

Inspector General

United States
Department of Defense



FY 2007 DoD Purchases Made Through the U.S.
Department of Veterans Affairs

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Acronyms and Abbreviations

AHLTA	Armed Forces Health Longitudinal Technology Application
COR	Contracting Officer's Representative
DGPA	DSCP Guiding Principles for Acquisition
DLA	Defense Logistics Agency
DSCP	Defense Supply Center Philadelphia
D&F	Determination and Finding
FAR	Federal Acquisition Regulation
FSS	Federal Supply Schedule
GAO	Government Accountability Office
IG	Inspector General
ITAC	Information Technology Acquisition Center
J&A	Justification and Approval
MIPR	Military Interdepartmental Purchase Request
MOA	Memorandum of Agreement
OIG	Office of Inspector General
QASP	Quality Assurance Surveillance Plan
U.S.C.	United States Code
VA	U.S. Department of Veterans Affairs
VASS	Veterans Affairs Special Services



INSPECTOR GENERAL
DEPARTMENT OF DEFENSE
400 ARMY NAVY DRIVE
ARLINGTON, VIRGINIA 22202-4704

January 21, 2009

MEMORANDUM FOR UNDER SECRETARY OF DEFENSE FOR ACQUISITION,
TECHNOLOGY, AND LOGISTICS
UNDER SECRETARY OF DEFENSE (COMPTROLLER)/DoD CHIEF
FINANCIAL OFFICER
ASSISTANT SECRETARY OF DEFENSE (HEALTH AFFAIRS)
COMMANDER, DEFENSE SUPPLY CENTER PHILADELPHIA

SUBJECT: FY 2007 DoD Purchases Made Through the U.S. Department of Veterans Affairs
(Report No. D-2009-043)

We are providing this draft report for review and comment. We considered comments from the Office of the Under Secretary of Defense for Acquisition, Technology, and Logistics; the Office of the Under Secretary of Defense (Comptroller)/DoD Chief Financial Officer; and the Commander, Defense Supply Center Philadelphia. The Assistant Secretary of Defense (Health Affairs) also provided unsolicited comments. All comments were considered in preparing the final audit report.

DoD Directive 7650.3 requires that all recommendations be resolved promptly. As a result of client comments, we revised and renumbered Recommendation B. We request that the Under Secretary of Defense for Acquisition, Technology, and Logistics provide additional comments on Recommendation B.1. The Office of the Under Secretary of Defense (Comptroller)/DoD Chief Financial Officer and the Assistant Secretary of Defense (Health Affairs) comments were responsive. The Commander, Defense Supply Center Philadelphia comments were partially responsive. Therefore, we request additional comments on Recommendation B.3. by February 20, 2009.

Please provide comments that conform to the requirements of DoD Directive 7650.3. If possible, send your comments in electronic format (Adobe Acrobat file only) to AudACM@dodig.mil. Copies of your comments must have the actual signature of the authorizing official for your organization. We are unable to accept the / Signed / symbol in place of the actual signature. If you arrange to send classified comments electronically, you must send them over the SECRET Internet Protocol Router Network (SIPRNET).

We appreciate the courtesies extended to the staff. Please direct questions to me at (703) 604-9200 (DSN 664-9200). If you desire, we will provide a formal briefing on the results.

A handwritten signature in black ink, reading "Richard B. Jolliffe", is positioned above the typed name.

Richard B. Jolliffe
Assistant Inspector General
Acquisition and Contract Management

cc: Inspector General, U.S. Department of Veterans Affairs



Results in Brief: FY 2007 DoD Purchases Made Through the U.S. Department of Veterans Affairs

What We Did

As required by Public Law 109-364, "John Warner National Defense Authorization Act for Fiscal Year 2007," we did the second review regarding DoD contracting through the U.S. Department of Veterans Affairs (VA). The main objective was to determine whether DoD and VA improved their interagency purchasing practices since our last audit.

What We Found

The VA contracting officials and DoD management officials showed some improvement, but still did not consistently comply with procurement regulations when making assisted acquisitions through VA. Specifically, this review disclosed problems with acquisition planning, sole-source justifications, price reasonableness determinations, contract administration, and the bona fide needs rule.

As a result, DoD organizations making purchases through VA had no assurance that the purchases were based on best value or that VA used effective and efficient acquisition procedures, and DoD continued to incur potential Antideficiency Act violations. Additionally, the VA Office of Acquisition and Logistics decided to terminate its assisted acquisition support to the Air Force. This effectively ends DoD use of VA for assisted acquisitions as the VA Office of Acquisition and Logistics worked on 94 percent of purchases made by DoD organizations. We believe that DoD should continue to use VA to purchase goods and services, when in DoD's best interest.

Further, Defense Supply Center Philadelphia contracting officers, when making direct acquisitions from Federal Supply Schedules, did

not properly solicit, award, or perform oversight.

The internal controls were not adequate. We identified weaknesses in acquisition strategies.

What We Recommend

- The Under Secretary of Defense for Acquisition, Technology, and Logistics should ensure DoD organizations issue local guidance that reflects current requirements.
- The Under Secretary of Defense (Comptroller)/DoD Chief Financial Officer should provide the status of the DoD Components preliminary reviews for the potential Antideficiency Act violations identified.
- The Commander, Defense Supply Center Philadelphia should require contract officers to follow acquisition regulations.
- Recommendations to address the contracting problems were made in other audit reports noting the same problems. Also, the Office of Management and Budget issued detailed guidance on improving the interagency acquisition process on June 6, 2008. Accordingly, we did not repeat these recommendations in this report.

Client Comments

The Under Secretary of Defense for Acquisition, Technology, and Logistics and the Under Secretary of Defense (Comptroller)/DoD Chief Financial Officer generally agreed with the recommendations; the Director of the Defense Logistics Agency Accountability Office, responding for the Commander, Defense Supply Center Philadelphia, partially agreed. Please see the table on the back of this page for recommendations needing additional comment.

Recommendations Table

Client	Recommendations Requiring Comment	No Additional Comments Required
Under Secretary of Defense for Acquisition, Technology, and Logistics	B.1.	A.1.
Under Secretary of Defense (Comptroller)/DoD Chief Financial Officer		A.2., B.2.a., and B.2.b.
Commander, Defense Supply Center Philadelphia	B.3.	

Please provide comments by February 20, 2009.

Table of Contents

Results in Brief	i
Introduction	1
Objectives	1
Background	1
Review of Internal Controls	3
Finding A. DoD Use of Veterans Affairs for Assisted Acquisitions	5
Recommendations, Client Comments, and Our Response	19
Finding B. DoD Use of Veterans Affairs for Direct Acquisitions	21
Recommendations, Client Comments, and Our Response	33
Appendices	
A. Scope and Methodology	39
B. Prior Coverage	42
C. Assisted Acquisitions Issues	45
D. Potential Antideficiency Act Violations That Occurred in FY 2007 Using Assisted Acquisitions	49
E. Direct Acquisitions Issues	51
F. Potential Antideficiency Act Violations That Occurred in FY 2007 Using Direct Acquisitions	53
Client Comments	
Under Secretary of Defense for Acquisition, Technology, and Logistics	57
Under Secretary of Defense (Comptroller)/DoD Chief Financial Officer	58
Assistant Secretary of Defense for Health Affairs	61
Defense Logistics Agency	62

Introduction

Objectives

Our overall audit objective was to determine whether DoD and the U.S. Department of Veterans Affairs (VA) improved their interagency purchasing practices since our last audit. Specifically, we examined the policies, procedures, and internal controls to determine whether there was a legitimate need for DoD to use the VA, whether DoD clearly defined its requirements, whether DoD properly used and tracked funds, and whether VA complied with Defense procurement requirements. See Appendix A for a discussion of the scope and methodology. See Appendix B for prior coverage related to the objectives.

Background

This audit was performed as required by section 817, Public Law 109-364, “John Warner National Defense Authorization Act for Fiscal Year 2007,” October 17, 2006. Section 817 states:

(a) INSPECTOR GENERAL REVIEWS AND DETERMINATIONS.—

(1) IN GENERAL.—For each covered non-defense agency, the Inspector General of the Department of Defense and the Inspector General of such non-defense agency shall, not later than March 15, 2007, jointly—

(A) review—

(i) the procurement policies, procedures, and internal controls of such non-defense agency that are applicable to the procurement of property and services on behalf of the Department by such non-defense agency; and

(ii) the administration of those policies, procedures, and internal controls; and

(B) determine in writing whether—

(i) such non-defense agency is compliant with defense procurement requirements;

(ii) such non-defense agency is not compliant with defense procurement requirements, but has a program or initiative to significantly improve compliance with defense procurement requirements;

(iii) neither of the conclusions stated in clauses (i) and (ii) is correct in the case of such non-defense agency; or

(iv) such non-defense agency is not compliant with defense procurement requirements to such an extent that the interests of the Department of Defense are at risk in procurements conducted by such non-defense agency.

(2) ACTIONS FOLLOWING CERTAIN DETERMINATIONS.—If the Inspectors General determine under paragraph (1) that a conclusion stated in clause (ii), (iii), or (iv) of subparagraph (B) of that paragraph is correct in the case of a covered non-defense agency, such Inspectors General shall, not later than June 15, 2008, jointly—

(A) conduct a second review, as described in subparagraph (A) of that

paragraph, regarding such non-defense agency's procurement of property or services on behalf of the Department of Defense in fiscal year 2007; and
(B) determine in writing whether such non-defense agency is or is not compliant with defense procurement requirements.

To comply with the FY 2007 National Defense Authorization Act, the Offices of the Inspectors General (OIG) DoD and VA conducted an interagency audit of DoD purchases made through the VA. The law required a second review if our initial review disclosed problems. Our initial review was performed last year and disclosed problems that are summarized in DoD Inspector General (IG) Report No. D-2008-036, "FY 2006 DoD Purchases Made Through the U.S. Department of Veterans Affairs," December 20, 2007. This report addresses problems noted during our second review. We believe that DoD should continue to use VA to purchase goods and services, when in DoD's best interest. The DoD OIG transmitted a summary of the review to Congress on June 13, 2008. The VA OIG transmitted a separate summary of its review to Congress.

The VA mission is to provide United States veterans and their families with medical care, benefits, and social support. VA is divided into three subdivisions: the Veterans Health Administration, the Veterans Benefits Administration, and the National Cemetery Administration. Currently there are 153 VA medical centers and more than 263,000 personnel. About 5.5 million people received benefits in VA health care facilities in FY 2007. VA is the second largest Federal department. According to the VA fact sheet, the FY 2007 spending was projected to be more than \$80.0 billion. The VA was established on March 15, 1989, succeeding the former Veterans Administration that was established July 21, 1930.

The VA organization comprises several contracting organizations. The Austin Acquisition Service, the Denver Acquisition and Logistics Center, the Information Technology Acquisition Center (ITAC), the Joint Venture Acquisition Center, and the Veterans Affairs Special Services (VASS) all make purchases on behalf of DoD. The National Acquisition Center solicits, awards, and administers the VA Federal Supply Schedule (FSS).

In FY 2007, DoD organizations provided funds to VA contracting activities to award 876 purchases of goods and services valued at \$207.5 million, an approximate 50 percent decrease from FY 2006, with the Air Force being the largest DoD user of the VA with 760 purchases valued at approximately \$174 million. We visited 5 DoD and 3 VA organizations, and reviewed 61 military interdepartmental purchase requests (MIPR) totaling \$85.0 million for 40 purchases. In addition, during FY 2007 the Defense Supply Center Philadelphia (DSCP) awarded 1,277 direct purchases valued at approximately \$19.0 million using the FSS contracts. Of these purchases, DSCP personnel stated that 99 percent were on VA FSS contracts. We reviewed 23 of the direct purchases worth more than \$10.0 million made by DSCP using VA contracts.

Recommendations Implemented

VA is implementing actions to correct problems noted in DoD IG Report No. D-2008-036, "FY 2006 DoD Purchases Made Through the U.S. Department of Veterans Affairs," December 20, 2007; and VA IG Report No. 06-03540-24, "Audit of VA Purchases Made on Behalf of the Department of Defense," November 19, 2007. VA is improving compliance with the Federal Acquisition Regulation (FAR) and DoD procurement regulations. VA stopped advance payments, changed funding procedures, and is providing training to its personnel on DoD procurements. Further, VA contracting officers have improved price reasonableness determinations, sole-source justifications, and competition.

Interagency Acquisitions Guidance

On June 6, 2008, the administrator of the Office of Management and Budget, Executive Office of the President issued a memorandum on "Improving the Management and Use of Interagency Acquisitions." The memorandum provides guidance to help agencies make sound decisions when supporting the use of assisted acquisitions and on direct acquisitions. The guidance also provides a checklist of roles and responsibilities for the requesting and servicing agency.

Review of Internal Controls

We determined that a material internal control weakness existed as defined by DoD Instruction 5010.40, "Managers' Internal Control (MIC) Program Procedures," January 4, 2006. DoD organizations were required to ensure the acquisition strategy was in the best interest of the Government. The sites we visited encountered problems while implementing and executing policy. Furthermore, contracting, financial, and accounting officials did not comply with regulations and statutes. DoD organizations should incorporate the regulations and statutes associated with contracting and funding. Contracting, financial, and accounting officials should have the necessary training and knowledge to properly execute the orders. Implementing Recommendation A.1. will improve interagency acquisitions. We will provide a copy of this report to the senior official responsible for internal controls in the Office of the Under Secretary of Defense for Acquisition, Technology, and Logistics and the Office of the Under Secretary of Defense (Comptroller)/DoD Chief Financial Officer.

Finding A. DoD Use of Veterans Affairs for Assisted Acquisitions

For FY 2007 assisted acquisitions, VA contracting officials and DoD management officials continued to work on improving contracting for interagency agreements; however, those officials did not always comply with the FAR and DoD procurement regulations and guidance. Of the 22 purchases reviewed at DoD organizations, all were either hastily planned, inappropriately administered, or improperly funded, and there was no collection and recording of contractor past performance data by DoD organizations on the VA contracts. Specifically,

- DoD organizations did not document that the non-DoD contracts were in the best interest of DoD;
- the VA and DoD organizations were deficient in contract administration, including surveillance of contractor performance, assignment of contracting officer's representatives (COR), and preparation of quality assurance surveillance plans (QASP); and
- the VA and DoD requesting activity used Government funds that did not meet the bona fide needs rule.

On 16 of 36 purchases¹ reviewed at the VA contracting activities, the VA contracting officials did not properly award DoD purchases. Specifically,

- on 15 of the 36 purchases, the VA contracting officials did not have adequate support for price reasonableness determination; and
- on 5 of 11 sole-source purchases, the VA contracting officials did not provide adequate justification for sole-source procurements.

This occurred because of a lack of oversight and coordination between VA and DoD. Officials were unclear of their roles and responsibilities and also the applicable guidance for interagency agreements. As a result, DoD organizations making purchases through the VA had no assurance that the purchases were based on best value or that the VA used effective and efficient acquisition procedures, and DoD continued to incur potential Antideficiency Act violations.

¹Eighteen of 36 purchases were reviewed at DoD and VA organizations and 18 purchases were reviewed solely at VA organizations. See the Appendix A, "Assisted Acquisitions Reviewed," table and Appendix C, "Assisted Acquisition Issues," for detailed information on the purchases.

Background

DoD Use of the VA

The Military Departments generally use the services of the VA contracting organizations to award contracts under section 8111, title 38, United States Code (38 U.S.C. 8111), “Sharing of Department of Veterans Affairs and Department of Defense Health Care Resources” (VA-DoD Health Care Resources Sharing Act) statutory authority. Further, 10 U.S.C. 1104 states that DoD shall share health care resources with VA in accordance with 38 U.S.C. 8111. The VA and Office of the Air Force Surgeon General established a March 31, 2005, memorandum of agreement (MOA) that states the Air Force will use VA as its primary contracting support for health care-related acquisitions. DoD uses MIPRs to transfer funds to the VA when using assisted acquisition services.

VA-DoD Health Care Resources Sharing Act

Congress encourages VA and DoD to share resources through the VA-DoD Health Care Resources Sharing Act. This act states:

The Secretary of Veterans Affairs and the Secretary of Defense shall enter into agreements and contracts for the mutually beneficial coordination, use, or exchange of use of the health care resources of the Department of Veterans Affairs and the Department of Defense with the goal of improving the access to, and quality and cost effectiveness of, the health care provided by the Veterans Health Administration and the Military Health System to the beneficiaries of both Departments.

Memorandum of Agreement

The Deputy Surgeon General of the Air Force and the VA Acting Deputy Assistant Secretary, Office of Acquisition and Materiel Management signed an MOA, effective March 31, 2005, for Air Force contract support from the VA. The MOA was entered into under the authority of 38 U.S.C. 8111 and 10 U.S.C. 1104. The MOA superseded the Service Legal Agreement between the Air Force Medical Logistics Office and the Department of Veterans Affairs National Acquisition Center, dated July 7, 1995. The VA-Office of the Air Force Surgeon General MOA states:

This MOA establishes a medical contracting service network for acquisition and procurement activities to facilitate the provision of Air Force Medical Service (AFMS) procurement requirements, increase efficiency of operations, and reduce cost of operations in accordance with the VA/DOD Joint Strategic Plan (April 2003). The AFMS will be the customer of the services provided under this agreement and will use this service network on a voluntary basis.

On May 21, 2008, the VA Deputy Assistant Secretary for Acquisition and Logistics terminated support to Air Force Medical Service effective May 21, 2009. This announcement is in accordance with MOA dated March 31, 2005, Section VIII, “Termination.” The VA memorandum states:

The purpose of this letter is to inform you that the Department of Veterans Affairs (VA) will exercise its right to terminate support under the terms of the Memorandum of Agreement (MOA) with the Office of the Air Force Surgeon General executed in March 2005.

