constituted performance. However, because the DoD FMR is silent on what measurement applies to cost and on what

impact a contracting officer's failure to enforce a notice to proceed could have on bona fide need, we believe that clarification is in order.

We also do not believe that FAR 52.249-10 is applicable for extending the period of performance, based on the contracting officer's statement. As a result, the intent of the DoD FMR was apparently not met, and the use of FAR 52.249-10 did not justify the continued use of the FY 2003 funds to pay for this maintenance and repair action.

B.7. Assessment Deviations – “Over and Above” Maintenance

Contracting office personnel did not properly fund over and above maintenance.^{B-17} This occurred because the primary contracting officer funded the over and above maintenance as if the action was for severable services that crossed fiscal years. Instead, the funds that were available and obligated at the time the administrative contracting officer (ACO) approved the repair action should have been used for the repair. We attributed the deviation to the primary contracting officer’s misunderstanding of the nature of an over and above maintenance action related to its funding. As a result, we identified \$111,000 that was paid from FY 2003 O&M funds when the only funds obligated on the contract at the time the work orders were approved were Working Capital funds. In addition, we identified \$71,000 paid from FY 2003 O&M funds for work orders that were approved after October 1, 2003, which should have been paid from the FY 2004 O&M appropriation.

Criteria for Recording Over and Above Maintenance

Over and Above Maintenance. Contracts for manufacture, installation, maintenance, or repair of weapon systems and equipment include a line item for what is termed over and above maintenance. Those costs were so-named because they were over and above the firm-fixed-price for manufacture, installation, maintenance, and repair that Air Force personnel funded by the separate line item. Before an over and above cost was incurred, the ACO was required to approve the work order. After the ACO approved the work order, and established a not-to-exceed amount for the repair, the vendor accepted the order and performed the repair. Once the vendor made the repair, the ACO accepted performance and authorized payment.

Personnel Response and Related Causes

After obtaining attorney-advisor counsel, the primary contracting officer concurred with our observation that the over and above maintenance was improperly funded. The attorney-advisor offered the following about the funding of the over and above maintenance.

It appears the over and above funds on CLIN 0005 are not obligated until the written direction to proceed is issued. This is because there is no “binding agreement” between the parties to perform the work until that time. (That is part of the definition of obligation in title 31 of the U.S. Code.) Each aircraft’s over and above stands alone as a separate obligation and, because the Government gets no effective value for the over and above work on a particular UH-1 until the work is

^{B-17} Sample number 44, contract F09603-02-C-0286.

finished,^{B-18} the work is not severable. In other words, when the amount is agreed upon for over and above work on aircraft 001, the full estimated cost (because it is a T&M effort^{B-19}) is obligated without regard to how long the work will take.

In our sample of 45 contracting actions, one other contracting action for over and above maintenance was examined.^{B-20} In that case, the vendor's invoices were properly paid with the funds that were available at the time the administrative contracting officer authorized the repair. In comparing the two contracts, several key distinctions were noted. First, the improperly funded contract had aircraft procurement, working capital, and Air Force O&M funds obligated on the contract for over and above maintenance, regardless of customer,^{B-21} and the funded period of performance crossed fiscal years. The second contract had only O&M funds obligated and the funded period of performance ran concurrent with the fiscal year. In both contracts, the ACOs had to approve the repair before the work was done.

However, because of multi-funding, timing of the obligations, unliquidated balance of those obligations, and obligation of funds as if for services that crossed fiscal years, the situation was created where the appropriation available at the time a repair was authorized did not attach to the repair itself. As a result, once the repair was made and the ACO accepted performance, the vendor was paid with the unliquidated balance of the appropriation available at the time of payment. However, at the time of payment the funds were either not obligated on contract when the ACO first approved the repair or were unavailable to pay for the repairs in the fiscal period the ACO approved the repair.

We agree with the attorney-advisor's opinion that the repair, once approved, was nonseverable and payable from funds available at the time a binding agreement was reached. However, since there are many factors related to the funding of over and above maintenance throughout the Air Force,^{B-22} we defer to the Air Force to examine the overall business practice related to the funding of over and above maintenance.

^{B-18} The over and above maintenance on this contract was for the UH-1N Helicopter.

^{B-19} Time and materials.

^{B-20} Sample number 25, contract F34601-97-C-0032.

^{B-21} In the second contract, multiple appropriations existed but funded each customer's individual requirements.

