

Inspector General

United States
Department of Defense



FY 2007 DoD Purchases Made Through the
National Institutes of Health

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Acronyms and Abbreviations

BFNR	Bona Fide Needs Rule
CIO-SP2i	Chief Information Officer-Solutions and Partners 2 Innovations
COR	Contracting Officer's Representative
DAU	Defense Acquisition University
DFARS	Defense Federal Acquisition Regulation Supplement
DIA	Defense Intelligence Agency
DLA	Defense Logistics Agency
ECS III	Electronic Commodities Store III
FAR	Federal Acquisition Regulation
IG	Inspector General
IW2nd	Image World 2 New Dimensions
MIPR	Military Interdepartmental Purchase Request
NIH	National Institutes of Health
O&M	Operation and Maintenance
SOW	Statement of Work
U.S.C.	United States Code



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

March 24, 2009

MEMORANDUM FOR UNDER SECRETARY OF DEFENSE FOR ACQUISITION,
TECHNOLOGY, AND LOGISTICS
UNDER SECRETARY OF DEFENSE (COMPTROLLER)/CHIEF
FINANCIAL OFFICER
COMMANDER, SOFTWARE ENGINEERING CENTER-BELVOIR
COMMANDING OFFICER, SPACE AND NAVAL WARFARE
SYSTEMS CENTER ATLANTIC
COMMANDER, AERONAUTICAL SYSTEMS CENTER
DIRECTOR, DEFENSE INTELLIGENCE AGENCY

SUBJECT: FY 2007 DoD Purchases Made Through the National Institutes of Health (Report
No. D-2009-064)

We are providing this 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)/Chief Financial Officer; the Software Engineering Center-Belvoir; the Space and Naval Warfare Systems Center Atlantic; and the Aeronautical Systems Center when preparing the final report.

DoD Directive 7650.3 requires that all recommendations be resolved promptly. The comments received were responsive. However, we did not receive comments from the Defense Intelligence Agency (DIA). Therefore, we request DIA comments on Recommendation B.2. by April 23, 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 management 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) 604-9201 (DSN 664-9201).

A handwritten signature in black ink, appearing to read "Richard B. Jolliffe".

Richard B. Jolliffe
Assistant Inspector General
Acquisition and Contract Management

cc: Health and Human Services Office of the Inspector General, Office of Audit
Services
General Services Administration Office of the Inspector General



Results in Brief: FY 2007 DoD Purchases Made Through the National Institutes of Health

What We Did

In accordance with the National Defense Authorization Act for FY 2007, we reviewed DoD purchases made using National Institutes of Health (NIH) contracts. We reviewed 34 direct acquisitions valued at \$221.0 million and 6 assisted acquisitions valued at \$280.0 million.

What We Found

DoD contracting officers continued to provide insufficient competition and inadequate documentation for direct acquisitions of goods. Also, DoD contracting officers and contracting officer's representatives provided inadequate contract surveillance. For assisted acquisitions, DoD program and NIH contracting officials:

- favored the incumbent contractor,
- did not verify price reasonableness,
- awarded a task order for a requirement too large to be managed as a single task order, and
- did not accept a contractor's proposal to reduce the price of a task order.

In addition, DoD, NIH, and General Services Administration officials misused funds, causing potential funding violations. We identified internal control weaknesses in the justification for using non-DoD contracts.

Still, DoD and NIH officials have improved some interagency practices. NIH discontinued advance funding. DoD and NIH signed a memorandum of agreement outlining the responsibilities of each party. We believe that these steps will improve the NIH acquisition process. And that DoD should continue using NIH to purchase goods and services.

What We Recommend

The Under Secretary of Defense for Acquisition, Technology, and Logistics (AT&L) should

institute mandatory training for DoD contracting officers on multiple-award contracts.

The Under Secretary of Defense (Comptroller)/Chief Financial Officer should instruct DoD organizations to correct funding violations and ensure appropriate funds are obligated and deobligated. When this is not possible, the Comptroller should initiate preliminary reviews of the potential violations. In addition, the Comptroller should determine why his office did not follow up on four violations last year and monitor future followup.

The Commander, Software Engineering Center-Belvoir and the Director, Defense Intelligence Agency should not exercise the next options for orders 2524 and 2520 under their Chief Information Officer-Solutions and Partners 2 Innovations multiple-award contracts.

The Commanding Officer, Space and Naval Warfare Systems Center Charleston and the Commander, Aeronautical Systems Center should conduct a review and take disciplinary or administrative action against contracting officers who repeatedly did not follow contracting rules.

Management Comments and Our Response

All those providing solicited comments agreed with the recommendations, and the comments were responsive. We also received unsolicited comments that did not specifically address the recommendations.