Therefore, the VA Office of Acquisition and Logistics will no longer provide assisted acquisition support to the Air Force. This decision does not affect purchases made by ITAC under the Government Management Reform Act.

DoD MIPRs to VA

DoD uses the MIPR (DoD Form 448) to transfer funds within Military Departments and to other Federal agencies' servicing organizations. Most DoD MIPRs sent to VA are authorized under the VA-DoD Health Care Resources Sharing Act. VA policy limits interagency contracting authority to goods or services normally obtained by VA in the course of carrying out its mission. The ITAC uses the Government Management Reform Act of 1994 to procure information technology-related goods and services. Purchases made under these two statutory authorities are categorized as non-Economy Act orders. Accordingly, the requirements of DoD Financial Management Regulation, volume 11A, chapter 3, "Economy Act Orders," do not apply.

Criteria

On October 29, 2004, the Principal Deputy Under Secretary of Defense (Comptroller) and Acting Under Secretary of Defense for Acquisition, Technology, and Logistics issued a memorandum on "Proper Use of Non-DoD Contracts" (DoD October 29, 2004, Memorandum). The memorandum directs Military Departments and Defense agencies to establish procedures for reviewing and approving the use of non-DoD contract vehicles when procuring supplies and services on or after January 1, 2005, for amounts exceeding the simplified acquisition threshold. The procedures for assisted acquisitions must include evaluating whether using a non-DoD contract is in the best interest of DoD; determining that services and supplies are within the scope of the contract used; reviewing funding to ensure it is in compliance with appropriation limitations; providing unique terms, conditions, and requirements to the assisting agency for incorporation into the order or contract, thus ensuring the contract is in compliance with DoD-unique requirements; and collecting data on the use of assisted acquisitions for analysis.

MIPR Guidance

Section 1501, title 31, United States Code, "Documentary Evidence Requirement for Government Obligations," requires a binding, written agreement between two agencies that will report the specific goods to be delivered, real property to be bought or leased, or work or services to be provided. Defense Federal Acquisition Regulation Supplement 253.208-1, "Military Interdepartmental Purchase Requests," requires reporting a realistic time of delivery or performance on each MIPR.

Recently Issued Guidance

On October 16, 2006, The Acting Deputy DoD Chief Financial Officer, Office of the Under Secretary of Defense (Comptroller), issued a memorandum, "Non-Economy Act

Orders” (DoD October 16, 2006, Memorandum). The memorandum prescribes policy and procedures applicable to DoD procurement of goods and services from non-DoD agencies under statutory authority other than the Economy Act. For non-economy act orders over the simplified Acquisition Threshold, the memorandum directs Military Departments to comply with FAR Part 7, and DoD Components’ procedures for the DoD October 29, 2004, Memorandum. Furthermore, all non-Economy Act orders exceeding \$500,000 must be reviewed by a DoD-warranted contracting officer prior to sending the orders to the funds certifier or issuing MIPRs to the non-DoD activity. The memorandum states non-Economy Act orders for work and services outside of DoD should be executed through the use of MIPRs. If an alternative execution document is used, it must provide information consistent with the MIPR. Non-Economy Act orders must include a detailed description, specific performance or delivery requirements, proper fund citation, payment terms and conditions, specific non-Economy Act statutory authority, and the DoD Activity Address Code. Finally, the memorandum directs the requesting official to establish QASPs for non-Economy Act orders exceeding the simplified acquisition threshold. The requirement facilitates the oversight of goods and services for the performing agency. The plans should include contract administration oversight in accordance with the surveillance plan, procedures for receipt and review of receiving reports and invoices from the performing agency, reconciliation of receiving reports and invoices, and requirements for documenting acceptance of the goods received or services performed. In February 2008, the Under Secretary of Defense (Comptroller)/ DoD Chief Financial Officer updated the DoD Financial Management Regulation by adding volume 11A, chapter 18, “Non-Economy Act Orders.” The information updated in the Financial Management Regulation was information previously covered by the Comptroller memorandums.

Acquisition Planning for Use of VA

We visited five DoD organizations that sent funds to VA using MIPRs for the purchase of goods and services. The DoD organizations did not always:

- perform acquisition planning to document that the VA was the best source for procurement of goods and services;
- enter into interagency agreements with the VA that were specific, definite, and certain; or
- properly complete the MIPRs used to fund their purchases.

Acquisition Planning

On 22 of 22 purchases reviewed, DoD organizations had inadequate acquisition planning. FAR Part 7, “Acquisition Planning,” details the Federal requirements for acquisition planning. FAR 7.102 states that agencies must perform acquisition planning for all acquisitions: “This planning shall integrate the efforts of all personnel responsible for significant aspects of the acquisition. The purpose of this planning is to ensure that the Government meets its needs in the most effective, economical, and timely manner.” During initial acquisition planning, DoD organizations should determine the best way to purchase goods or services and when applicable have this decision reviewed by a warranted DoD contracting officer as also required by the DoD October 16, 2006,

Memorandum. FAR 7.105 requires organizations to consider acquisition alternatives and prospective sources of supplies and services that will meet their need. FAR Part 10, “Market Research,” requires that agencies use the results of market research to determine the sources capable of satisfying the agency’s requirements.

DoD organizations did not follow FAR or DoD guidance when using interagency contracting. The Air Force Medical Operations Agency, Kelly Air Force Base, prepared a boilerplate best interest determination for the purchase of 840 ventilators and accessories. The boilerplate determination states:

Use of a non-DoD contract is in the best interest of the Air Force considering the factors of satisfying customer requirements, cost effectiveness and price, delivery schedule, non-availability of a suitable contract within DOD, contract administration, small business opportunities and any other factors as applicable.

Twenty of 22 purchases reviewed contained the same statement, as compared to 35 of 49 purchases last year. The boilerplate statement does not explain the supporting rationale on why the use of the non-DoD contract is in the best interest of the Air Force, as required by the DoD October 29, 2004, Memorandum. DoD organizations must explain why the use of non-DoD contract vehicles is in the best interest of DoD rather than sign a previously prepared boilerplate statement.

Acquisition Guidance

The Air Force has issued contradictory guidance on interagency acquisitions. The October 16, 2006, Memorandum requires all non-Economy Act orders greater than \$500,000 to be reviewed by a DoD-warranted contracting officer prior to sending the order to the funds certifier or issuing the MIPR to the non-DoD activity. However, Air Force Federal Acquisition Regulation Supplement 5317.78, “Proper Use of Interagency Acquisitions (Non-DoD Contracts),” directs the requiring activity to only require the signature of the program/project manager for assisted acquisitions of supplies. The Air Force Federal Acquisition Regulation does not require an Air Force contracting officer signature for assisted acquisitions of supplies or services but the MIPR must be coordinated with the local base contracting office. To prevent inconsistencies between DoD organizations, the Under Secretary of Defense for Acquisition, Technology, and Logistics should re-emphasize the need for contracting officers to review DoD purchases being assisted by a non-DoD activity. Also, the Under Secretary should require consistency on DoD policy.

Interagency Agreements

On 3 of 22 purchases reviewed, as compared to 33 of 49 purchase reviewed last year, DoD officials did not have an adequate interagency agreement with the VA outlining the terms and conditions of the purchase. While preparing interagency agreements, DoD officials did not always comply with DoD Instruction 4000.19 and Financial Management Regulation, volume 11A, chapter 1, requirements. These standards require the interagency agreement to have the following: (1) the authority, (2) description of material or service required, (3) financing source or fund citation, (4) delivery

requirements, and (5) duration of agreement. The DoD March 24, 2005, memorandum, “Proper Use of Interagency Agreements for Non-Department of Defense Contracts Under Authorities Other Than the Economy Act,” (DoD March 24, 2005, Memorandum) in conjunction with the DoD October 29, 2004, Memorandum, mandates that supplies and services acquired by placing an order under a non-DoD contract will be consistent with DoD statutory and regulatory requirements applicable to the acquisition and requirements for use of DoD-appropriated funds.

MIPR Preparation

Fifty of 61 MIPRs reviewed, as compared to 75 of 124 MIPRs last year, did not contain the required information necessary for interagency transactions. DoD organizations issued MIPRs that either lacked a detailed description of the goods or services to be acquired, failed to specify the delivery requirements for goods, or omitted the funding statement required by the Under Secretary of Defense (Comptroller)/Chief Financial Officer March 27, 2006, memorandum, “Proper Use of Interagency Agreements with Non-Department of Defense Entities Under Authorities Other Than the Economy Act” (DoD March 27, 2006, Memorandum). Most of the omitted information related to statements that should have been included on the MIPR. For example, 40 of 61 MIPRs reviewed, valued at \$72 million, did not include the funding statement required by that memorandum. For severable service purchases made using Operations and Maintenance funds, the MIPR should state:

These funds are available for services for a period not to exceed one year from the date of obligation and acceptance of this order. All unobligated funds shall be returned to the ordering activity no later than one year after the acceptance of the order or upon completion of the order, which ever is earlier.

In the case of goods, the memorandum requires that interagency funding documents include the statement, “I certify that the goods acquired under this agreement are legitimate, specific requirements representing a bona fide need of the fiscal year in which these funds are obligated.”

When preparing a MIPR, DoD organizations should either list or include a reference to an interagency agreement, statement of work, task order, modification, or other contractual document that contains a specific description of goods and services being procured. This should also include the expected periods of performance and the DoD March 27, 2006, Memorandum required funding statement, to provide a sound basis for the use of DoD funds.

Improper Use of Government Funds

The DoD October 16, 2006, Memorandum and DoD Financial Management Regulation, volume 11A, chapter 18 issue clear guidance on purchasing goods and services. As per the October 16th Memorandum, delivery of goods should be made during the period of availability of the funds, unless delivery, production or manufacturing lead time, or unforeseen delays occur. Commercial off-the-shelf goods readily available from other sources should be procured and delivered in the period the funds are available. Severable

services may cross fiscal years, as long as the period of performance does not exceed 1 year and services must begin in the year the funds are available for use. Use of current guidance will help ensure bona fide needs and Antideficiency Act violations do not occur.

Bona Fide Need

Three of the seven purchases reviewed at ITAC and one of five purchases reviewed at the Air Force Medical Operations Agency, Fort Detrick, Maryland, may have violated the bona fide needs rule, 31 U.S.C. 1502 (a); these could result in Antideficiency Act violations, 31 U.S.C 1341 (a) (1). Overall, 4 of 40 purchases reviewed, or 10 percent², had potential Antideficiency Act violations. DoD organizations used annual Operations and Maintenance appropriations to fund purchases of severable services that met a bona fide need of the following fiscal year instead of the year the funds were available. Also, DoD organizations purchased commercial goods that were contracted for and received after the availability of the funds. The delay in contracting and receiving the goods could not be justified because of delivery, production or manufacturing lead time, unforeseen delays, or stock replacement.

For example, the TRICARE Management Activity sent approximately \$1.8 million to ITAC on September 22, 2006, using FY 2006 Defense Health Program funds. VA personnel accepted the funds on September 26, 2006. FY 2006 Defense Health Program funds expired on September 30, 2006. VA officials contracted for systems engineering and information assurance support, valued at just under \$1.5 million using FSS GS-35F-4987H, task order V200P-1747. The contract states the period of performance was October 1, 2006, through November 15, 2006. The use of FY 2006 Defense Health Program funds to satisfy the FY 2007 requirement for engineering services does not meet the intent of the bona fide needs rule. The TRICARE Management Activity should conduct a preliminary review to determine whether an Antideficiency Act violation occurred.

Throughout the audit, we worked with the personnel at the Office of the Under Secretary of Defense (Comptroller)/DoD Chief Financial Officer and provided them with information on the potential Antideficiency Act violations identified. The office directed the DoD Components to initiate preliminary reviews in accordance with DoD 7000.14-R, "Financial Management Regulations." See Appendix D for a list of potential Antideficiency Act violations.

VA Contract Award Decisions

VA contracting officials are responsible for determining price reasonableness of contractor-proposed pricing and for justifying sole-source awards when contracting for DoD. Price reasonableness determinations and sole-source justifications, when applicable, should be prepared by the contracting officials and contain sufficient detail and documentation to support their determinations.

² Judgment sample percentage does not generalize to universe.

Price Reasonableness Determinations

VA contracting officials did not adequately document and support price reasonableness decisions for 15 of 36 purchases, or 42 percent, reviewed at VA contracting offices. The 42 percent represents a slight improvement over the 58 percent in our previous audit. Twelve of the 15 purchases were for services and 3 were for goods. Seven of the purchases had price reasonableness determinations that were not sufficiently supported, and eight did not have any price reasonableness determination documented in the contract files.

For example, VASS awarded an option year for five full-time registered nurses for the 96th Medical Group, Eglin Air Force Base, Florida. FAR 8.405, "Ordering Procedures for Federal Supply Schedules," states that services requiring a statement of work require the ordering activity to consider the level of effort and the mix of labor proposed to perform a specific task being ordered and for determining that the total price is reasonable. The contract specialist's price reasonableness determination for the purchase stated that price analysis was performed on the acquisition by a "comparison with competitive published price lists, published market prices of commodities, similar indexes, and discount or rebate arrangements." The "boilerplate" justification included a statement that the pricing was compared to Salary.com and to the Federal Supply Service (FSS) Web site. The Salary.com hourly rate was averaged with the median FSS Web site hourly rate, resulting in an average hourly rate.

The contract hourly rate was considered to be fair and reasonable based on a comparison to this rate. However, there was no supporting documentation showing the FSS Web site hourly rates and how the median hourly rate was determined. In addition, the use of Salary.com and the methodology of averaging the Salary.com hourly rate with the FSS Web site median hourly rate as a means to support fair and reasonable pricing are questionable. The VA contracting officer also exercised an option year contract containing an allergist physician for the 96th Medical Group using the same boilerplate justification.

In another example, the Joint Venture Acquisition Center awarded an FSS order for facilities maintenance sustainment support at Brooks City-Base, Texas. The VA contracting officer's price reasonableness determination was included in the Justification and Approval (J&A) for Follow-on Requirement. The justification stated that a review of other FSS contract pricing was not performed because the contractor's pricing was determined to be the same as the contractor's previous phase and there was minimal increase due to inflation and cost increase of material.

The justification lacked supporting documentation showing the comparison of current pricing to the previous phase pricing, and that the previous pricing was adequately determined fair and reasonable. FAR Subpart 15.4, "Contract Pricing," states that the contracting officer is responsible for obtaining sufficient information that is adequate for determining price reasonableness or cost realism, evaluating the reasonableness of the offered prices, and purchasing supplies and services from responsible sources at fair and reasonable prices. FAR 15.406-3, "Documenting the Negotiation," states that the

contracting officer must document in the contract file the principal elements of the negotiation agreement including documentation of fair and reasonable pricing. Therefore, the contracting officer's assertion that prices were fair and reasonable was not sufficient, as it did not meet FAR requirements.

Sole-Source Awards

VA officials awarded 11 of 31 purchases reviewed at VA contracting activities on a sole-source basis. Of the 11 sole-source purchases, the VA contracting officials did not adequately justify the use of sole-source contracts for 5 purchases, or 45 percent, and therefore did not comply with FAR requirements. This was, however, a slight improvement over the 73 percent inadequate sole-source justifications noted in our previous audit. Four of the five awards were FSS purchases covered by FAR Subpart 8.4., "Federal Supply Schedules." One award was a multiple-award task order covered by FAR 16.505(b), "Orders Under Multiple Award Contracts."

Two of the five sole-source justifications incorrectly cited FAR 6.302 exceptions to fair opportunity instead of FAR 8.405-6 exceptions. FAR Subpart 6.3, "Other Than Full and Open Competition," provides sole-source restrictions for most contracts. FAR Part 6 exceptions to fair opportunity are not applicable to FSS orders. The three remaining sole-source justifications failed to cite a specific FAR exception to fair opportunity. Contracts that are not fully competed must provide specific statutory exceptions to fair opportunity and adequate explanations why FAR exceptions are allowed. There must also be sufficient supporting documentation to validate the assertions.

For example, the contracting officer at the Joint Venture Acquisition Center awarded an FSS order for facilities maintenance sustainment support at Brooks City-Base, Texas. The J&A for Follow-on Requirement stated that it is likely that award to any other source would result in substantial duplication of costs and schedule delays to the Government. The J&A also stated that the Government is not expected to recover these costs and delays through competition. The justification cited 10 U.S.C. 2304(c)(1), only one responsible source, as the statutory authority for the follow-on award, but failed to provide the FAR exception to fair opportunity. FAR 8.405-6(b) does provide an exception when the new work is a logical follow-on to an original FSS order provided that the original order was placed in accordance with the applicable FSS ordering procedures. The original order must not have been previously issued under sole-source or limited-source procedures. Further, the justification did not provide sufficient detail and supporting documentation to show that only one responsible source existed for fulfilling this requirement, or that the new order was a follow-on to an original FSS order that was not issued under sole-source or limited-source procedures.