^{B-22} In our review of the two contracts, we noted the nature of the aircraft, age and presence of historical repair data, and the difference in how the contract line item was funded affected the outcome.

Appendix C. Contracting Actions Selected for Review

SAMPLE NO	CONTRACTING OFFICE	CONTRACTING ACTION	CONTRACT DOLLARS	DESCRIPTION GOODS/SERVICES	DESIGNATED PAYING OFFICE
1	WR-ALC/LRK, 750 3rd St., Robins, AFB, GA 31098-2122	F3460100G0006 RU32	\$319,431.00	Miscellaneous Engine Accessories, Aircraft	DFAS-Columbus (North)
2	USAF/AFMC, Aeronautical System Center, 2640 Loop Rd. West, Bldg 557, Wright-Patterson AFB OH 45433-7106	F3365700G4029	\$645,500.00	Airframe structural components	DFAS-Columbus (West)
3	OO-ALC/LGJ Bldg 1215, 6050 Gum Lane, Hill AFB, UT 84056-5825	GS07F7465C- F4263003F0059	\$677,385.00	Converters, Electrical, Nonrotating	DFAS-San Bernardino
4	Dept of Air Force, AF Material Command, Human System Center/PKR, 7909 Lindbergh Dr., Brooks AFB, TX 78235-5352	F4162497D6004	\$112,000.00	RDTE/Other Research and Development-ENG/Manuf. DE	DFAS-Columbus (Bunker)
5	USAF/AFMC, AF Research Laboratory, 2310 9th St, Bldg 167, Wright-Patterson AFB OH 45433-7801	F3361503M2385	\$99,661.00	RDTE/Aircraft-applied Research	DFAS-Columbus (North)
6	55 Contracting Squadron, 101 Washington SQ, Bldg 40, Offutt AFB, N 6813-2107	F2560002D0008	\$319,972.00	Automated Info System Design and Integration SVC	DFAS-San Bernardino
7	OC-ALC/PSK B-52, 3001 Staff Dr, Bldg 3001 Ste. 2AG87A, Tinker, AFB, OK 73145-20	F3460199C0006- P00130	\$75,000.00	Systems Engineering Services	DFAS-Columbus (Unknown)
10	ASC/PKW, Area C, Bldg 1, 1940 Allbrook Dr., Suite 3, Wright-Patterson AFB, OH 45433-5309	26303D0541- F3360003F3217	\$68,570.00	ADP Support Equip	DFAS/BVFD/DY
11	18 CONS/INFRASTRUCTURE ACQUISITION, POC-ADAM JAIME, Unit 5199, Bldg 95 Kadena AB APO AP 96368	F6232100D0007	\$142,185.00	Maint/Other Miscellaneous Buildings	DFAS-BVNF/JA
12	Dept. 8 AF Research Laboratory, Directorate of Contracting/PK, 2251 Maxwell Ave, SE, Kirtland AFB, NM 87117-5773	F2960197AC0115- P00065	\$106,600.00	RDTE/Weapons-Adv Tech Dev	DFAS-Columbus (Unknown)
14	39 CONS/LGC FA5685 (Foreign), 39 UNCU KONTRAT SUBAYLIGI, BINA No. 488 10 UNCU TANKER US, KOMUTANLIGI, INCIRLIK/ADANA TURKEY	F6135803P0104	\$128,750.00	Aircraft Ground Servicing Equipment	DFAS-Limestone
17	R325 CONS/LGCB/STOP 28, 501 Illinois Avenue, STE 5, Jim Garred, Tyndall, AFB FL 32403-5526	F0863702D6999	\$680,028.00	Facilities Operations Support Services	DFAS-San Antonio
18	OC-ALC/PKQAA, Lynda McCoy/405-739-3434, 7858 5th ST STE 1, Tinker AFB, OK 73145	NA5501142- F3465003FA394	\$148,127.00	ADPE System Configuration	DFAS-San Bernardino
19	Directorate of Contracting, Bldg 1206, OO-ALC/LHKC, 6039 Wardleigh Rd, Hill AFB, UT 84056-5838	F4260001D0027	\$3,688,503.00	Systems Engineering Services	DFAS-Columbus (Unknown)
20	AAC/YUK Dept of Air Force, AAC/YUB, Bldg 11, 102 W. D Avenue, Ste 300, Eglin AFB, FL 32542-9808	F0863503D0007	\$195,626.00	BOMBS	DFAS-Columbus (Unknown)
21	Air Force Materiel Command, 311th Human Systems Wing/PKV, 3300 Sidney Brooks, Brooks City Base, TX 78235-5112	F4162401D8552	\$99,461.00	Other Industrial Buildings	DFAS-Columbus (South)
22	Directorate of Contracting, OO-ALC/YWK Bldg 1215, 6050 Gum Lane, Hill AFB, UT 84056-5825	F4263069C0170- P00085	\$56,862.00	Maint and Repair of EQ/Training Aids and Devices	DFAS-Columbus (Unknown)
23	Contracting Squadron, IT 14040 Bldg 17000, Andersen AFB GU 96543-4040	F6413303P0242	\$89,708.00	Miscellaneous Items	DFAS-Ford Island