In another example, ITAC contracting officials awarded an FSS contract for the Armed Forces Health Longitudinal Technology Application (AHLTA) System Engineering and Security Accreditation Support for the Clinical Information Technology Program Office. The AHLTA system is the computer-based patient record system for DoD and is designed to support the clinical process. The J&A Memorandum for Other than Full and Open Competition cited FAR 8.405-6, "Limited Sources Justification and Approval," but

did not cite a specific exception to fair opportunity. The justification stated that the contractor had functioned as the prime integrator for AHLTA and was intimately familiar with AHLTA. The services being provided under the contract represent a follow-on to the overall AHLTA maintenance effort. The justification also stated that the intent of the task order was to leverage the contractor knowledge base in order to avoid incurring additional costs by funding the learning curve of another vendor. In addition to not providing a specific FAR exception to fair opportunity, the justification did not provide sufficient detail and supporting documentation that would have supported any of the FAR 8.405-6 exceptions to fair opportunity:

- (1) Only one source is capable of responding due to the unique or specialized nature of the work;
- (2) The new work is a logical follow-on to an original Federal Supply Schedule order provided that the original order was placed in accordance with the applicable Federal Supply Schedule ordering procedures. The original order must not have been previously issued under sole source or limited source procedures;
- (3) An urgent and compelling need exists, and following the ordering procedures would result in unacceptable delays.

ITAC contracting officials also issued a task order under the Global Information Technology Support Services multiple-award program. The Single Source Task Order Award Justification provided narrative support for the sole-source award, but failed to provide a specific FAR exception to fair opportunity. Sole-source task orders issued under multiple-award contracts must cite one of the FAR 16.505(b)(2) exceptions to fair opportunity.

Contract Administration

DoD and VA officials did not fully delineate administrative roles and responsibilities for contract administration. Although 39 of the 40 purchases reviewed at DoD and VA organizations referenced the March 31, 2005, MOA between VA and the Air Force Surgeon General that lists the roles and responsibilities for contract administration, including monitoring of contractor performance, the MOA failed to address the collection and recording of past performance information. Contract administration includes functions conducted by Government personnel from the awarding of the contract through contract termination, including the elements of surveillance and documentation of past performance.

Delineation of Surveillance Roles and Responsibilities

Regarding surveillance of contractor performance, the MOA states that the contracting officer will designate in writing a COR who will be responsible for monitoring contractor performance. The MOA does not delineate the specific surveillance procedures required to be performed during the contract performance. However, the DoD October 16, 2006, Memorandum and DoD Financial Management Regulation, volume 11A, chapter 18 clarify DoD surveillance duties and procedures by requiring the requesting official to establish QASPs for non-Economy Act orders in excess of the simplified acquisition threshold. DoD organizations must implement the recently issued guidance that clarifies roles and responsibilities for non-Economy Act orders.

DoD Contracting Officers' Representatives

The VA contracting officers did not identify DoD personnel as CORs on 19 of 39 purchases³ reviewed, or 49 percent, as compared to 60 percent in our previous audit. Also, three purchases had inadequate COR designation letters. For example, one COR did not sign the letter acknowledging his designation even though he was performing COR duties. Defense Federal Acquisition Regulation Supplement Subpart 201.6, "Contracting Authority and Responsibilities," requires that contracting officers designate a properly trained COR in writing prior to contract performance to assist in technical monitoring or administration of a contract. Also, the MOA between the Air Force and VA states that for task and delivery orders placed through the VASS or other VA contracting offices, the applicable VA contracting officer will appoint in writing a COR at the Medical Treatment Facility or appropriate Air Force Medical Service organization located at the place of performance for each action.

In addition to 19 of the 39 purchases³ without designated CORs, 3 contract files of the 20 purchases with designated CORs did not have training certificates to verify the CORs were adequately trained. CORs should have the skills necessary to reasonably ensure the contractor is using efficient and effective cost control methods. The MOA and Defense Federal Acquisition Regulation Supplement 201.6 requires a COR be designated in writing and properly trained to perform his or her duties. An adequately trained COR should be aware of what his or her duties are and should recognize the importance of providing Government contract surveillance. DoD officials should stress the importance of adequate Government quality assurance on all its contracts and require CORs to prepare QASPs and conduct and document adequate Government contract surveillance.

DoD Surveillance Plans

Twenty-three of 40 purchases reviewed did not include surveillance plans and 9 purchases had inadequate surveillance plans, as compared to 18 of 34 purchases in our previous audit; 8 purchases had adequate surveillance plans that met FAR requirements. FAR 46.103, "Contracting Office Responsibilities," provides that contracting offices are responsible for receiving a QASP from the requesting activity when contracting for services. According to FAR Subpart 46.4, "Government Contract Quality Assurance," a QASP should be prepared in conjunction with preparation of the statement of work and should specify all work requiring surveillance and the method of surveillance. FAR Subpart 37.6, "Performance-Based Acquisition," addresses QASP requirements for performance-based contracts. It requires agencies to develop QASPs when acquiring services that contain measurable inspection and acceptance criteria corresponding to the performance standards contained in the statement of work.

Without adequate surveillance plans there was no assurance that work was actually monitored or the methods used to perform surveillance were sufficient. For instance, the Air Force Medical Operations Agency, Bolling Air Force Base, program officials did not have an adequate QASP for the Administrative Support contract. The DoD COR was

³ For 1 of the 40 purchases reviewed, we were unable to determine whether a COR had been designated.

unaware of a surveillance plan and explained there is not anything in particular done for surveillance because she “sits next to the employee.” DoD personnel must document their surveillance efforts and demonstrate that they adequately monitored contractors’ performance. Without such documentation, it would be difficult for the contracting officer to protect Government interests and take actions to require performance improvement or to terminate the contract for default.

The FAR requires Government inspections through the use of receiving reports or commercial shipping documents. DoD receiving personnel should ensure that goods conform to contract requirements. The DoD October 16, 2006, Memorandum and DoD Financial Management Regulation, volume 11A, chapter 18 require the preparation of surveillance plans for goods. The Air Force Medical Operations Agency, Fort Detrick, Maryland, program officials could not demonstrate how DoD performed oversight for the purchase of a sterilizing unit. The contract was awarded on September 24, 2007, with a delivery date of October 31, 2007. On November 8, 2007, the VASS fiscal department sent the vendor a letter stating they provided an improper invoice because it did not include a proof of delivery. VASS contracting officials also requested by phone that the customer provide the receiving report. As of April 30, 2008, the customer did not provide a receiving report and the vendor did not provide a proof of delivery. As required by the DoD October 16, 2006, Memorandum, the surveillance plans should include the process for receipt and review of receiving reports and invoices from the performing agency, reconciliation of receiving reports and invoices, and requirements for documenting acceptance of the goods. DoD adherence to those procedures will increase the likelihood that the Government receives the correct type and quantity of products.

Past Performance Requirements

The DoD and VA activities reviewed did not collect and record past performance information for 24 of 30 assisted acquisition purchases⁴ reviewed. No past performance information on the VA contracts had been entered into the DoD data collection system, the Contractor Performance Assessment Reporting System, or into the Past Performance Information Retrieval System, which collects and retains past performance information on contractors for the entire Federal Government.

The November 27, 2007, Office of the Under Secretary of Defense, Director, Defense Procurement and Acquisition Policy Memorandum on “Past Performance Information,” states:

It is important that the acquisition workforce input contractor past performance information into DoD’s data capture system, the Contractor Performance Assessment Reporting System (CPARS), whenever a procurement action meets the DoD dollar threshold. All contracts that meet the thresholds stated in Attachment A should be included in CPARS. There is an expectation of noticeable performance

⁴Ten of the 40 purchases reviewed at DoD and VA activities were below the dollar threshold required for documenting past performance. We did not review past performance information for 6 of the remaining 30 purchases.

improvements and greater efficiency and effectiveness of operations when past performance information is used effectively.

On January 18, 2008, the Director, Defense Procurement and Acquisition Policy issued a memorandum on interagency acquisitions, stating that a previous memorandum issued by his office on January 20, 2005, had emphasized that “teamwork and communication” are critical to the success of interagency acquisition and that all parties to an interagency acquisition must ensure that the duties and responsibilities of contract administration and oversight are clearly assigned and correctly performed. In the later memorandum, the director added that this is especially important in performing assessment of contractor past performance (FAR 42.15). FAR Subpart 42.15, “Contractor Performance Information,” states:

Past performance information is relevant information, for future source selection purposes ... It includes, for example, the contractor’s record of conforming to contract requirements and to standards of good workmanship; the contractor’s record of forecasting and controlling costs

interim evaluations should be prepared as specified by the agencies to provide current information for source selection purposes, for contracts with a period of performance, including options, exceeding one year.

During the audit, we did not see any evidence that duties and responsibilities related to the collection and recording of contractor’s past performance were clearly assigned and performed. There was confusion and uncertainty as to whether DoD or VA was responsible for the collection and recording of past performance and as a result, past performance information was not collected and recorded in DoD data collection systems or the Past Performance Information Retrieval System and used to access performance for future contract awards.

For example, contractor past performance information was not collected and recorded for facilities maintenance support at the 79th Medical Support Group, Andrews Air Force Base, Maryland. The Joint Venture Acquisition Center contracting officer awarded the task order that had a base year beginning January 1, 2007, and three 1-year options valued at \$4.5 million. The contractor was required to survey the facilities infrastructure and identify all deficiencies with all equipment and systems they were responsible for and at the same time handle routine and emergency work orders along with monthly preventative maintenance requirements.

On August 15, 2007, the 79th Medical Support Group, Deputy Flight Commander issued a justification for non-renewal of the contract, citing numerous deficiencies in the contractor’s performance. The contractor’s on-site maintenance supervisor lacked the skills necessary to effectively inspect and identify deficiencies and maintain the daily workload, which caused delays in the completion of work orders and projects. The contractor also was not able to maintain positive results where fire and safety were concerned as violations of fire and safety codes existed. Poor contractor performance, such as this, should be a factor in future source selection decisions involving this

contractor. However, the performance information was not collected and recorded and therefore, not available for consideration in future source selections.

Conclusion

Overall, we found that VA contracting officials have made some improvement on their compliance with the FAR and DoD procurement regulations when making purchases on behalf of DoD; however, problems with sole-source justifications and price reasonableness determinations still persist to a significant degree. We also found that DoD continues to struggle in its use of interagency acquisitions at VA. VA and DoD should continue working together to ensure that both comply with the FAR and Defense Federal Acquisition Regulation Supplement.

On June 6, 2008, the Executive Office of the President, Office of Management and Budget, Office of Federal Procurement Policy issued guidance on interagency acquisitions that addresses the use and management of interagency acquisitions. The guidance includes a comprehensive checklist of roles and responsibilities in assisted acquisitions, designed to help requesting and servicing agencies define their respective roles in the interagency acquisition. The checklist includes responsibilities of the requesting and servicing agencies for acquisition planning, contract execution, and contract administration. If followed, many of the problems noted during this audit can be avoided in future interagency acquisitions.

For example, the checklist states that, for contractor performance evaluations, the requesting agency is responsible for tracking, measuring, and reporting to the servicing agency contracting officer on the performance of the contractor. The servicing agency is responsible for documenting performance in the contract file and inputting data into the Past Performance Information Retrieval System. This guidance should help eliminate the confusion and uncertainty as to DoD and servicing agency responsibilities on collecting and recording past performance information.

As stated earlier, the VA Office of Acquisition and Logistics decided to terminate its assisted acquisition support to the Air Force. This does not affect purchases made by the VA Information Technology Acquisition Center. However, this effectively ends DoD use of VA for assisted acquisitions as the VA Office of Acquisition and Logistics worked on 94 percent of purchases made by DoD organizations.

Client Comments on the Finding and Our Response

Assistant Secretary of Defense for Health Affairs Comments

Although not required to comment, the Assistant Secretary of Defense for Health Affairs provided comments and agreed with the findings and conclusions of the draft report. The Under Secretary of Defense (Comptroller) notified the TRICARE Management Activity of the potential bona fide needs violation on August 18, 2008. An investigation was completed, which determined a bona fide needs violation had occurred. The Assistant Secretary also stated that DoD IG identified that expiring FY 2006 Operations and

Maintenance funds had been placed on a delivery order that had a period of performance beginning October 1, 2007. The violation was corrected by financing the delivery order with FY 2007 Operations and Maintenance funds.

The Health Affairs Office requested in its comments that the DoD IG remove the discussion of the TRICARE Management Activity bona fide needs violation prior to publishing the final report.

Our Response

We recognize the TRICARE Management Activity took action to correct the potential bona fide needs violation; however, we are reporting on what occurred during the audit. Therefore, we are not removing the discussion of the TRICARE Management Activity bona fide needs violation because it shows evidence of a systematic problem in DoD.

Recommendations, Client Comments, and Our Response

We are not making recommendations to the Under Secretary of Defense for Acquisition, Technology, and Logistics regarding the various acquisitions and contracting issues. Actions needed to correct the problems noted were recommended in DoD IG Report No. D-2008-036, "FY 2006 DoD Purchases Made Through the U.S. Department of Veterans Affairs," December 20, 2007.

A.1. We recommend that the Under Secretary of Defense for Acquisition, Technology, and Logistics ensure DoD organizations are aware of current requirements that DoD contracting officers should review all purchases over \$500,000, and that Air Force guidance be updated to reflect current requirements.

Under Secretary of Defense for Acquisition, Technology, and Logistics Comments

The Director, Defense Procurement, Acquisition Policy, and Strategic Sourcing, responding for the Under Secretary of Defense for Acquisition, Technology, and Logistics, agreed. The director stated that a policy memorandum (Interagency Acquisition) was issued on January 18, 2008, requiring a warranted contracting officer to review all Non-Economy Act Orders greater than \$500,000. Air Force Instruction 65-116 also requires a Determination and Findings for Interagency Acquisitions, assisted or direct, when the MIPR value exceeds \$100,000. In addition, the director stated that the Air Force is currently reviewing its policies regarding interagency acquisitions, and will clarify that interagency acquisitions, for both direct and assisted acquisitions over \$500,000, must be reviewed by a warranted contracting officer. The Air Force review is expected to be completed and any policy updated by March 2009.

Our Response

The comments were responsive, and no further comments are required.

A.2. We recommend that the Under Secretary of Defense (Comptroller)/DoD Chief Financial Officer provide a status update on the assisted acquisition preliminary reviews, initiated under DoD Financial Management Regulation, volume 14, chapter 3, “Preliminary Review of Potential Violations,” for apparent bona fide needs violations identified during the course of the audit.

Office of the Under Secretary of Defense (Comptroller)/DoD Chief Financial Officer Comments

The Assistant Deputy Under Secretary of Defense (Financial Management), responding for the Under Secretary of Defense (Comptroller)/DoD Chief Financial Officer, agreed with the recommendation and stated that two cases were not violations, one case is still under review, and notified the Air Force to initiate a preliminary review for the remaining case.

Our Response

The comments were responsive, and no further comments are required.

Finding B. DoD Use of Veterans Affairs for Direct Acquisitions

Defense Supply Center Philadelphia (DSCP) contracting officials did not place delivery orders through VA FSS contracts in accordance with FAR and DoD procurement requirements. On 23 direct acquisition purchases reviewed, DSCP contracting officials did not properly solicit, award, or perform oversight. Specifically,

- on 23 of 23 purchases, DSCP contracting officials lacked acquisition planning to determine whether the use of non-DoD contracts were in the best interest of the Government;
- on 23 of 23 purchases, valued at \$10,034,297, DSCP contracting officials did not document that fair notice of requirements were made available to FSS contractors;
- on 22 of 22 purchases,⁵ valued at \$9,915,084, DSCP contracting officials did not provide adequate justifications for the use of sole-source procurements;
- on 19 of 21 purchases,⁶ valued at \$9,579,599, DSCP and DoD officials may have incurred bona fide needs rule violations; and
- on 11 of 20 purchases,⁷ DSCP contracting officials did not have sufficient support of Government inspections performed for goods.

This occurred because DSCP officials misinterpreted applicable funding and acquisition policy when awarding direct acquisitions. As a result, DSCP contracting officials making purchases through VA contracts had no assurance that goods were properly funded and received at best values.

Background

Defense Supply Center Philadelphia

DSCP was originally established as the Defense Personnel Support Center in 1965. DSCP, renamed from the Defense Personnel Support Center in 1998, is a primary-level field activity of the Defense Logistics Agency (DLA) with a mission to provide food, medicine, and supplies. Specifically, DSCP ensures the combat readiness of America's fighting forces by providing U.S. Service members with food, clothing, textiles, medicines, medical equipment, and supplies. DSCP also supports U.S. humanitarian and disaster relief efforts. DSCP is divided into four Supply Chains for Troop Support (Clothing and Textiles, Medical, Subsistence, and Construction and Equipment). The DSCP Medical Supply Chain provides 1.6 million medical items for the Military

⁵ We could not determine whether one purchase was competed due to lack of available documentation.

⁶ We could not determine whether Government funds were properly funded for two purchases at DSCP due to a lack of available documentation.

⁷ A DSCP contracting official stated three of the 23 purchases did not have receiving reports because goods were not completely delivered and installed at DoD medical facilities.

Services. Each year the Medical Supply Chain processes 530,000 customer orders using approximately 300 suppliers. In FY 2007, DSCP awarded approximately 1,280 contract actions for goods through the VA FSS, valued at approximately \$19.0 million

DoD/DLA Working Capital Fund Charter

On April 13, 2007, the Under Secretary of Defense (Comptroller) and the Director of the DLA approved the establishment of a new Defense Working Capital Fund, Supply Management Charter. The charter states that the Supply Management Business Area, a Defense Working Capital Fund activity, was established under the authority of 10 U.S.C. 2208. The charter adds that the Supply Management Business Area provides the Military Services and non-DoD civilian agencies wide-ranging logistical support for the medical supply chain.

Economy Act Authority (31 U.S.C. 1535)

The Economy Act allows a DoD activity to place an order with a different Military Department, Defense agency, or another Federal agency for goods or services. Therefore, DoD organizations use the Economy Act to send funds to DSCP. Economy Act orders must be supported by a Determinations and Findings (D&F) that the use of interagency support capabilities is in the best interest of the Government and the required goods, supplies, or services cannot be obtained as conveniently or economically by contracting directly with a private source. Economy Act orders should also include a description of the supplies or services ordered, delivery requirements, funds citation, payment provision, and acquisition authority. If specific legal authority does not exist for a transaction placed with a non-DoD agency, the default legal authority is the Economy Act.

DoD Use of MIPRs and Requisitions for Direct Acquisitions

DoD requesting activities transfer funds to DoD servicing activities through the use of MIPRs (DD Form 448) and requisitions (DD Form 1348-6) for the placement of an order directly against an interagency contract. When a DoD requesting activity sends a MIPR or requisition to a DoD servicing activity within DoD, the servicing activity accepts and obligates the requesting activities funds to create a binding obligation between the two activities.

DSCP Direct Acquisitions Through VA FSS Contracts

A direct acquisition consists of a requesting agency placing an order directly against the servicing agency's contract vehicle. At DSCP the contracting officials place delivery orders on behalf of DoD customers through VA FSS contracts for medical equipment and supplies. DSCP officials charge DoD customers a 2 percent surcharge to award contracts through the VA FSS. VA is delegated, through the General Services Administration, the responsibility to establish and administer the VA FSS contracts for health care-related commodities; however, the VA contracting officer does not participate in the placement of the order for direct acquisitions. A .75 percent FSS program operating fee is included within the FSS prices and this fee is paid by the customer. DoD can eliminate the lengthy process of awarding new contracts by placing direct acquisitions through VA FSS

contracts. The VA FSS Program is a multiple-award schedule, with indefinite-delivery, indefinite- quantity type contracts that are available for use by all Federal agencies

Acquisition Planning for Direct Acquisitions

DoD program and other requesting managers must seek early involvement of appropriate financial management and contracting personnel to ensure that the resultant acquisition strategy is in the best interest of DoD in terms of meeting requirements, schedule, cost effectiveness, oversight and administration, and availability of a contract vehicle within DoD. FAR Subpart 7.1, “Acquisition Plans,” states that agencies are to perform acquisition planning for all acquisitions.

Best Source for Acquisition Supplies

On all of the purchases reviewed, DSCP contracting officers lacked acquisition planning that supported making the purchases through VA FSS contracts was in the best interest of the Government. Acquisition planning must be performed for acquisitions once an agency need is identified. FAR Subpart 17.5, “Interagency Acquisitions Under the Economy Act,” requires the completion and execution of a written justification known as a D&F prior to placing an Economy Act order for supplies or services to another Federal agency. The D&F documents the specific rationale and required justification for use of an interagency acquisition. Thorough acquisition planning provides realistic delivery and performance schedules, identifies planned management responsibilities for contract performance, and develops a tentative cost basis for the purchase.

To further clarify the requirements for acquisition planning of interagency contracts, the DoD October 29, 2004, Memorandum, states that direct acquisitions that exceed the simplified acquisition threshold must include:

evaluating whether using a non-DoD contract for such actions is in the best interest of the DoD . . . , determining that the tasks to be accomplished or supplies to be provided are within the scope of the contract to be used; reviewing funding to ensure it is used in accordance with appropriation limitations ...

DSCP did not comply with these policies and procedures when procuring goods. For instance, a DSCP contracting official did not prepare an adequate D&F for dental chairs on behalf of the Naval School of Health Sciences. The boilerplate D&F did not specify the rationale for the use of the VA FSS contract. Rather, the boilerplate D&F states:

This order/BPA is in the best interests of DLA. I have considered such factors as satisfying customer requirements; cost effectiveness (taking into account discounts and fees) and price; delivery schedule; non-availability of a suitable contract within DOD; contract administration/oversight; small business opportunities; and any other factors, as applicable

The boilerplate statement was copied directly from the DSCP Guiding Principles for Acquisition (DGPA) Subpart 7.90, “Use of Non-DoD Contracts.” Eighteen of 23 purchases we reviewed contained the same boilerplate statement that did not explain

how it was determined that the use of interagency acquisitions were in the best interest of the Government. Furthermore, purchases did not provide a reason why services could not be obtained conveniently or economically by contracting directly with private sources. Rather than relying on boilerplate information from the DGPA, DSCP officials must further explain why the use of interagency contracts is in the best interest of DoD. DSCP officials did not fully understand the requirements for preparing the D&F. Adequate planning will assist DoD in meeting its needs in the most effective, economical, and timely manner. Appendix E lists the purchases and issues identified.

Economy Act Order Preparation

Eighteen of 23 purchases from DoD organizations to DSCP did not include all the elements for placing an Economy Act order. These Economy Act orders did not always include a description of the supplies or services ordered, delivery requirements, or fund citation. According to DoD Financial Management Regulation, volume 11A, chapter 3, "Economy Act Orders," Economy Act orders may be placed on any form that is acceptable to both the requesting and servicing agencies. DoD customers used MIPRs and requisitions to place orders through DSCP; however, these MIPR and requisition forms did not always include the elements that should have been included to place Economy Act orders. For example, the 79th Medical Group sent a MIPR to DSCP that listed the incorrect statutory authority. Instead of listing the Economy Act authority that the purchase was eventually awarded under, the MIPR listed section 8111, title 38, United States Code (38 U.S.C. 8111), "Sharing of Department of Veterans Affairs and Department of Defense Health Care Resources," as the statutory authority. The DoD customer also failed to list the delivery date for goods that would provide the servicing activity with information on when the requesting activity requires the goods. DSCP officials should ensure DoD organizations correctly prepare funding documents prior to accepting them.

Misuse of Government Funds

Restrictions on Appropriations Transferred to Working Capital Fund

DoD requesting activities use Economy Act authority to transfer funds through MIPRs and requisitions to DSCP for the acquisition of medical equipment and supplies. DSCP contracting officers acquire medical equipment and supplies on behalf of the requesting activities through their working capital fund. The DSCP Defense Working Capital Fund receives reimbursements from other organizations for the goods purchased. Though the working capital fund does not have a restriction on the time funds are available for obligation, fiscal limitations on appropriations of requesting activities may not be changed.

Potential Violations of Bona Fide Needs Rule

For 19 of the 21 purchases⁸ reviewed, valued at approximately \$9.6 million, DoD funding authorities potentially violated the bona fide needs rule. Specifically, DoD authorities may have violated the bona fide needs rule by using annual Operations and Maintenance appropriations to fund the purchase of goods that were contracted for and received in the year after the appropriation expired. Funding policy states that goods may be received in the year following the appropriation if there were delivery, production lead time, or unforeseen delays. However, these exemptions would not apply to commercial items and FSS purchases are commercial items. For example, the Air Force Medical Operations Agency sent MIPR F1ATB26271G004 for \$163,164 to DSCP on September 28, 2006, using FY 2006 Defense Health Program funds to purchase a dermatological laser system. FY 2006 Defense Health Program funds expired on September 30, 2006. The contract for the medical equipment was awarded on March 12, 2007, and had a scheduled delivery date of April 1, 2007. The contract had to be awarded in FY 2006 in order to use FY 2006 funds. Furthermore, the receipt of goods after the DoD appropriation expired could not be justified because of delivery time, production lead time, or unforeseen delays. Use of FY 2006 Defense Health Program funds to satisfy a FY 2007 requirement does not meet the intent of the bona fide needs rule.

In another example, the U.S. Army Medical Agency sent requisition W33BTY60698502 for \$211,814 to DSCP on April 25, 2006, using Defense Health Program FY 2006 funds. The U.S. Army Medical Agency funds were for the purchase of a robotic medication dispensing system. The contract for the dispensing system was awarded on February 28, 2007. Use of FY 2006 Defense Health Program funds to satisfy a FY 2007 requirement does not meet the intent of the bona fide needs rule.

Though the contracts were awarded using DSCP working capital funds, the Defense Health Program funds cannot be changed from “1-year” to “no-year” funds when sent to DSCP. Thus, the availability of an appropriation cannot be expanded or otherwise changed by transfer to the working capital fund. The DoD Financial Management Regulation, volume 11B, chapter 1, “Defense Working Capital Funds General Policies and Requirements,” states that appropriated funds cited on reimbursable orders are available only for the purposes permissible under the source appropriation and remain subject to the same restrictions. DSCP contracting officials did not correctly adhere to appropriation restrictions.

Throughout the audit, we worked with the personnel at the Office of the Under Secretary of Defense (Comptroller)/DoD Chief Financial Officer and provided them with information on the potential Antideficiency Act violations identified. The office directed the DoD Components to initiate preliminary reviews in accordance with DoD 7000.14-R, “Financial Management Regulations.” See Appendix F for the details of the 19 direct acquisition purchases that we believe improperly used Government funds.

⁸We could not determine whether Government funds were properly funded for two purchases at DSCP due to lack of available documentation.

Non-Competitive Awards

The Director of Defense Procurement and Acquisition Policy issued a January 28, 2005, memorandum, "Use of Federal Supply Schedules and Market Research," that requires contracting officers to solicit as many contractors as practicable when using the FSS. Furthermore, the contract files should explain instances where it is not possible to solicit contractors. Non-competitive awards should include sole-source justifications that clearly support and explain why full and open competition is not possible. Contracting officers must also seek discounts for orders exceeding the maximum order threshold when utilizing the FSS.

Fair Notice

DSCP contract files did not provide evidence that fair notice of requirements for purchases were made available to FSS contractors. A DSCP contracting official stated that DoD knows which contractors can fulfill Military Services information security and certification unique requirements. Particularly, DSCP contracting officials stated that "there is no central database or central source of information regarding which vendors and products do/do not meet the services' information security and certification requirements." None of the contract files contained documentation indicating that fair notice was provided to all contractors to determine whether there was any interest in submitting a proposal for the requirement. Rather, DSCP contracting officials relied on knowing all contractors that can fulfill their need, though contractors that were supposedly able to meet DoD requesting activity requirements were not documented in a central location.

The Defense Federal Acquisition Regulation Supplement 208.4, "Federal Supply Schedules," states that the contracting officer provide fair notice of the intent to make the purchase, including a description of the supplies to be delivered and the basis upon which the contracting officer will make the selection. The Defense Federal Acquisition Regulation Supplement 208.405 further states that a determination in writing is prepared if fewer than three offers are received. The documentation should clearly explain efforts made to obtain offers from at least three contractors. FAR 8.402 also states that "ordering activities shall post a Request for Quotation to e-Buy⁹ when an order contains brand name specification."¹⁰ According to FAR Subpart 4.8, "Government Contract Files," the contracting office contract file should include the list of sources solicited. The DSCP contract files did not contain support that the requirement was solicited by posting the Request for Quotation on e-Buy for the brand name specification purchases. Fair notice allows FSS contractors to submit quotes and therefore maximize DoD buying leverage and competition.

⁹E-Buy is an online Request for Quotation tool designed to facilitate the request for submission of quotations for a wide range of commercial supplies and services offered by Schedule contractors. E-Buy allows ordering activities to post requirements, obtain quotes, and issue orders electronically.

¹⁰A brand name product is an item that is peculiar to one manufacturer.

Orders Exceeding the Maximum Order Threshold Price Reductions

DSCP contracting officials awarded 8 of 23 purchases reviewed above the maximum order threshold. Three of eight purchases, valued at \$795,023, that exceeded the maximum order threshold did not have supporting documentation in the contract files demonstrating that price reductions were sought. FAR Subpart 8.405-1(d), "Ordering Procedures for Supplies, and Services Not Requiring a Statement of Work," states that each schedule contract has a maximum order threshold. FAR Subpart 8.405-1 further states that although a price reduction may be sought for an order at anytime, the threshold represents the point where the ordering activity must seek a price reduction. Though a DSCP contracting official stated that "the attempt to receive a price reduction should be documented in the contract file," no documentation demonstrating that price reductions were sought was found in some the contract files. For instance, DSCP contracting officials purchased medication storage cabinets on behalf of the U.S. Army Medical Department Activity in Fort Hood, Texas. The medication storage cabinets totaled \$336,173, which was in excess of the \$300,000 FSS maximum order threshold. The DSCP contracting officials did not include any information regarding price reductions that were sought to ensure the Government received the best value.

Sole-Source Awards

DSCP contracting officials did not adequately justify the use of sole-source procurements for purchases. Twenty-two contract actions¹¹ were reviewed to determine the adequacy of contracts awarded on a sole-source basis. All of the contract actions failed to comply with FAR requirements when making sole-source awards. FAR Subpart 8.405-6(a) states "orders placed under Federal supply schedules are exempt from the requirements in Part 6"; however, FSS orders were not always prepared in compliance with FAR Subpart 8.4, "Federal Supply Schedules." Though all of the purchases were awarded under the FSS, DSCP contracting officials misinterpreted requirements for FSS orders by preparing orders in accordance with FAR Subpart 6.3, "Other Than Full and Open Competition" and FAR Subpart 16.5, "Indefinite-Delivery Contracts." Of the 22 FSS contract actions reviewed, 5 of the actions cited FAR 8.405-6, "Limited Sources Justification and Approval," stating that only one contractor can satisfy the requirement. Another four cited FAR 6.302-1, "Only One Responsible Source," and four cited FAR Subpart 16.505(b), "Orders Under Multiple Award Contracts." The remaining 9 contract actions did not cite any FAR exceptions. FAR Subpart 8.405-6, "Limited Sources Justification and Approval," states that circumstances that may justify restrictions of ordering supplies not requiring a statement of work include only one source capable, new work is a logical follow-on, and urgent and compelling need exists. DSCP contracting officials did not always apply the correct FAR requirements when awarding sole-source contracts. Contracts that are not fully competed must provide appropriate FAR exceptions and sufficiently explain the rationale why the requirement was not competed.

¹¹Overall, we reviewed 23 purchases but we could not determine whether one purchase was competed due to lack of available documentation.

For instance, DSCP contracting officials issued sole-source purchase orders, valued at approximately \$5.6 million, on behalf of DoD Northeast Military Treatment Facilities for Sigma International pumps. The requirement was for intravenous infusion pumps, poles, and accessories that were not at combat locations. The J&A states that market research revealed 19 contractors that were considered to have “IV Pump” equipment or accessories on the FSS. The J&A further states that there was only one contractor that met the five essential criteria of the requesting Medical Treatment Facility. Specifically, the essential criteria consist of Food and Drug Administration approval, single-channel design, dose error reduction technology, gravity-tubing design, and less than 5-pound weight. The J&A did not adequately justify why two other pumps that were considerably less expensive, and did not have gravity-fed tubing or weigh less than 7 pounds were unacceptable. The alternative pumps would have cost \$3,335,720 and \$1,960,341, respectively. The J&A mentions that the gravity-fed tubing is supposed to reduce the risk of infection, but the J&A does not measure the significance or provide details of the reduced patient infection rate through the use of gravity-fed tubing. In addition, the J&A says that the 5-pound weight limit is needed to avoid the tip-over of poles. It seems that the best value pumps should have been selected, then the acquisition of poles capable of handling the weight of pumps. Thus there would be no need to select pumps with a weight limit of 5-pounds. The J&A identifies another contractor that could fulfill the requirement for the accessories, but DSCP personnel did not solicit bids because they decided other contractors’ prices would be higher. The J&A must adequately justify the reason why a requisition cannot be competed. Based on the current J&A, it could not be determined whether the medical equipment was essential to the Government requirements, as required by FAR 8.405-6(a)(2), or merely desirable, which would not justify a sole-source purchase.

Contract Oversight and Reporting

Inspection and Receipt of Goods

On 11 of 20 purchases,¹² DoD did not always perform sufficient oversight to ensure the Government received the value of goods agreed to within the contract terms. FAR Subpart 46.401(a) states,

Government contract quality assurance shall be performed at such times (including any stage of manufacture or performance of services) and places (including subcontractors’ plants) as may be necessary to determine that the supplies or services conform to contract requirements.

DoD did not comply with FAR Subpart 46.401(f) that states that Government inspection must be documented on an inspection or receiving report form or commercial shipping document/packing list. For instance, DSCP contracting officials did not provide a receiving report for a digital dental x-ray system, valued at \$105,651. According to a

¹² A DSCP contracting official stated 3 of the 23 purchases did not have receiving reports because goods were not completely delivered and installed at DoD medical facilities.

DSCP contracting official, the receipt and payment process includes the contractor submitting a Material Receiving Report (DD Form 250) to DoD for request of payment. DSCP personnel then work with the DoD requesting activity to confirm that medical systems are delivered and installed. Authorizing officials for the DD Form 250 include the DSCP biomedical engineer and DSCP contracting officer. DoD officials forward the completed DD Form 250 to the vendor who submits the DD Form 250, along with the invoice, to the Defense Finance and Accounting Service for payment. The requested DD Form 250 was not provided by DSCP personnel; though DSCP personnel stated the inspection process included the completion of the DD Form 250. Instead, the DSCP contracting officer provided a computer printout that was generated from inputting information into the DLA Enterprise Business System from the receiving report. The computer printout or onscreen image is not a source document or DD Form 250. These electronic documents represent electronic information that does not always provide information on the origin, authorization, or integrity of information.

Another purchase for Piperacillin medication, valued at \$119,214, did not have documentation showing that a receiving report was completed for the goods that were scheduled to be delivered by July 2007. Several requests were made for the receiving report that was not provided. If Government monitoring and inspections of goods are not properly performed, this may result in a lack of accountability and payment for goods that may not comply with contract terms.