Note: Sample Numbers are not in consecutive order. Contracting actions resulting in deliveries and payment prior to September 30, 2003 were replaced.

SAMPLE NO	CONTRACTING OFFICE	CONTRACTING ACTION	CONTRACT DOLLARS	DESCRIPTION GOODS/SERVICES	DESIGNATED PAYING OFFICE
24	CONS/INFRASTRUCTURE ACQUISITION POC: Todd Purdy Unit15199, Bldg 95 Kadena AB APO AP 96368 JAPAN	F6232103D0010	\$83,345.00	Maint/Other Miscellaneous Buildings	DFAS-BVNF/JA
25	Dept of Air Force, OC-ALC/Dir of Contracting/Aircraft, 3001 Staff Dr, Ste 1AE1 107B, Tinker AFB OK 73145-3020	F3460197C0032 P00126	\$587,000.00	Aircraft Fixed Wng	DFAS-Columbus (Suspected)
26	ESC/SRK, Electronic Systems Cener, AF Material Command, USAF, Hanscom AFB, MA 01731-3010	GS35F4668G- F1962802F8197P000	\$1,508,316.00	Other Professional Services	DFAS-Columbus (Suspected)
27	374 Contracting Squadron Unit 5228, Bldg 620, Yokota AB FUSSA-SHI, Tokyo 197-0001 Japan	F6256203C0049	\$620,200.00	Maint/Religious Facilities	DFAS-BVNF/JA
28	AAC/PKO-FA2823, 205 West D Ave., Suite 541 (Bldg 350), Eglin AFB FL 32542-6882	GS07F0397K- F0865103FA294	\$68,995.00	Recreational and Gymnastic Equipment	DFAS-BVFD/DY Columbus
30	USAF/AFMC HQ Aeronautical Sys Cener, 2300 D Street, Wright-Patterson AFB OH 45433-7249 Vicki A. Fry	F3365798D0021	\$876,488.00	Data Analyses (Other Than Scientific)	DFAS-Columbus (North)
31	OO-ALC/PKOS, c/o: Yvonne Berger, 6038 Aspen Ave, B1289 NE Hill AFB, UT 84056-5905	F4265002C0024 P00013	\$250,000.00	Custodial-Janitorial Services	DFAS-San Bernardino
32	82 CONSLGC (TSgt David Bustamate, David Bustamate@sheppard.af.mil) 136 Ave, Ste 1, Bldg 1664, Sheppard AFB, TX 76311-2746	F4161201D0006	\$573,366.00	Maint/Maintenance Building	DFAS-San Antonio
33	374 Contracting Squadron Unit 5228, Bldg 620, Yokota AB, FUSSA-SHITOKYO 197-0001 Japan	F6256203P0648	\$42,085.00	Maint/Family Housing Facilities	DFAS-BVNF/JA
34	88 ABW/PKS, POC: Lt. Sean Krisko, 1940 Albrook Dr, Ste 3, Wright-Patterson AFB, OH 45433-5309	GS28F8021H F3360103F0228	\$67,770.00	Office Furniture	DFAS/BVFD/DY
35	USAFE Contracting Squadron, Unit 3115, APO, AE 09094	GS06F0007J- F6152103FA494	\$206,530.00	Miscellaneous Items	DFAS-Limestone
36	OC-ALC/PKOE, Monte Pope/405-739-4177, 7858 5th St, Ste 1, Tinker AFB OK 73145	F3465098D0033	\$124,359.00	Architect - Engineering Services	Unknown
37	99 CONSLGCB, 5865 S/WAAB Blvd, Bldg 588, Nellis AFB, NV 89191-7063	GS35F4076D- F2660003F8613	\$486,000.00	ADP Input/Output and Storage Devices	DFAS-Limestone
38	35 CONSLGC (APO), Unit 5201, Bldg 302, APO AP 96319-5201 Japan	GS07F8756D- F6250903F0067	\$77,173.00	Tractor, Wheeled	DFAS-FVFI/JA Unit 5220
40	38 Contracting Squadron, Unit 14040, Bldg 17000, Andersen AFB GU 96543-4040	F6413398D0009	\$128,590.00	Maint/Other Miscellaneous Bulding	DFAS-Ford Island
41	USAF/AFMC Aeronautical Systems Cener (SC) 2640-Loop Rd West, RM 213, Wright-Patterson AF OH 45433-7106	F3365703C3003- P00016	\$3,232,511.00	DRONES	DFAS-Columbus (Unknown)
42	15th Contracting Squadron, Attn: Laurence Orr, 90G St, Bldg 1201, Hickam AFB HI 96853-5230	F6460503C0020	\$1,499,980.00	Maint/All Other Non-Building Facilities	DFAS-Pacific