Collection and Recording of Past Performance

DSCP contracting officials did not collect and record past performance information for the five purchases¹³ that exceeded the \$5.0 million threshold. DoD policy states that past performance information is to be collected for operations support that exceeds the \$5.0 million threshold. Operations support includes troop support that consists of food, subsistence items, clothing, textile-related items, medical supplies, and equipment. The DSCP medical supply chain's troop support includes medical supplies, equipment, pharmaceuticals, and other health care items. Annual performance assessment reports must be completed for contracts with performance periods exceeding 1 year and in accordance with the mandatory DoD past performance information collection thresholds. Additionally, DoD policy also directs that past performance information be collected on contracts if the collection threshold is exceeded by the exercise of option, modification, or order.

For instance, DSCP purchased infusion pumps and accessories for five medical treatment facilities. Five purchase orders were awarded under a base contract for a total of \$5.6 million. DSCP contracting officials stated that they consider each delivery order to be a separate contract. Furthermore, these DSCP contracting officials added that since the individual purchase orders did not exceed the \$5.0 million threshold, past performance information was not collected and recorded into a past performance system. According to DoD policy, past performance information should have been collected.

¹³Eighteen of the 23 purchases reviewed did not require collection and recording within a past performance information system because they were below the Operations Support \$5.0 million threshold.

DSCP combined the five purchases together when preparing the customer's statement of need, limited source justification, and price negotiation documentation; however, the methodology for how purchases were handled differed for past performance. DSCP did not properly comply with DoD policy for the collection and recording of past performance information for these purchases that serviced the five medical treatment facilities.

On November 27, 2007, the Director, Defense Procurement and Acquisition Policy issued a "Past Performance Information," memorandum that states it is important that the acquisition workforce input contractor past performance information into the DoD data capture system, Contractor Performance Assessment Reporting System, whenever a procurement action meets the DoD dollar threshold. Past performance information is a tool used to provide feedback to contractors on actual contract performance and the information is utilized in the source selection process. When past performance information is used effectively, there is an expectation of noticeable performance improvements and greater efficiency and effectiveness of operations. Regarding the recording of past performance information in the Past Performance Information Retrieval System, the memorandum, states:

PPIPRS [Past Performance Information Retrieval System] collects and retains past performance information on contractors for the entire Federal Government. DoD Components are required to load past performance information into CPARS [Contractor Performance Assessment Reporting System] which automatically feeds completed performance assessments to the PPIPRS [Past Performance Information Retrieval System].

The recording of past performance provides an indication of how well the contractor performed work on the contract. Furthermore, source selection officials should use past performance information when making source selection decisions. These completed performance assessments are a major evaluation factor of contract award when making "best value" selections. The recording of past performance information also provides a powerful motivator for contractors to maintain high quality performance or improve inadequate performance before the next reporting cycle. By not collecting past performance information, source selection teams have a more difficult time determining whether the contractor can fulfill requirements of proposal.

Conclusion

DoD IG Report No. D2008-022, "FY 2006 DoD Purchases Made Through the National Institutes of Health," November 15, 2007, reported similar results regarding DSCP contracting activities. Specifically, the report stated 22 of 29 purchases (76 percent) were awarded on a sole-source basis, and problems with the award selection documentation were noted. In addition, the report stated 25 delivery orders reviewed potentially violated the bona fide needs rule.

In our review of the VA, we found that 22 purchases were awarded on a sole-source basis with inappropriate justification and 19 of 21 purchases (90 percent) potentially violated the bona fide needs rule. DSCP should work to correct the problems identified and follow proper FAR and DoD guidance.

DoD program, financial, and contracting personnel must work together to properly plan the fulfillment of the requirement. A team approach can help ensure the utilization of interagency contracts are the best alternative when procuring DoD requirements. DoD officials should also ensure that funds do not violate their purpose, time, and amount limitations when being transferred to or used by the servicing activity for direct acquisitions. Interagency contracts are intended to leverage the Government's buying power and simplify the procurement of commonly used goods and services but they do not provide funding authority beyond those provided to the requesting activity.

In addition, contracting officials should try to promote competition to increase the probability that the Government receives the best value. Competition can also generate savings and performance improvements. Restricting competition should be avoided whenever possible. Proper planning can also reduce the possibility of issuing non-competitive purchases. If contracting officials must issue noncompetitive acquisitions, these acquisitions should include adequate justifications on why the contracts were not open to competition. Furthermore, contracting officials must follow appropriate guidance when issuing noncompetitive contracts. Sole-source justifications must include FAR parts that regulate the purchases. It is vital that contracting officials are familiar with the applicable FAR parts when awarding varying types of contract vehicles.

Finally, contracting officials must follow established contract quality assurance policies and procedures to ensure the Government receives goods that were agreed to within the contract. Contracting officials must complete and document the inspections and receipt of goods. All DoD acquisitions that exceed the established past performance thresholds should collect and record past performance information. By adhering to Government policies and procedures, Government officials reduce the risk of improperly using Government funds and better protect DoD interest when obtaining goods.

Client Comments on the Finding and Our Response

DLA Comments

The Director, DLA Accountability Office provided comments on Fair Notice, Price Reductions on Orders Exceeding the Maximum Order Threshold, Sole-Source Awards, Inspection and Receipt of Goods, and Collection and Recording of Past Performance. The director agreed that 23 of 23 purchases were not placed on e-Buy. DLA officials issued guidance in September 2007 and stated all FSS purchases have been posted on e-Buy since the guidance effective date. The director added that compliance with guidance will be monitored during FY 2009.

The director partially agreed with the price reduction on orders exceeding the maximum order threshold portion of the finding. The report identifies 8 of 23 purchases issued

above the maximum order threshold. The director stated a review of these contracts was performed and found only one of eight contracts exceeding the maximum order threshold and lacking documentation.

The director partially agreed with the portion of the finding on sole-source awards. The report states none of the 22 purchases reviewed provided an adequate justification for the use of a sole-source award. The director stated that a review found that 22 of 23 limited source purchases were properly executed. Only one contract file was deficient because it did not contain a limited source justification. He added that 17 of 22 contract files included an adequate limited source justification in the narrative. The director stated FAR 8.405-6(g) does not require the inclusion of a FAR citation. For the remaining five contract files, the director agreed with the report that the limited source justifications should have had additional support and documentation. He stated that DSCP officials will ensure that future sole or limited justifications contain the necessary information to support the contracting officer's decision.

The director disagreed on the portion of the finding regarding inspection and receipt of goods. The report states that on 11 of 20 purchases, DoD did not always perform sufficient oversight to ensure goods received were in accordance with contract terms. The director added that the contract files were considered deficient because DSCP personnel provided screen shots from their business system instead of the DD Form 250. The director stated that they were not informed that the documentation was inadequate and were not given opportunity by DoD IG to provide additional or alternative information. A review of these contracts was performed and found that 22 of 23 contract files contained adequate proof of delivery and receipt of the goods purchased.

The director agreed with the finding on collection and recording of past performance data. DLA stated they will take the necessary corrective actions and will continue to monitor the collection and recording of contractor past performance data.

Our Response

While we agree that DSCP executed 22 of 23 limited source justifications, we disagree that 17 of 23 limited source justifications were adequately prepared. Purchases we reviewed should have complied with FAR Subpart 8.405-6, "Limited Sources Justification and Approval," that states circumstances that may justify restrictions of ordering supplies not requiring a statement of work include only one source capable, new work is a logical follow-on, and an urgent and compelling need exists. Moreover, FAR Subpart 8.405-6(a) states "orders placed under Federal supply schedules are exempt from the requirements in Part 6"; however, FSS orders were not always prepared in compliance with FAR Subpart 8.4, "Federal Supply Schedules." Though the sole-source justifications mention FSS vendors, we maintain that DSCP contracting officials misinterpreted requirements for orders by preparing orders in accordance with FAR Part 6.3, "Other Than Full and Open Competition," and FAR Subpart 16.5, "Indefinite-Delivery Contracts." The director said that FAR 8.405-6(g) does not specifically require inclusion of a FAR citation. However, contracting officers should know which parts of the FAR are applicable to each purchase. Further, the DSCP contracting officers did not

comply with FAR 8.405-6(d), which requires brand name specifications be posted on e-Buy. If the DSCP contracting officers used the correct regulations, then they would have known that requirement existed. Citing incorrect FAR exceptions should not be overlooked when preparing sole-source justifications.

The director also notified DoD IG that they were able to locate five documents below the maximum order limitation, one request for price reduction e-mail, and four signed receiving reports (DD Form 250). Though the director said they located these documents that they did not provide, the systematic problems that exist at DSCP remain unchanged. These documents could reduce the number of problems, but not eliminate the problems that were noted during our review. Our visit to DSCP found that contract files were not always easy to obtain and were incomplete. Specifically, DSCP contracting officials had difficulty finding exactly where contract files were located. Additionally, entire contract files we copied lacked all of the contract information. Furthermore, information we requested upon our return from DSCP was not provided in its entirety. For example, we specifically requested the DD Form 250 for each purchase while visiting DSCP. DSCP officials were only able to provide the DD Form 250 for some purchases during our visit. After our visit, we sent a follow-up e-mail to give DSCP an opportunity to provide documentation that we discussed during our visit. Instead of providing the actual receiving report we requested, DSCP provided copies of onscreen images.

Recommendations, Client Comments, and Our Response

We are not directing recommendations to the Under Secretary of Defense for Acquisition, Technology, and Logistics regarding the multitude of acquisitions and contracting findings. Actions needed to resolve the direct acquisitions issues noted were recommended in DoD IG Report No. D-2008-022, "FY 2006 DoD Purchases Made Through the National Institutes of Health," November 15, 2007, and DoD IG Report No. D-2007-023, "FY 2005 DoD Purchases Made Through the National Aeronautics and Space Administration," November 13, 2006.

B.1 We recommend that the Under Secretary of Defense for Acquisition, Technology, and Logistics ensure contracting personnel receive training that focuses on working capital fund restrictions when awarding direct and assisted acquisitions. The training should also emphasize the bona fide needs rule and potential Antideficiency Act violations.

This is a new recommendation and caused the other recommendations to be renumbered. We are requesting that the Under Secretary of Defense for Acquisition, Technology, and Logistics provide comments to the final report by February 20, 2009.

B.2. We recommend that the Under Secretary of Defense (Comptroller)/DoD Chief Financial Officer:

a. Ensure financial personnel receive training that focuses on the use of working capital funds for direct and assisted acquisition purchases. The training should also emphasize the bona fide needs rule and potential Antideficiency Act violations.

Office of the Under Secretary of Defense (Comptroller)/DoD Chief Financial Officer Comments

The Assistant Deputy Under Secretary of Defense (Financial Management), responding for the Under Secretary of Defense (Comptroller)/DoD Chief Financial Officer, partially agreed with the recommendation and stated that they have requested the Graduate School, USDA update their “Working Capital Funds” course to include additional information that emphasizes funding restrictions and reviews the bona fide needs rule. The Assistant Deputy stated that the recommendation to ensure contracting officers receive training should be to the Under Secretary of Defense for Acquisition, Technology, and Logistics.

Our Response

The comments were responsive, and no further comments are required. Further, we agree that the recommendation should have also been addressed to the Under Secretary of Defense for Acquisition, Technology, and Logistics. Therefore, we added a recommendation to the Under Secretary of Defense for Acquisition, Technology, and Logistics.

Defense Logistics Agency Comments

Although not required to comment, the Director, DLA Accountability Office disagreed. The director recognizes that some contract files contain minor deficiencies, but does not agree that DSCP contracting officials did not comply with procurement regulations. The director stated the purchases are not conducted under the authority of the Economy Act, but under the authority of 10 U.S.C. 2208. The director added that because they do not transfer funds to other agencies for the service of assisted acquisitions on behalf of DLA, the authority of the Non-Economy Act Orders also does not apply to DLA. Finally, the director stated they are not responsible for the determination of a Military Service bona fide need; that determination is the responsibility of the Service.

Our Response

We disagree with the position that the DLA supply operations are conducted pursuant to the specific statutory authority of 10 U.S.C. 2208 and not subject to the Economy Act. The DSCP contracting officials were unaware of the applicable requirements when awarding direct acquisitions on behalf of requiring activities. DSCP officials relied on the Defense Working Capital Fund, Supply Management Charter to fulfill DoD requiring activity requirements. The Charter states that the Supply Management Business Area, a Defense Working Capital Fund activity, was established under the authority of

10 U.S.C 2208. The DoD Financial Management Regulation, volume 11A, chapter 1, “General Reimbursement Procedures And Supporting Documentation,” states that DoD working capital funds are established by 10 U.S.C. 2208 as one means to encourage one DoD activity to perform work for another DoD activity based on the “Project Order Law” or on the Economy Act.

A “project order” is a specific, definite, and certain order issued under the authority contained in 41 U.S.C. 23, and may be issued only to DoD-owned establishments that have been given the authority to operate a reimbursable program in the amount equal to or exceeding the project order amount. Moreover, “project orders” shall be issued to DoD-owned establishments that are capable of performing substantially the work ordered. Specifically, the DoD-owned establishments shall incur costs of not less than 51 percent of the total costs attributable to rendering the work or services ordered.

However, if a project order cannot be placed with another DoD-owned establishment because that establishment would fill the order by contracting with a commercial concern for performance of substantially the entire order, then the order could be placed through the Economy Act. The Economy Act permits interservice support, where an activity needing supplies or services (requesting customer) obtains them from another activity (servicing performer). Furthermore, the Economy Act allows a DoD activity to place an order within the same DoD Component, another DoD Component, or another Federal agency for goods or services. DoD requiring activities used MIPRs and requisitions to place orders through DSCP, which were eventually fulfilled through the use of private sources. As note above, 10 U.S.C. 2208 allows work to be performed on the basis of the Economy Act. Therefore, for interagency acquisitions, DSCP officials should be accepting the funds from DoD organizations under the Economy Act, which may not be used to circumvent conditions and limitations imposed on the use of funds. And when completing the transactions and making purchases using non-DoD contracting officials or the FSS, DSCP contracting officers should follow DoD Non-Economy Act guidance and requirements.

We also disagree with the Director, DLA Accountability Office position that DLA officials are only required to comply with its Defense Working Capital Fund’s limitations, rather than Military Service’s fund limitations when procuring supplies on behalf of Military Services. If an order meets both legal and regulatory requirements, DLA officials can obligate those funds. However, the obligation only occurs between the requiring activity and servicing activity. Specifically, 31 U.S.C 1532 states “an amount available under law may be withdrawn from one appropriation account and credited to another or to a working fund only when authorized by law.” For instance, if a DLA working capital fund is credited with an appropriation from a Military Service, those funds remain subject to the same limitations that applied to the original funds. DLA officials do not have the authority to use a Military Service’s funds differently than the Military Service could use those funds. DLA officials cannot extend the availability of Military Services funds for the commercial items purchased. The servicing activity must still order or contract for the supplies in compliance with the fiscal limitations on the funds provided to them. These funds do not lose their legal character when transferred

into the Defense Working Capital Fund, unless there is a specific statute that permits funds modifications.

b. Provide a status update on the direct acquisition preliminary reviews initiated during the course of the audit.

Office of the Under Secretary of Defense (Comptroller)/DoD Chief Financial Officer Comments

The Assistant Deputy Under Secretary of Defense (Financial Management), responding for the Under Secretary of Defense (Comptroller)/DoD Chief Financial Officer, agreed with the recommendation and stated eight cases were deemed no violation, two cases are under formal investigation, and eight cases are being reviewed. The Assistant Deputy will notify the Air Force to initiate a preliminary review for the remaining case.

Our Response

The comments were responsive, and no further comments are required.

B.3. We recommend that the Commander, Defense Supply Center Philadelphia require contracting officers to follow the Federal Acquisition Regulation and the Defense Federal Acquisition Regulation Supplement, specifically on awarding sole-source contracts and award documentation. Further, the commander should then complete a review to determine whether the contracting officers are in compliance with the acquisition regulations. If violations continue to occur, the commander should take disciplinary action against repeat offenders, as contracts with issues have been identified in various interagency acquisition audit reports.

Defense Logistics Agency Comments

The Director, DLA Accountability Office, responding for the Commander, DSCP, partially agreed. The director did not agree to the prevalence of the errors reported in the contracts reviewed. However, the director agreed that contracting officers must follow procurement requirements for the award of sole-source contracts and award documentation. The DSCP Head of Contracting Activity will write to contracting officers about the findings in the report and the importance of following procurement requirements. This will be done within 30 days of publication of the final report. Further, local guidance will be updated to address non-DoD contracts. Finally, the director stated that corrective actions are initiated as appropriate.

Our Response

As stated in the report, DoD IG Report No. D-2008-022, "FY 2006 DoD Purchases Made Through the National Institutes of Health," November 15, 2007, reported similar results regarding DSCP contracting activities. Specifically, DoD IG Report No. D-2008-022 stated that DSCP contracting officers should have followed FAR 16.505 to award multiple-award contracts, as they previously referenced FAR 8.4 for these purchases. It appears that DSCP contracting officers started referencing FAR 16.505 for contracts

instead of taking into consideration the applicable procurement requirements for contract vehicles that are being used. Therefore, the commander needs to complete a review to determine whether contracting officers are compliant. Action needs to be taken against those contracting officers that are repeat offenders. Accordingly, we request that the Commander, DSCP reconsider the recommendation and provide comments on the final report.

Appendix A. Scope and Methodology

We conducted this performance audit from September 2007 through October 2008 in accordance with generally accepted government auditing standards. Those standards require that we plan and perform the audit to obtain sufficient, appropriate evidence to provide a reasonable basis for our findings and conclusions based on our audit objectives. We believe that the evidence obtained provides a reasonable basis for our findings and conclusions based on our audit objectives.