Note: Sample Numbers are not in consecutive order. Contracting actions resulting in deliveries and payment prior to September 30, 2003 were replaced.

SAMPLE NO	CONTRACTING OFFICE	CONTRACTING ACTION	CONTRACT DOLLARS	DESCRIPTION GOODS/SERVICES	DESIGNATED PAYING OFFICE
44	Special Operations Forces, Contracting Div. WR-ALC/UK, 228 Cochran St., Robins AFB, GA 31098-2200	F0960302C0286- P0007	\$442,297.00	Modification of EQ/Aircraft Comps & Accys	DFAS-Columbus (North)
46	USAFB/AFMC, Aeronautical Systems Center (ASC), 2640 Loop Rd West, Rm 203, Wright-Patterson AFB OH 45433-7106	F3365700G4042	\$85,371.00	Systems Engineering Services	DFAS-Columbus (West)
47	ASC/PKW, Area C, Bldg 1, 1940 Allbrook Dr., Suite 3, Wright-Patterson AFB, OH 45433-5309	F4262000D0039- RZ16	\$71,092.00	Engineering Technical Services	DFAS/BVFD/DY
48	OC/ALC/LGKIB (CFT), 3001 Staff Dr, Ste 1AC197E, Tinker AFB, OK 73145-3028	F3460197D0423	\$1,130,678.00	Maint and Repair of EQ/Aircraft Structural Comps	DFAS-Columbus (North)
50	12 CONS/LGCB-FA1691, 395 B St. West, Ste 2, Randolph AFB TX 78150-4525	GS35F4415G- F4169102F0653P000	\$74,630.00	Other ADP & Telecommunication Services	DFAS-Omaha
51	Dept of the Air Force, Directorate of Contracting, OO-ALC/LHKS Bldg 1239, 6012 Fir Ave, Hill AFB, UT 84056-5820	F0460697D0059- QPSB	\$317,027.00	Telephone & Telegraph Equipment	DFAS-Columbus (North)
53	42nd Contracting Squadron, Attn: AMN Lynn Gardner, 50 Lemay Plaza South, Maxwell AFB AL 36112-6334	F0160003FA306	\$149,160.00	Office Furniture	DFAS-San Antonio
54	22nd Contracting Squadro, FA4621, 53147 Kansas St, Ste 102, McConnell AFB KS 67221-3806	DAHA1402D5222-X406	\$168,272.00	Maint/Religious Facilities	DFAS-OM/FP, Bellevue NE
56	USAF/AFMC/AAC, Air Armament Center, Bldg 349, 207 West D Ave, Ste 622, Eglin AFB FL 32542-6944, Jennifer L McPherson 850-882-3367 X257	F0863503C0098	\$2,500,000.00	Guided Missiles	DFAS-Columbus (West)
57	50th Contracting Squadron, GWE, Attn: Gwendolyn Miller, 21D Falcon Parkway Schriever AFB CO 80912-2118	GS07F6337A- FA255003FA122	\$199,943.00	Miscellaneous Furniture and Fixtures	DFAS-BVFD/DY, Columbus

Note: Sample Numbers are not in consecutive order. Contracting actions resulting in deliveries and payment prior to September 30, 2003 were replaced.