This audit was a joint review between the DoD OIG and the VA OIG. We performed the audit in accordance with the “John Warner National Defense Authorization Act for Fiscal Year 2007.” This law requires the Inspectors General of DoD and the VA to perform a second review of the policies, procedures, and internal controls for DoD purchases made through the VA. We reviewed 23 DoD direct purchases using VA contracts at the DLA DSCP worth approximately \$10.0 million. In addition, we reviewed a total of 40 assisted acquisition purchases at DoD and VA activities funded by 61 MIPRs valued at approximately \$85.0 million. Four of the 40 purchases were reviewed solely at DoD activities and 18 of the 40 purchases were reviewed solely at VA activities. We reviewed 18 purchases at both DoD and VA activities. See the table for assisted purchases reviewed and Appendix C, “Assisted Acquisition Issues.”

Assisted Acquisitions Reviewed	
<u>Locations</u>	<u>Purchases</u>
DoD	4
VA	18
DoD and VA	<u>18</u>
Total	40

For assisted acquisitions, the VA OIG provided four Excel spreadsheets listing DoD purchases made by the VA contracting offices as the universe of the audit. We took a judgmental sample of 40 purchases from the VA universe. We visited a total of five DoD and three VA organizations. We visited the Air Force Medical Operations Agency-Fort Detrick, Air Force Medical Operations Agency-Kelly Air Force Base, Air Force Medical Operations Agency-Bolling Air Force Base, Air Force 96th Medical Group, and Air Force 81st Medical Group for the assisted acquisitions. Additionally, we visited three VA organizations, including the Joint Venture Acquisition Center, the ITAC, and the VASS.

For each site, we attempted to review a minimum of five purchases containing contract actions between October 1, 2006, and September 30, 2007. We reviewed documentation maintained by the contracting and program organizations to support purchases made through the VA. The purchase documents reviewed included MIPRs and the VA acceptances, statements of work, acquisition plans, COR letters, surveillance plans, invoices, sole-source justifications, price reasonableness determinations, contract award documents, task orders, and miscellaneous correspondence.

At the DSCP, our review included the following:

- We determined whether DSCP had internal controls in place for direct acquisitions and to review the process of making direct acquisitions.
- We determined whether DSCP adequately competed the purchases, in compliance with the Defense Federal Acquisition Regulation Supplement.

At each DoD organization visited, our review of assisted acquisitions included the following:

- We determined whether DoD organizations had internal controls to ensure that the proper types of funds and proper year of funds were used for DoD MIPRs sent to the VA. We determined whether the organization had written procedures covering the use of MIPRs to non-DoD organizations. For each purchase reviewed, we determined whether the appropriation code was correct and whether that code would be proper if the purchase had not been made through the VA.
- We determined whether DoD requesting organizations had internal controls for defining requirements and planning acquisitions for purchases awarded on the VA contracts. For each purchase reviewed, we determined when the organization developed the requirement, why VA was selected to make the purchase, and whether DoD determined if it was in the best interest of the Government to use the VA. In addition, we determined whether there was a bona fide need for the requirement in the fiscal year of the appropriation used to finance the requirement.
- We determined whether DoD contracting activities were following established procedures for approving purchases made through the use of contracts awarded through the VA. Specifically, we determined whether a DoD contracting officer was involved in planning the VA purchase.
- We determined how contractor performance was being monitored in situations where DoD purchases were awarded on the VA contracts. For each purchase reviewed, we determined whether a DoD representative was assigned as the COR and signed off on acceptance of contractor work.

At each VA organization visited, our review for assisted acquisitions included the following:

- We determined whether VA contracting officers adequately competed DoD purchases according to the FAR and the Defense Federal Acquisition Regulation Supplement. For each sole-source award, we determined whether the VA contracting officer prepared a Justification and Approval for Other Than Full and Open Competition that adequately justified the sole-source award.

- We determined whether the VA contracting officers adequately documented that the prices paid for the DoD purchases were fair and reasonable.

These additional audit steps at the VA organizations were performed on 36 of the 40 purchases reviewed during the audit. We coordinated with VA auditors throughout our audit.

Use of Computer-Processed Data

The VA OIG provided spreadsheets with the universe of DoD purchases for FY 2007. From the spreadsheets, we judgmentally selected mostly high-value MIPRs for review. We did not assess the reliability of the VA-furnished data during this audit. However, we did not find any discrepancies in the data provided for the 40 purchases reviewed.

We did not assess the accuracy of the past performance information systems used within DoD, or the Government-Wide Past Performance Information Retrieval System, which is the official past performance system for compiling data on contractor performance used throughout the Federal Government.

Appendix B. Prior Coverage

During the last 5 years, the Government Accountability Office (GAO), DoD IG, the Army, and the VA OIG have issued 25 reports discussing interagency acquisitions. Unrestricted GAO reports can be accessed over the Internet at <http://www.gao.gov>. Unrestricted DoD IG reports can be accessed at <http://www.dodig.mil/audit/reports>. Unrestricted VA reports can be accessed at <http://www.va.gov>.

GAO

GAO Report No. GAO-08-1063, “DoD Financial Management: Improvements Are Needed in Antideficiency Act Controls and Investigations,” September 2008

GAO Report No. GAO-07-310, “High-Risk Series: An Update,” January 2007

GAO Report No. GAO-06-996, “Interagency Contracting: Improved Guidance, Planning, and Oversight Would Enable the Department of Homeland Security to Address Risks,” September 2006

GAO Report No. GAO-05-456, “Interagency Contracting: Franchise Funds Provide Convenience, but Value to DoD is Not Demonstrated,” July 2005

GAO Report No. GAO-05-201, “Interagency Contracting: Problems with DOD’s and Interior’s Orders to Support Military Operations,” April 2005

GAO Report No. GAO-05-274, “Contract Management: Opportunities to Improve Surveillance on Department of Defense Service Contracts,” March 2005

DoD IG

DoD IG Report, No. D2008-122, “Follow-up on DoD Purchases Made Through the Department of the Interior,” August 18, 2008

DoD IG Report No. D-2008-082, “Summary Report on Potential Antideficiency Act Violations Resulting From DoD Purchases Made Through Non-DoD Agencies (FY 2004 Through FY 2007),” April 25, 2008

DoD IG Report No. D-2008-066, “FY 2006 and FY 2007 DoD Purchases Made Through the Department of the Interior” March 19, 2008

DoD IG Report No. D-2008-050, “Report on FY 2006 DoD Purchases Made Through the Department of the Treasury,” February 11, 2008

DoD IG Report No. D-2008-036, “FY 2006 DoD Purchases Made Through the U.S. Department of Veterans Affairs,” December 20, 2007

DoD IG Report No. D-2008-022, “FY 2006 DoD Purchases Made Through the National Institutes of Health,” November 15, 2007

DoD IG Report No. D-2007-044, “FY 2005 DoD Purchases Made Through the Department of the Interior,” January 16, 2007

DoD IG Report No. D-2007-042, "Potential Antideficiency Act Violations on DoD Purchases Made Through Non-DoD Agencies," January 2, 2007

DoD IG Report No. D-2007-032, "Report on FY 2005 DoD Purchases Made Through the Department of the Treasury," December 8, 2006

DoD IG Report No. D-2007-023, "FY 2005 DoD Purchases Made Through the National Aeronautics and Space Administration," November 13, 2006

DoD IG Report No. D-2007-007, "FY 2005 DoD Purchases Made Through the General Services Administration," October 30, 2006

DoD IG Draft Report No. D-2007-D000CF-0262.000, "FY 2007 DoD Purchases Made Through the National Institutes of Health," December 15, 2008

DoD IG Report No. D-2006-029, "Report of Potential Antideficiency Act Violations Identified During the Audit of the Acquisition of the Pacific Mobile Emergency Radio System," November 23, 2005

DoD IG Report No. D-2005-096, "DoD Purchases Made Through the General Services Administration," July 29, 2005

DoD IG Report No. D-2005-003, "DoD Antideficiency Act Reporting and Disciplinary Process," October 14, 2004

DoD IG Report No. D-2004-084, "Antideficiency Act Investigation of the Research, Development, Test and Evaluation, Defense-Wide Appropriation Account 97 FY 1989/1990 0400," May 28, 2004

Army

Army Report No. A-2007-0096-FFH, "Proper Use of Non-DoD Contracts, U.S. Army Medical Command," March 22, 2007

Army Report No. A-2004-0244-FFB, "Information Technology Agency Contract Management," May 25, 2004

VA IG

VA Report No. 06-03540-24, "Audit of VA Purchases Made on Behalf of the Department of Defense," November 19, 2007

VA Report No. 04-03178-139, "Audit of VA Acquisitions for Other Government Agencies," May 5, 2006

Appendix C. Assisted Acquisitions Issues

DoD Activity	Purchase	Purchase Reviewed at DoD	Purchase Reviewed at VA	No Audit Trail of Funds	Inadequate MIPR Preparation	Inadequate Acquisition Planning	Inadequate Interagency Agreement
Army							
1) Army Office of Information Assurance Compliance	1) CAC Support		•	N/R	•	N/R	N/R
Air Force							
2) AFMOA, Fort Detrick	2) Sterilizing Unit, plasma 3) Human Patient Simulator	• •	• •		• •	• •	• •
	4) AN/PRC 150 Tactical Radio Systems	•	•			•	
	5) AN/PRC 117 Tactical Radio Systems	•	•			•	
	6) War Reserve Maintenance	•	•		•	•	•
3) AFMOA, Kelly AFB	7) Mandibular/Craniofacial sets 8) 840 Ventilators and Accessories	• •	• •	• •		• •	
	9) MIM Analyzer System	•	•	•		•	
	10) KCI VAC ATS	•	•	•		•	
	11) KCI Freedom Wound VAC	•	•	•		•	
4) AFMOA, Bolling AFB	12) Centralized Credentialing Support 13) Spectrum Healthcare Medical Management	• •	• •		• •	• •	
	14) Administrative Technician	•	•		•	•	
	15) EDS VTC Support	•	•			•	
5) 96 th MDSS, Eglin AFB	16) Sterling Medical-Allergist 17) Family Health RN	• •	• •		• •	• •	
	18) OB Midwife Nurse	•	•		•	•	
	19) OB Nurse Practitioner	•	•		•	•	
	20) PACU/RNs	•	•		•	•	
6) AFMOA, Brooks City-Base	21.) DMMLSS Facility Management		•	N/R	•	N/R	N/R
7) AFMSA, Brooks City-Base	22.) HAMS/V791-TO7518 (Edwards)		•	N/R	•	N/R	N/R
	23) HAMS/V791-TO6224 (Andrews)		•	N/R	•	N/R	N/R
	24) HAMS/V791(J-06)-0103 (Ofuty)(Nellis)		•	N/R	•	N/R	N/R
	25) Wireless and IT services/V791(J-07)-P0015		•	N/R	•	N/R	N/R
	26) Facility Maintenance V0010.ATO6039		•	N/R	•	N/R	N/R
8) HQ ACC, Langley AFB	27) Facility Maintenance		•	N/R	•	N/R	N/R

DoD Activity	Purchase	Purchase Reviewed at DoD	Purchase Reviewed at VA	No Audit Trail of Funds	Inadequate MIPR Preparation	Inadequate Acquisition Planning	Inadequate Interagency Agreement
9) 81 st Medical Group, Keesler AFB	28) HAMS/V791(J-06)-0101		•	N/R	•	N/R	N/R
	29) HAMS/V791(J-07)-0503 (Keesler Bridge)		•	N/R	•	N/R	N/R
	30) HAMS/V0010ATO02 (Keesler 6 months)		•	N/R	•	N/R	N/R
	31) Phlebotomist & Lab Technologist	•			•		
	32) Admin Assistant Clerks	•			•		
	33) HVAC	•			•		
10) 79 th Medical Logistics	34) Facility Maintenance Andrews (V0010ATO7001)		•	N/R	•	N/R	N/R
11) AETC, Randolph AFB	35) Synesort Backup Software		•	N/R	•	N/R	N/R
12) SAF/FMBMS	36) Electronic Document Management System		•	N/R	•	N/R	N/R
13) AFCA, Scott AFB	37) IT Service		•	N/R	•	N/R	N/R
DoD Field Activity							
14) Defense Civilian Personnel Management Service	38) IT Service		•	N/R	•	N/R	N/R
	39) IT Services		•	N/R	•	N/R	N/R
15) TRICARE	40) System Engineering		•	N/R	•	N/R	N/R
15 DoD Activities	40 Purchases	22 Purchases	36 Purchases	5 No	32 Inadequate	22 Inadequate	3 Inadequate

Note: See the list of acronym definitions at the end of Appendix E.

DoD Activity	Purchase	Inadequate Sole-Source Justification	Inadequate Price Reasonableness Determination	No Reference to the MOA Between VA and AFSG	No DoD COR Letter	No DoD Collection and Recording of Past Performance	No QASP
Army							
1) Army Office of Information Assurance Compliance	1) CAC Support	unknown	•	N/A	•	N/R	•
Air Force							
2) AFMOA, Fort Detrick	2) Sterilizing Unit, plasma	competed	adequate		•	N/A	•
	3) Human Patient Simulator	competed	adequate		•	N/A	•
	4) AN/PRC 150 Tactical Radio Systems	competed	adequate		•	N/A	•
	5) AN/PRC 117 Tactical Radio Systems	•	•		•	•	•
	6) War Reserve Maintenance	•	adequate		N/D	•	•
3) AFMOA, Kelly AFB	7) Manducular/Craniofacial sets	adequate	adequate		•	N/A	•
	8) 840 Ventilators and Accessories	competed	•		•	N/A	•
	9) MIM Analyzer System	competed	•		•	N/A	•
	10) KCI VAC ATS	adequate	adequate		•	N/A	•
	11) KCI Freedom Wound VAC	adequate	adequate		•	N/A	•
4) AFMOA, Bolling AFB	12) Centralized Credentialing Support	competed	adequate		adequate	•	•
	13) Spectrum Healthcare Medical Management	competed	adequate		adequate	•	adequate
	14) Administrative Technician	competed	adequate		adequate	•	inadequate
	15) EDS VTC Support	competed	adequate		adequate	•	•
5) 96 th MDSS, Eglin AFB	16) Sterling Medical-Allergist	unknown	•		adequate	•	adequate
	17) Family Health RN	unknown	•		adequate	•	adequate
	18) OB Midwife Nurse	competed	adequate		adequate	•	adequate
	19) OB Nurse Practitioner	competed	adequate		adequate	•	adequate
	20) PACU/RNs	N/R	N/R		inadequate	•	adequate
6) AFMOA, Brooks City-Base	21) DMLSS Facility Management	competed	adequate		adequate	•	inadequate
7) AFMSA, Brooks City-Base	22) HAMS/V791-TO7518 (Edwards)	competed	adequate		adequate	•	inadequate
	23) HAMS/V791-TO6224 (Andrews)	competed	adequate		adequate	•	inadequate
	24) HAMS/V791(J-06)-0103 (Offut)/Nellis	competed	adequate		adequate	•	inadequate
	25) Wireless and IT services/V791(J-07)-P0015	adequate	adequate		adequate	•	inadequate
	26) Facility Maintenance V0010ATO6039	•	•		adequate	•	•
8) HQ ACC, Langley AFB	27) Facility Maintenance	competed	•		adequate	•	inadequate

DoD Activity	Purchase	Inadequate Sole-Source Justification	Inadequate Price Reasonableness Determination	No Reference to the MOA Between VA and AFSG	No DoD COR Letter	No DoD Collection and Recording of Past Performance	No QASP
9) 81 st Medical Group, Keesler AFB	28) HAMS/V791(J-06)-0101	competed	adequate		adequate	•	inadequate
	29) HAMS/V791(J-07)-0503 (Keesler Bridge)	adequate	adequate		inadequate	•	•
	30) HAMS/V0010ATO02 (Keesler 6 months)	competed	•		•	•	•
	31) Phlebotomist & Lab Technologist	N/R	N/R		•	•	adequate
	32) Admin Assistant Clerks	N/R	N/R		•	•	adequate
	33) HVAC	N/R	N/R		•	N/A	•
10) 79 th Medical Logistics	34) Facility Maintenance Andrews (V0010ATO7001)	competed	•	•	adequate	•	•
11) AETC, Randolph AFB	35) Syncsort Backup Software	adequate	adequate	N/A	adequate	N/R	•
12) SAF/FMBMS	36) Electronic Document Management System	competed	•	N/A	•	N/A	•
13) AFCA, Scott AFB	37) IT Service	•	•	N/A	adequate	N/R	inadequate
DoD Field Activity							
14) Defense Civilian Personnel Management Service	38) IT Services	unknown	•	N/A	inadequate	N/R	•
	39) IT Services	unknown	•	N/A	adequate	N/A	•
15) TRICARE	40) System Engineering	•	•	N/A	•	N/R	•
Total 15 DoD Activities	40 Purchases	5 Inadequate	15 Inadequate	1 No	16 No	24 No	23 No 9 Inadequate

Note: See the list of acronym definitions at the end of Appendix E.

Appendix D. Potential Antideficiency Act Violations That Occurred in FY 2007 Using Assisted Acquisitions

Office of the Secretary of the Air Force (Financial Management and Budget)

Electronic Document Management System

The Office of the Secretary of the Air Force (Financial Management and Budget) sent MIPR F1AF2B6243G001 for \$252,561 using FY 2006 Air Force Operations and Maintenance funds to the VA on August 31, 2006. The VA accepted the funds on September 7, 2006, to purchase electronic document management system support services. FY 2006 Operations and Maintenance funds expired on September 30, 2006. The VA issued the purchase order for \$232,611 on October 23, 2006, using VA contract V797 (049A3G) P-065. The period of performance was 1 year from the date of award. Use of FY 2006 Operations and Maintenance funds to satisfy FY 2007 requirements does not meet the intent of the bona fide needs rule.

Air Force Medical Operations Agency

Plasma Sterilization System

The Air Force Medical Operations Agency sent MIPR F1ATB27152G001 for \$285,242 using FY 2007 Defense Health Program funds to the VA on June 6, 2007. The VA accepted the funds on July 6, 2007, to purchase two plasma sterilization systems. FY 2007 Defense Health Program funds expired on September 30, 2007. The VA issued the purchase order for \$242,650 on September 24, 2007, using VA contract V797P3773K for the sterilization systems. The purchase order had a stated delivery date of October 31, 2007. Actual delivery occurred on November 7, 2007. Since delivery was in FY 2008, the use of FY 2007 Defense Health Program funds to satisfy the FY 2008 requirement does not meet the intent of the bona fide needs rule.

TRICARE Management Activity

AHLTA System Support

The TRICARE Management Activity sent MIPR DRAM65189 for \$1,778,863 using FY 2006 Defense Health Program funds to the VA on September 22, 2006. The VA accepted the funds on September 26, 2006, to purchase Composite Health Care Systems and AHLTA system engineering and information assurance support. VA

issued the purchase order for \$1,454,551 on September 30, 2006, using GSA contract GS-35F-4987H for the Composite Health Care Systems & AHLTA system support services. The period of performance was October 1 through November 15, 2006. Since performance was to begin in FY 2007, the use of FY 2006 Defense Health Program funds to satisfy the FY 2007 requirement does not meet the intent of the bona fide needs rule.

Air Education and Training Command

Data Storage Protection Software and Equipment

The Headquarters Air Education and Training Support, Office of the Surgeon General sent MIPR F3PF377227G001 for \$1,371,653 using FY 2007 Defense Health Program funds to the VA on August 14, 2007. The VA accepted the funds on September 7, 2007, to purchase data storage protection software and equipment. The VA issued the purchase order for \$1,336,785 on September 30, 2007, using the National Aeronautics and Space Administration Solutions for Enterprise-Wide Procurement contract NNG07DA31B for the software and equipment purchase. Items on this contract are commercial. The contract stated the delivery date for the software and equipment was 7 days after contract award. Since delivery of the software and equipment was to occur during October 2007, use of FY 2007 Defense Health Program funds to satisfy FY 2008 requirements does not meet the intent of the bona fide needs rule.

Appendix E. Direct Acquisitions Issues

Purchase	Inadequate Acquisition Planning	No Bona Fide Need	Inadequate Preparation of MIPR/ Requisition	No Fair Notice/ Opportunity to Schedule Contractors	No Price Reduction Sought	Inadequate Sole-Source Justification	Inadequate Contract Oversight	Inadequate Past Performance
1) Dental X-Ray System	•		•	•	N/D	•		NA
2) Pharmacy Dispensing System	•	•	•	•	NA	•	•	NA
3) Pharmacy Automation Equipment	•	•	•	•	NA	•	•	NA
4) CT Imaging System	•	•	•	•	NA	•	•	NA
5) Dental Chairs	•	•	•	•	•	•		NA
6) Dental X-Ray Machine	•		•	•	N/D	•	•	NA
7) Dental Radiography Sensor System	•	N/D	•	•	N/D	•	•	NA
8) Pharmacy Automation Equipment	•	•	•	•	•	•	•	NA
9) Imaging Guidance System	•	•	•	•	•	•	GNR	NA
10) Piperacillin Medication	•	N/D	N/D	•	N/D	N/D		NA
11) Dermatological Laser System	•	•	•	•	N/D	•	•	NA
12) Dental CT System	•	•	•	•	NA	•	•	NA
13) Pharmacy Dispensing System	•	•	•	•	NA	•	•	NA
14) Pharmacy Dispensing System	•	•	•	•	NA	•	GNR	NA
15) Pharmacy Automation Equipment	•	•	•	•	NA	•	GNR	NA
16) Robotic Medication Management System	•	•	•	•	NA	•	•	NA
17) Pharmacy Automation Equipment	•	•	•	•	NA	•		NA
18) Pharmacy Dispensing System	•	•	•	•	NA	•		NA
19) Intravenous Infusion Pumps	•	•	•	•	•	•		•
20) Intravenous Infusion Pumps	•	•	•	•	•	•		•
21) Intravenous Infusion Pumps	•	•	•	•	•	•		•
22) Intravenous Infusion Pumps	•	•	•	•	•	•		•
23) Intravenous Infusion Pumps	•	•	•	•	•	•		•
Totals:	23 of 23	19 of 21	18 of 23	23 of 23	3 of 8	22 of 22	11 of 20	5 of 5

Appendices Abbreviations and Acronyms Defined

Abbreviations

GNR Goods Not Received
N/A Not Applicable
N/R Not Reviewed
N/D Did not determine due to lack of documentation

Acronyms

ACC Air Combat Command
AETC Air Education and Training Command
AFCA Air Force Communications Agency
AFMOA Air Force Medical Operations Agency
AFMSA Air Force Medical Support Agency
AN/PRC Army/Navy Portable Radio (used for two-way communications)
CAC Common Access Card
CT Computed Tomography
DMLSS Defense Medical Logistics Standard Support
EDS Electronic Data System
HAMS Hospital Aseptic Management Services
HVAC Heating, Ventilation, and Air Conditioning
IT Information Technology
OB Obstetrics
PACU/RN Post Anesthesia Care Unit Registered Nurse
SAF/FMBMS Secretary of the Air Force Financial Management and Budget
VAC ATS Vacuum Assisted Closure Advanced Therapy System
VTC Video Teleconferencing

Appendix F. Potential Antideficiency Act Violations That Occurred in FY 2007 Using Direct Acquisitions

Defense Supply Center- Philadelphia

1. The Air Force Medical Operations Agency sent MIPR F1ATB27137G003, using FY 2007 Defense Health Program funds, to DSCP on May 17, 2007, to purchase pharmacy automation equipment. FY 2007 Defense Health Program funds expired on September 30, 2007. DSCP issued the purchase order for \$481,491 on August 16, 2007, using contract V797P-4324A. The purchase order had a stated delivery date of 90 days after delivery order, November 14, 2007. Use of FY 2007 Defense Health Program funds to satisfy FY 2008 requirements does not meet the intent of the bona fide needs rule.

2. The Material Management Department sent requisition N6809462228001, using FY 2006 Defense Health Program funds, to DSCP on August 14, 2006, to purchase pharmacy automation equipment. FY 2006 Defense Health Program funds expired on September 30, 2006. DSCP issued the purchase order for \$157,629 on February 1, 2007, using contract V797P-4313A. Use of FY 2006 Defense Health Program funds to satisfy FY 2007 requirements does not meet the intent of the bona fide needs rule.

3. The National Naval Medical Center sent requisition N001686221W800, using FY 2006 Defense Health Program funds, to DSCP on September 21, 2006, to purchase dental imaging equipment. FY 2006 Defense Health Program funds expired on September 30, 2006. DSCP issued the purchase order for \$194,875 on July 1, 2007, using contract V797P-3075M. Use of FY 2006 Defense Health Program funds to satisfy FY 2007 requirements does not meet the intent of the bona fide needs rule.

4. The Naval School of Health Sciences sent requisitions N0621A6229HB04, N0621A6229HB01, N0621A6229HB02, and N0621A6229HB03, using FY 2006 Defense Health Program funds, to DSCP on August 17, 2006, to purchase dental chairs. FY 2006 Defense Health Program funds expired on September 30, 2006. DSCP issued the purchase order for \$262,849 on April 10, 2007, using contract V797P-3073M. Use of FY 2006 Defense Health Program funds to satisfy FY 2007 requirements does not meet the intent of the bona fide needs rule.

5. The U.S. Army Medical Department sent requisition W45CM161158200, using FY 2006 Defense Health Program funds, to DSCP on May 2, 2006, to purchase pharmacy automation equipment. FY 2006 Defense Health Program funds expired on September 30, 2006. DSCP issued the purchase order for \$336,173 on February 1, 2007, using contract V797P-4313A. Use of FY 2006 Defense Health Program funds to satisfy FY 2007 requirements does not meet the intent of the bona fide needs rule.

6. The Air Force Medical Operations Agency sent MIPR F1ATB26268G007, using FY 2006 Defense Health Program funds, to DSCP on September 26, 2006, to purchase an imaging guidance system. FY 2006 Defense Health Program funds expired on September 30, 2006. DSCP issued the purchase order for \$196,000 on April 12, 2007, using contract V797P-4802A. Use of FY 2006 Defense Health Program funds to satisfy FY 2007 requirements does not meet the intent of the bona fide needs rule.

7. The Air Force Medical Operations Agency sent MIPR F1ATB26271G004, using FY 2006 Defense Health Program funds, to DSCP on September 28, 2006, to purchase a dermatological laser system. FY 2006 Defense Health Program funds expired on September 30, 2006. DSCP issued the purchase order for \$159,965 on March 12, 2007, using contract V797P-4499A. Use of FY 2006 Defense Health Program funds to satisfy FY 2007 requirements does not meet the intent of the bona fide needs rule.

8. The Air Force Medical Operations Agency sent MIPR F1ATB26268G006, using FY 2006 Defense Health Program funds, to DSCP on September 26, 2006, to purchase a dental computed tomography system. FY 2006 Defense Health Program funds expired on September 30, 2006. DSCP issued the purchase order for \$185,134 on July 21, 2007, using contract V797P-3086M. Use of FY 2006 Defense Health Program funds to satisfy FY 2007 requirements does not meet the intent of the bona fide needs rule.

9. The Air Force Medical Operations Agency sent MIPR F1ATB26248G002, using FY 2006 Defense Health Program funds, to DSCP on September 5, 2006, to purchase a pharmacy dispensing system. FY 2006 Defense Health Program funds expired on September 30, 2006. DSCP issued the purchase order for \$242,742 on March 15, 2007, using contract V797P-4324A. Use of FY 2006 Defense Health Program funds to satisfy FY 2007 requirements does not meet the intent of the bona fide needs rule.

10. The Air Force Medical Operations Agency sent MIPR F1ATB26271G005, using FY 2006 Defense Health Program funds, to DSCP on September 28, 2006, to purchase a pharmacy dispensing system. FY 2006 Defense Health Program funds expired on September 30, 2006. DSCP issued the purchase order for \$185,978 on March 13, 2007, using contract V797P-4324A. Use of FY 2006 Defense Health Program funds to satisfy FY 2007 requirements does not meet the intent of the bona fide needs rule.

11. The Air Force Medical Operations Agency sent MIPR F1ATB26186G001, using FY 2006 Defense Health Program funds, to DSCP on July 7, 2006, to purchase pharmacy automation equipment. FY 2006 Defense Health Program funds expired on September 30, 2006. DSCP issued the purchase order for \$817,843 on February 9, 2007, using contract V797P-3481K. Use of FY 2006 Defense Health Program funds to satisfy FY 2007 requirements does not meet the intent of the bona fide needs rule.

12. The Martin Army Community Hospital sent MIPR W33BTY60698502, using FY 2006 Defense Health Program funds, to DSCP on April 25, 2006, to purchase a robotic medication management system. FY 2006 Defense Health Program funds expired on September 30, 2006. DSCP issued the purchase order for \$411,820 on

February 28, 2007, using contract V797P-4796A. Use of FY 2006 Defense Health Program funds to satisfy FY 2007 requirements does not meet the intent of the bona fide needs rule.

13. The U.S. Army Medical Department Activity sent requisition W45CM161158200, using FY 2006 Defense Health Program funds, to DSCP on May 2, 2006, to purchase pharmacy automation equipment. FY 2006 Defense Health Program funds expired on September 30, 2006. DSCP issued the purchase order for \$187,654 on February 28, 2007, using contract V797P-3458K. Use of FY 2006 Defense Health Program funds to satisfy FY 2007 requirements does not meet the intent of the bona fide needs rule.

14. The Naval Medical Logistics Command sent requisitions N626456151E021 and N626456151E022, using FY 2006 Defense Health Program funds, to DSCP to purchase a pharmacy dispensing system. FY 2006 Defense Health Program funds expired on September 30, 2006. DSCP issued the purchase order for \$115,405 on March 7, 2007, using contract V797P-4257A. Use of FY 2006 Defense Health Program funds to satisfy FY 2007 requirements does not meet the intent of the bona fide needs rule.

15. The Naval Medical Logistics Command sent requisitions N626457200E090, N626457204E091, N626457204E092, N626457204E093, N626457204E094, N626457204E095, and N626457269E173, using FY 2007 Defense Health Program funds, to DSCP on July 23, 2007, to purchase intravenous infusion pumps and accessories. FY 2007 Defense Health Program funds expired on September 30, 2007. DSCP issued the purchase order for \$2,392,176 on September 26, 2007, using contract V797P-4965A. The purchase order had a stated delivery date of October 31, 2007 for the pumps, while the accessories delivery dates were from October 8, 2007 through November 7, 2007. The pumps were delivered on November 6, 2007 and accessories deliveries were completed on November 14, 2007. Use of FY 2007 Defense Health Program funds to satisfy FY 2008 requirements does not meet the intent of the bona fide needs rule.

16. The Keller Army Community Hospital sent requisitions W16SLD72067701 and W16SLD72067702, using FY 2007 Defense Health Program funds, to DSCP on July 25, 2007, to purchase intravenous infusion pumps and accessories. FY 2007 Defense Health Program funds expired on September 30, 2007. DSCP issued the purchase order for \$104,800 on October 3, 2007, using contract V797P-4965A. Use of FY 2007 Defense Health Program funds to satisfy FY 2008 requirements does not meet the intent of the bona fide needs rule.

17. The Walter Reed Army Medical Center sent MIPR MIPR7KWCD04091, using FY 2007 Defense Health Program funds, to DSCP on July 31, 2007, to purchase intravenous infusion pumps and accessories. FY 2007 Defense Health Program funds expired on September 30, 2007. DSCP issued the purchase order for \$2,542,117 on October 3, 2007, using contract V797P-4965A. Use of FY 2007 Defense Health Program funds to satisfy FY 2008 requirements does not meet the intent of the bona fide needs rule.

18. The U.S. Army Medical Department Activity, Fort Belvoir, sent MIPR MIPR7DLA00051, using FY 2007 Defense Health Program funds, to DSCP on August 17, 2007, to purchase intravenous infusion pumps and accessories. FY 2007 Defense Health Program funds expired on September 30, 2007. DSCP issued the purchase order for \$237,875 on October 3, 2007, using contract V797P-4965A. Use of FY 2007 Defense Health Program funds to satisfy FY 2008 requirements does not meet the intent of the bona fide needs rule.

19. The 79th Medical Wing sent MIPR V4425-0154, using FY 2007 Defense Health Program funds, to DSCP on September 26, 2007, to purchase intravenous infusion pumps and accessories. FY 2007 Defense Health Program funds expired on September 30, 2007. DSCP issued the purchase order for \$367,072 on October 3, 2007, using contract V797P-4965A. Use of FY 2007 Defense Health Program funds to satisfy FY 2008 requirements does not meet the intent of the bona fide needs rule.

Office of the Under Secretary of Defense for Acquisition, Technology, and Logistics Comments

Final Report
Reference



ACQUISITION,
TECHNOLOGY
AND LOGISTICS

OFFICE OF THE UNDER SECRETARY OF DEFENSE
3000 DEFENSE PENTAGON
WASHINGTON, DC 20301-3000

NOV 26 2008

MEMORANDUM FOR DEPUTY INSPECTOR GENERAL FOR AUDITING,
PROGRAM DIRECTOR, ACQUISITION, AND
CONTRACT MANAGEMENT

THROUGH: DIRECTOR, ACQUISITION RESOURCES, AND ANALYSIS *MS 11/26/08*

SUBJECT: Response to DoDIG Draft Audit Report on "FY 2007 DoD Purchases
Made Through the U.S. Department Of Veterans Affairs," (Project No.
D2007-D000CF-0263.000) dated October 23, 2008

As requested, I am providing the USD (AT&L) response to recommendation
A.1 of the subject draft report.

Recommendation A.1:

We recommend that the Under Secretary of Defense for Acquisition, Technology, and Logistics ensure DoD organizations are aware of current requirements that DoD contracting officers should review all purchases over \$500,000, and that the Air Force guidance be updated to reflect current requirements.

Response:

On January 18, 2008, I issued a policy memo (attached) that requires a warranted contracting officer review each Non-Economy Act Order greater than \$500,000 to ensure it complies with statute, policy, regulation, and local component requirements and procedures. Air Force Instruction 65-116 (29 September 2008) "Air Force Purchases using Military Interdepartmental Purchases Request (MIPRs)" (attached) requires a Determination and Findings for Interagency Acquisitions, assisted or direct, when the MIPR value exceeds \$100,000. In addition, the Air Force is currently reviewing its policies regarding interagency acquisitions and will clarify that interagency acquisitions, for both direct and assisted acquisitions over \$500,000, must be review by a warranted contracting officer. The Air Force anticipates completing their review and any policy updates by March 2009.

My POC is Michael Canales. He can be reached at (703) 695-8571 or via e-mail at michael.canales@osd.mil.

Shay D. Assad
Director, Defense Procurement,
Acquisition Policy, and
Strategic Sourcing

Attachments:
As stated.



Attached guidance
discussed on page
19.