Appendix D. Report Distribution

Office of the Secretary of Defense

Under Secretary of Defense for Acquisition, Technology, and Logistics
Under Secretary of Defense (Comptroller)/Chief Financial Officer
 Deputy Chief Financial Officer
 Deputy Comptroller (Program/Budget)
Under Secretary of Defense for Personnel and Readiness
Assistant Secretary of Defense (Networks and Information Integration/Administration
 and Management)
Assistant Secretary of Defense (Health Affairs)
Director, Acquisition Resources and Analysis
Director, Program Analysis and Evaluation
Director, Defense Procurement and Acquisition Policy

Department of the Navy

Naval Inspector General
Auditor General, Department of the Navy
President, Naval Postgraduate School

Department of the Air Force

Assistant Secretary of the Air Force (Financial Management and Comptroller)
Assistant Secretary of the Air Force (Acquisition, Technology, and Logistics)
Auditor General, Department of the Air Force

Other Defense Organization

Office of the Chairman Joint Chiefs of Staff
Director, Defense Finance and Accounting Service
Director, Defense Contract Audit Agency
Director, Defense Contract Management Agency
Director, Defense Logistics Agency
National Security Agency
Defense Systems Management College
Inspector General, US Forces Command

Non-Defense Federal Organization

Office of Management and Budget

Congressional Committees and Subcommittees, Chairman and Ranking Minority Member

Senate Committee on Appropriations
Senate Subcommittee on Defense, Committee on Appropriations
Senate Committee on Armed Services
Senate Committee on Governmental Affairs
House Committee on Appropriations
House Subcommittee on Defense, Committee on Appropriations
House Committee on Armed Services
House Committee on Government Reform
House Subcommittee on Government Efficiency and Financial Management, Committee on Government Reform
House Subcommittee on National Security, Emerging Threats, and International Relations, Committee on Government Reform
House Subcommittee on Technology, Information Policy, Intergovernmental Relations, and the Census, Committee on Government Reform

Department of the Air Force Comments



DEPARTMENT OF THE AIR FORCE
WASHINGTON, DC

JAN 05 2006

OFFICE OF THE ASSISTANT SECRETARY

MEMORANDUM FOR ASSISTANT INSPECTOR GENERAL FOR AUDITING
OFFICE OF THE INSPECTOR GENERAL DEPARTMENT
OF DEFENSE

SAF/AQC
1060 Air Force Pentagon
Washington, DC 20330-1060

SUBJECT: DoDIG Draft Report, "Vendor Pay Distribution Cycle, Air Force General Fund:
Contract Formation and Funding, "October 11, 2005 (Project No D2004FD-
0040 000)

This is in reply to your memorandum requesting the Assistant Secretary of the Air Force (Acquisition) and (Financial Management and Comptroller) to provide Air Force comments on subject report dated 8 Dec 05

We have reviewed the subject audit report, which contains multiple recommendations that covers the financial, legal, and contracting areas. We believe recommendations in some areas could be valid and deserve further examination. We will establish a team within SAF/AQC, SAF/FM and SAF/GC to review the audit recommendations. The team will prepare a report with recommendations relative to any policy or training requirements that need to be emphasized or written by 31 March 2006

Relative to recommendation Draft Report paragraph A 1a, (Atch 1) we partially concur. We understand appropriations cannot be reversed until a determination of the Anti-deficiency Act (ADA) has in fact occurred. As noted in the attached SAF/FMP letter (atch 2), of the 14 ADA violations alleged, four have been determined for preliminary review of the facts and circumstances surrounding the allegations.


In regards to recommendation Draft Report paragraph A 1b, we partially concur. Although we believe your opinions have merit relative to severable vs non-severable, bona fide need, end of year funding, and contract formation we likewise believe the contracting officer's opinion has merit. In this instance, as mentioned above, the review will include existing regulations together with policy, procedures and training. Likewise, we will see what information is being conveyed to the Administrative Contracting Officers about follow up and tracking contract execution.

Relative to recommendation Draft Report paragraph A 1c. We concur. As previously mentioned we will conduct a review relative to performance against minor repair and maintenance as a bona fide need.

Regarding recommendation A 2. of the attached draft audit report, we concur. SAF/AQC in coordination with SAF/FM will emphasize to the MAJCOMS the need for training in appropriations law and that it be part of the contracting requirement for continuous learning. We will also emphasize to the MAJCOMS what constitutes inherently governmental activities. As indicated above, we will insure a review of regulations, policies and procedures relative to end-of-year contracting is accomplished.