Office of the Under Secretary of Defense(Comptroller)/DoD Chief Financial Officer Comments



COMPTROLLER

OFFICE OF THE UNDER SECRETARY OF DEFENSE
1100 DEFENSE PENTAGON
WASHINGTON, DC 20301-1100

MEMORANDUM FOR PROGRAM DIRECTOR, DEPARTMENT OF
DEFENSE, OFFICE OF INSPECTOR GENERAL

SUBJECT: Draft Audit Report, "FY 2007 DoD Purchases Made Through the U.S.
Department of Veterans Affairs", Project No. D2007-D000CF-
0263.000

This memo is in response to the subject October 23, 2008 draft report
provided to this office for review and comment. Our response to each of the audit
report recommendations directed to the Under Secretary of Defense
(Comptroller)/Chief Financial Officer is attached.

We appreciate the opportunity to respond to your draft audit report and look
forward to resolving the cited issues. My point of contact is Mr. Rodney Gregory.
He can be contacted by telephone at 703-697-1008 or e-mail at
rodney.gregory@osd.mil.

A handwritten signature in cursive script, appearing to read "Radha Sekar".

Radha Sekar
Assistant Deputy Under Secretary of
Defense (Financial Management)

Attachment:
As stated

cc:
ODGC(F)

Response to Draft Audit Report Recommendations

Office of the Inspector General (OIG), Department of Defense (DoD)
“FY 2007 DoD Purchases Made Through the U.S. Department of Veterans
Affairs”
OIG Project No. D2007-D000CF-0263.000

OIG Recommendations A.2. Provide a status update on the assisted acquisition preliminary reviews, initiated under the DoD Financial Management Regulation, volume 14, chapter 3, for potential bona fide needs violations identified during the course of the audit.

OSD Response. Concur. Three of four assisted acquisition cases identified in the draft report have completed preliminary reviews. Two cases were deemed no violations and one case is still under review by OGC Fiscal. We will notify the Air Force to initiate a preliminary investigation for the last case.

OIG Recommendation B.1a. Ensure contracting and financial personnel receive training that focuses on working capital fund restrictions awarding direct and assisted acquisitions. The training would also emphasize the bona fide needs rule and potential Anti-deficiency Act violations.

OSD Response. Partially Concur. We concur that information on the subject of the Antideficiency Act should be incorporated into training that specifically deals with working capital funds. We have initiated communications with representatives from the Graduate School, USDA and have requested modification to their current course titled, “Working Capital Funds,” for DoD financial managers and program managers to include an additional module that emphasizes fund restrictions awarding direct and assisted acquisitions and a review of the bona fide needs rule and potential Anti-deficiency Act violations.

This office works with USD(AT&L) to address education and training to prevent future ADA violations, as outlined in the DoD Financial Management Regulation Volume 14, Chapter 8:0803 and Chapter 10:100207-100211. However, the recommendation to ensure that contracting officers receive appropriate training should be directed to the USD (AT&L).

OIG Recommendation B.1b. Provide a status update on the direct acquisition preliminary reviews initiated during the course of the audit.

OSD Response. Concur. Eighteen of nineteen direct acquisition cases identified in the draft report have completed preliminary reviews. Eight cases were deemed no

Revised
Recommendation
Pg. 33

violations, two cases are under formal investigation, and eight cases are still under review by OGC Fiscal. We will notify the Air Force to initiate a preliminary investigation for the last case.

Assistant Secretary of Defense for Health Affairs Comments

Final Report
Reference



HEALTH AFFAIRS

THE ASSISTANT SECRETARY OF DEFENSE
1 200 DEFENSE PENTAGON
WASHINGTON, DC 20301-1200

DEC 02 2008

MEMORANDUM FOR DEPARTMENT OF DEFENSE INSPECTOR GENERAL

SUBJECT: Fiscal Year 2007 Department of Defense Purchases Made Through the U.S.
Department of Veterans Affairs, Project No. D2007-D000CF-0263.000

Thank you for the opportunity to review and provide comments on the draft report, "Fiscal Year (FY) 2007 Department of Defense (DoD) Purchases Made Through the U.S. Department of Veterans Affairs," Project No. D2007-D000CF-0263.000.

We concur with the findings and conclusions detailed in the draft report. The TRICARE Management Activity (TMA) was first notified of the subject potential bona fide needs violation on August 18, 2008, via an e-mail from the Under Secretary of Defense (Comptroller). An investigation was initiated and completed, which determined that a potential bona fide needs violation occurred. The DoD Inspector General identified that expiring FY 2006 Operation & Maintenance (O&M) funds had been placed on a delivery order that had a period of performance with a start date of October 1, 2007 (FY 2007). This potential violation was corrected by financing the delivery order with FY 2007 O&M funds. With this action the violation was corrected and considered closed. Documentation of this corrective action is attached.

We request that the DoD Inspector General delete discussion of the TMA violation on page 11 and appendices references (pages 40, 42) from the draft report prior to publishing the document as the final report.

My points of contact on this issue are Mr. Walt Ruggles (Functional), who may be reached at (703) 681-4355 and Mr. Gunther Zimmerman (Audit Liaison), who may be reached at (703) 681-4360.

S. Ward Casscells, MD

Attachment:
As stated

cc:
Office of the Under Secretary of Defense (Comptroller)

Attachments Not
Included

Defense Logistics Agency Comments



DEFENSE LOGISTICS AGENCY
HEADQUARTERS
8725 JOHN J. KINGMAN ROAD, SUITE 2533
FORT BELVOIR, VIRGINIA 22060-6221

November 21, 2008

IN REPLY
REFER TO DA

MEMORANDUM FOR DEPUTY ASSISTANT INSPECTOR GENERAL, ACQUISITION AND CONTRACT MANAGEMENT

SUBJECT: Response to Department of Defense Inspector General (DOD IG) Draft Audit Report, "FY 2007 DOD Purchases Made Through the U.S. Department of Veterans Affairs" (Project No. D2007-D000CF-0263.000)

We have reviewed the subject report and are providing comments to recommendations B.1 and B.2 below. We have also provided additional details on the findings and recommendations in the attached document.

Although the Defense Logistics Agency (DLA) agrees that some contract files exhibit deficiencies, DLA disagrees with the DOD IG conclusion that the Defense Supply Center Philadelphia (DSCP) contracting officials did not place delivery orders through U.S. Department of Veterans Affairs federal supply schedule contracts in accordance with the Federal Acquisition Regulation (FAR), Defense Federal Acquisition Regulation (DFAR) Supplement, and DOD procurement requirements.

Recommendation B.1. We recommend that the Under Secretary of Defense (Comptroller)/Chief Financial Officer ensure contracting and financial personnel receive training that focuses on working capital fund restrictions awarding direct and assisted acquisitions. The training should also emphasize the bona fide needs rule and potential Antideficiency Act violations.

a. DLA Comment: Nonconcur. DLA agrees that some contract files exhibit minor deficiencies, but does not agree that DSCP contracting officials did not comply with FAR and DOD procurement requirements in placing delivery orders against the U.S. Department of Veterans Affairs federal supply schedule contracts. Because the draft report states that DLA relied on the Economy Act to purchase goods from other Federal agencies, we discuss applicable statutory and regulatory authorities for purchasing medical equipment.

A requisition by a Military Service obligates the Service's funds when DLA receives the requisition, since this requires DLA to fill the requisition. DLA, by its charter, DOD Directive 5105.22, and the DOD Supply Chain Materiel Management Regulation, DOD Regulation 4140.1-R, as well as 10 United States Code (U.S.C) § 2208 and § 2210, is authorized and required to purchase certain designated items for the Military Services. This is supported by

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Comptroller General Decision B-193005, "Matter of: Obligation of Funds for Purchase of Oil for Strategic Petroleum Reserve (1978)."

Because DLA's supply operations are conducted pursuant to the specific statutory authority of 10 U.S.C. § 2208, DLA purchases for designated items are not conducted under the authority of and are not subject to the Economy Act and its requirements (see FAR 17.500(b)). DLA not only makes purchases in response to specific requisitions, but is also authorized to make purchases in anticipation of requisitions; if the designated items are not in stock; DLA is required to order them. Because of this mandated structure, and because DLA does not transfer funds to other agencies in order to have those agencies perform "assisted acquisitions" on behalf of DLA's supply operations, the guidance in the Secretary of Defense (Comptroller) Memorandum, "Non-Economy Act Orders" (October 16, 2006), also does not apply to DLA's supply operations. DLA does not and is not required to question the determination of a Military Service of its *bona fide* need for an item; that is the responsibility of the Service. The requisition, however, must provide sufficient detail, clearly describing the required item to avoid any allegation regarding "parking" of funds and fiscal limitations.

In some cases, DLA performs required contract actions to procure supplies during the fiscal year following the requisition and obligation of a Military Service's funds to DLA. It is important to note that DLA is not obligating the Military Service's funds when executing these purchases, but instead obligates Defense Working Capital Funds (DWCF) in furtherance of its statutory and regulatory mission, as discussed above. The previously-obligated Military Service funds are then used to reimburse the DWCF for DLA's transaction costs, in accordance with the requirements of 10 U.S.C. § 2208. In this regard, note the Comptroller General decision, B-302760, "Transfer of Fiscal Year 2003 Funds from the Library of Congress to the Office of the Architect of the Capitol" (May 17, 2004), which states the general principle that an agency may properly liquidate its costs incurred in a subsequent fiscal year in carrying out a non-Economy Act transaction on behalf of another agency using funds obligated in a previous fiscal year and not currently available for obligation.


Recommendation B.2: We recommend the Commander, DSCP require contracting officers to follow the FAR and the DFAR Supplement, specifically on awarding sole-source contracts and award documentation. Further, the commander should then complete a review to determine whether the contracting officers are in compliance with the acquisition regulations. If violations continue to occur, the commander should take disciplinary action against repeat offenders, as contracts with issues have been identified in various interagency acquisition audit reports.

DLA Comment: Partially concur. While we do not agree with the draft report as to the prevalence of the errors reported in the contracts reviewed (attachment), DLA agrees that contracting officers are to follow the FAR, DFARS and DOD procurement requirements in awarding sole-source contracts and award documentation. To increase awareness of these requirements, the DSCP Head of Contracting Activity will, within 30 days of publication of the final audit report, write to all DSCP contracting officers emphasizing the importance of following FAR and DFARS requirements, to include discussion of the findings in the report.

Use of non-DOD contracts will continue to be an element of Procurement Management Reviews of DLA buying activities.

Contracting reviews conducted by DLA include in-process contract reviews, internal and external procurement management reviews, and contract quality management plans. Local contract quality management plans will be updated to specifically address use of non-DOD contracts. Feedback from these reviews is routinely provided to contracting officers and their managers, resulting in continuous visibility of contracting officers' performance. Corrective actions are initiated as appropriate, which may include employee counseling, additional training requirements, or negative reflection in performance appraisals.

Mr. Steven Pigott, our point of contact for this audit, may be reached at either (703) 767-6282 or at steven.pigott@dla.mil.


FREDERICK N. BAILLIE
Director
DLA Accountability Office

Attachment

Additional Information

In this attachment we discuss additional information for the reviewed contracts.

Fair Notice: We concur and acknowledge that 23 of 23 acquisitions reviewed by the DOD IG were not placed on e-Buy to provide notification of the brand name purchases to all FSS holders. This was due to a delay in internal implementing guidance being issued to the contracting personnel. Since issuance of this September 2007 guidance, all Federal Supply Schedule (FSS) orders have been posted on e-Buy. Additionally, the posting on e-Buy is specifically addressed in acquisition planning and presented at Medical Acquisition Review Boards where each FSS order over \$100,000 is reviewed and approved. The Head of the Contracting Activity identified this as a special interest topic for fiscal year 2009; and compliance will be monitored during internal procurement management reviews.

Price Reductions on Orders Exceeding the Maximum Order Threshold: We partially concur with this portion of the finding. The draft report identifies 8 of 23 orders issued above the maximum order limitation (MOL) of the vendor's FSS. Of the eight orders exceeding the MOL, 3 orders additionally were cited as not having supporting documentation for price reductions in the contract files and 5 orders were cited as not having sufficient documentation.

Our review of the contract files substantiated only one of the eight contracts (SPM2D1-07-F-Q062) as exceeding the MOL and lacking adequate documentation. This contract, for an image guided surgery system purchased from Brain Lab Inc., did not document that DSCP sought additional price reductions for an order over the threshold.

Based on our review, we found that the contract files for the two remaining orders did not exceed the MOL. Additionally, one of these two contract files contained evidence that DSCP requested additional price reductions.

- SPM2D1-07-F-Q264: Dental Operating Units and Chairs purchased from Adec. The file contained an email from the vendor, Adec, stating that they adhere to the VA FSS pricing and are not offering additional price breaks. Although the file does not include a copy of the DSCP request for a price reduction, the email from Adec states that they are responding to a recent phone request from DSCP contracting personnel for a price reduction. Therefore, we do not concur with the finding for this order.
- SPM2D1-07-F-Q019: Pharmacy Automation System purchased from Omnicell. At the time the order was issued, the MOL was \$300,000 or one system. DSCP awarded a contract for one system at a price of \$336,173, thus the \$300,000 price limitation did not apply. DLA did not exceed the limitation of one system and was not required to seek additional price reductions. Therefore, we do not concur with the finding for this order.

DLA also reviewed the five contract files that were listed in the draft report as lacking adequate documentation and found that each of the orders contained adequate documentation to support that each order was under the MOL.

- SPM2D1-07-F-Q041: Dermatology Laser System purchased from Sciton, Inc. The MOL under the Sciton FSS is \$300,000. The award is for \$159,965.00 which does not exceed the limitation; therefore DSCP was not required to seek additional price reductions.
- SPM2D1-07-F-Q155 and SPM2D1-07-F-Q176: Digital Dental X-Ray System purchased from Planmeca. Planmeca products being offered fall under SIN C-37 on the FSS, which has a MOL of \$200,000. The awards were for \$105,651.00 and \$124,788.00, which individually do not exceed the limitation. Therefore, DSCP was not required to seek additional price reductions.
- SPM2D1-07-F-Q-154: Digital Dental X-Ray Sensors purchased from Practiceworks, Inc. Products being offered fall under SIN C-37 on the FSS, which has an MOL of \$200,000. The award is for \$105,486.00 which does not exceed the limitation. Therefore, DSCP was not required to seek additional price reductions.
- SPM2DP-07-F0317: Pharmaceuticals purchased from Wyeth Ayerst International. The MOL for the FSS is \$250,000 per item, or \$1,000,000 per order. The dollar value of the contract was \$119,213.00 which does not exceed the MOL per item or order. Therefore, DSCP was not required to seek additional price reductions.

Sole-Source Awards: We partially concur with this portion of the finding. The draft report states that 22 of 22 orders did not provide adequate justifications for the use of sole-source procurement and that the orders did not comply with FAR requirements. We reviewed the contract files for all 23 orders and found that 22 of the 23 contract files had properly executed limited source justifications. One contract file (SPM2DP-07-F0317) was deficient since it did not contain a limited source justification.

Of the 22 orders in the draft report, our review of contract files determined 17 of 22 had limited source justifications containing incorrect or incomplete FAR citations or no FAR citation at all (although the FAR 8.405-6(g) format does not specifically require inclusion of a FAR citation). All justifications contained extensive narratives explaining the reasons for restricting ordering to a single FSS vendor.

DSCP confirmed by market research that the remaining five orders for intravenous infusion pumps and related equipment (SPM2DE-07-F-C-001, SPM2DE-08-F-C-001, SPM2DE-08-F-C-002, SPM2DE-08-F-C-003, SPM2DE-08-F-C-004), would have a cost to assemble the 738 poles. Furthermore, DOD would have been required to pay the transport cost of the power strips from Sigma to Cardinal for installation on the poles during the pre-assembly process. Because of these undocumented costs, DSCP determined that it was in the best interest of the Government to buy the assembled units from Sigma. Therefore, DSCP concurs with DOD IG that the limited source justification for the intravenous infusion pumps should have had additional documentation citing the costs of pole assembly, transportation of power strips, and transportation of assembled poles to support its selection of the Sigma intravenous pole as opposed to the Cardinal Health intravenous pole. DSCP will ensure that future sole or limited

source justifications contain all necessary information to support the contracting officer's decision.

Inspection and Receipt of Goods: We non-concur with this portion of the finding. The draft report states that for 11 of 20 orders, DLA did not perform sufficient oversight to ensure the Government received the goods agreed to within the contract terms. The contract files were considered deficient because DLA provided screen shots from our enterprise business system showing receipt of goods rather than a signed DD Form 250. Because DOD IG did not inform DSCP that these electronic documents were not adequate proof of delivery, DSCP did not provide additional or alternative information. In our review of the contract award files for these 23 orders, DLA found that:

- Four files contained a signed DD Form 250 for the order,
- Four files contained customer generated installation checklists with customer signatures and dates, accepting the equipment,
- Two files contained wide area workflow receiving reports (in lieu of DD Form 250); and
- One file contained information indicating the equipment was received at the Defense Depot in Susquehanna.

Our review of the contract files showed that 22 of 23 folders contained adequate proof of delivery and a receipt is provided in each contract folder (generally a DD Form 250). The one remaining contract does not contain proof of delivery and receipt because final acceptance has not taken place.

Collection and Recording of Past Performance: We concur with this portion of the findings and will take the necessary corrective actions.

The draft report states that DSCP contracting officials did not collect and record past performance information for the five purchases that exceeded \$5.0 million. The Contractor Performance Assessment Report System (CPARS) was received on 16 April 2008, and was closed on 25 July 2008. On 12 August 2008, DSCP notified DOD IG that the acquisition had been recorded in the system. We will continue to monitor the collection and recording of contractor performance.



Inspector General
Department of Defense