The point of contact for this action is Mr. J.P. McCusker, SAF/AQCK. His E-mail address is mecusker@pentagon.af.mil and his phone numbers are comm 703-588-7031 and DSN 425-7031.

Sincerely


WILLIAM D. MCKINNEY, Col USAF
Associate Deputy Assistant
Secretary (Contracting)
Assistant Secretary (Acquisition)

- 2 Attachments:
1 Draft Audit Recommendations
2 SAF/FM Memo

Department of the Air Force Comments



Office of the Assistant Secretary

DEPARTMENT OF THE AIR FORCE
WASHINGTON, DC

- 8 DEC 2005

MEMORANDUM FOR ASSISTANT INSPECTOR GENERAL FOR AUDITING
OFFICE OF THE INSPECTOR GENERAL
DEPARTMENT OF DEFENSE

FROM: SAF/FMP

SUBJECT: DoDIG Draft Report, "Vendor Pay Disbursement Cycle, Air Force General Fund:
Contract Formation and Funding," October 11, 2005 (Project No. D2004FD-
0040 000)

This is in reply to your memorandum requesting the Assistant Secretary of the Air Force (Financial Management and Comptroller) provide comments on the subject report

In recommendations A 1a(2) and B 1a of the draft report, you recommended the Assistant Secretary of the Air Force (Financial Management and Comptroller) direct the applicable commands and installations to perform preliminary reviews on 14 potential Antideficiency Act (ADA) violations identified in Appendix C of your draft report (Sample #2, 4 (twice), 11, 12, 17, 19, 23, 24, 26 (twice), 27, 44, and 57). We partially concur with your findings and recommendations. Specifically,

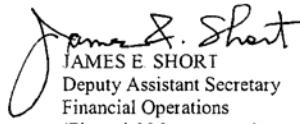
1. On October 31, 2005, my office directed Comptroller personnel at Headquarters, Air Combat Command (HQ ACC/FM), Headquarters, Air Force Materiel Command (HQ AFMC/A8), Headquarters, Air Force Space Command (HQ AFSPC/FM), and Headquarters, Pacific Air Force (HQ PACAF/FM), to thoroughly research each of the 14 samples and determine whether preliminary ADA reviews were, in fact, necessary. On December 2, 2005, my office received the results of their research, which determined only 3 of the 14 potential ADA violations identified in your draft report (Sample #17, 19, and 44) required preliminary ADA reviews.

2. On December 7, 2005, we discussed the research results with the Air Force Deputy General Counsel (Fiscal & Administrative Law) (SAF/GCA) and the Air Force Deputy Assistant Secretary for Budget (Policy & Fiscal Control) (SAF/FMBMM), and as a result of this discussion, we determined that another potential ADA violation identified in your draft report (Sample #23) would also require a preliminary ADA review because the research results and supporting legal opinions did not completely address this issue.

As a result, on December 8, 2005, my office instructed HQ AFMC/A8 to appoint four preliminary review officials, via contract, to gather the basic facts and circumstances to determine whether potential ADA violations occurred. Since the bidding/contract award process takes 30-45 days to complete, the reviews will begin, by January 23, 2006, and the results of the reviews will be provided to my office, by April 21, 2006. Upon receipt, we will provide the results of the reviews to SAF/GCA, as required, and allow them 90 days to complete their legal review/confirm whether formal investigations are necessary, or not.

I attached the results of the research performed by personnel at HQ AFSPC/FM (Atch 1), HQ PACAF/FM (Atch 2), and HQ AFMC/A8 (Atch 3), for your review. HQ ACC/FM personnel did not perform any research because, after reviewing the potential ADA violation identified in your draft report (Sample #17), they agreed that a preliminary ADA review was necessary.

If you have any questions, require additional information, or have future follow-up requests, please contact Mr Bill Town, SAF/FMPF, 695-0827


JAMES E SHORT
Deputy Assistant Secretary
Financial Operations
(Financial Management)

Attachments:

- 1 HQ AFSPC/FM Memo (w/atch), 2 Dec 05
- 2 HQ PACAF/FM Memo (w/atch), 2 Dec 05
- 3 HQ AFMC/A8 Memo (w/atch), 1 Dec 05

cc: OUSD(C)
SAF/AQCK
SAF/FMBMM
SAF/FMPF
SAF/GCA
AF/ILERP
HQ ACC/FM
HQ AFMC/A8
HQ AFSPC/FM
HQ PACAF/FM

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