The Defense Intelligence Agency Director did not comment on a draft of this report issued on December 15, 2008. We request the Director provide comments on the final report by April 23, 2009. Please see the recommendations table on the back of this page.

Recommendations Table

Entity	Recommendations Requiring Comment	No Additional Comments Required
Under Secretary of Defense for Acquisition, Technology, and Logistics		A.1.
Under Secretary of Defense (Comptroller)/Chief Financial Officer		C.1., C.2., C.3.
Commander, Software Engineering Center-Belvoir		B.1
Commanding Officer, Space and Naval Warfare Systems Center Atlantic		A.2.
Commander, Aeronautical Systems Center		A.3.
Director, Defense Intelligence Agency	B.2.	

Please provide comments by April 23, 2009.

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Introduction

Objectives

Our overall audit objective was to review DoD procedures for making purchases through the National Institutes of Health (NIH). Specifically, we examined DoD and NIH's policies, procedures, and internal controls to determine whether DoD had a legitimate need to use NIH, whether DoD clearly defined requirements, whether NIH and DoD properly used and tracked funds, and whether requirements were competed in accordance with the Federal Acquisition Regulation (FAR) and the Defense Federal Acquisition Regulation Supplement (DFARS). 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.”

Prior Audit and Corrective Actions by Management

During FY 2007, we conducted our first review of DoD use of the NIH contracts, and we issued DoD Inspector General (IG) Report No. D-2008-022, “FY 2006 DoD Purchases Made Through the National Institutes of Health,” on November 15, 2007. As a result of the first audit, NIH and DoD made corrections that led to improvements. NIH eliminated the practice of advance funding, returned \$11 million in funds to DoD, and removed out-of-scope work identified on DoD orders. In addition, NIH now reviews all statements of work to determine whether the proposed work is within scope of NIH contracts, requires appropriate acquisition planning for all task orders, and requires contracting officers to sign all award documents for task orders. We believe that DoD should continue to use NIH contracts because of the efforts DoD and NIH have made to fix the previous problems.

DoD and NIH Memorandum of Agreement

In April 2008, the Director of Defense Procurement and Acquisition Policy in the Office of the Under Secretary of Defense for Acquisition, Technology, and Logistics, along with the Director of the Office of Acquisition and Logistics Management at NIH, prepared a memorandum of agreement for the use of NIH's Government-wide acquisition contracts. The memorandum of agreement outlines DoD and NIH's commitment to work together as Federal partners and comply with acquisition rules and regulations. The memorandum of agreement also defines the responsibilities of each party.

DoD's responsibilities under the memorandum of agreement include:

- ensuring that all funding meets DoD-specific policies and regulations;
- documenting a justification for using the NIH contracts, in accordance with DFARS 217.7802, “Policy;”
- placing orders only for bona fide needs within the funds' period of availability;
- preparing a determination and findings document for using a time-and-materials order when using direct acquisition; and
- preparing award decision documents when using direct acquisition.

NIH's responsibilities under the memorandum of agreement include:

- deobligating funds DoD provides in excess of contract requirements in a timely manner,
- ensuring that its internal acquisition procedures for DoD orders comply with DoD interagency contracting requirements,
- reviewing all statements of work and performance work statements to ensure requirements are within the scope of the NIH contract, and

- preparing a determination and findings document for using a time-and-materials task order when using assisted acquisition.

Collaborative efforts between DoD and NIH include:

- ensuring that all vendors in the multiple-award contracts are provided a fair opportunity for award, as required in FAR 16.505, “Ordering,” and documenting any exception to the fair opportunity process;
- ensuring quality assurance surveillance plans are developed before award and used after award;
- ensuring that interagency agreements are complete and accurately reflect the work to be done and the type of funding to be used;
- encouraging the use of the Electronic Commodities Store (ECS III) quoting tool; and
- ensuring that adequate price analysis is performed and that best value determinations are made for each solicitation.

Advance Funding

DoD Regulation 7000.14-R, “DoD Financial Management Regulation,” volume 4, chapter 5 states that funding in advance may be authorized only by law or by the President. The continued practice of funding in advance created enough problems within DoD to compel the Under Secretary of Defense (Comptroller)/Chief Financial Officer to issue “Advance Payments to Non-Department of Defense (DoD) Federal Agencies for Interagency Acquisition” on March 1, 2007. This memorandum directs DoD Components to stop the practice of advancing funds to non-DoD Federal entities unless authorized to do so.

In accordance with this memorandum, NIH ceased requiring advanced funding for actions processed after July 1, 2007. However, from the date the Under Secretary of Defense (Comptroller)/Chief Financial Officer issued the memorandum, March 1, 2007, until July 1, 2007, NIH required that DoD fund 27 military interdepartmental purchase requests (MIPRs) totaling \$28.7 million in advance of services being performed. This total accounted for 28.9 percent of the funding actions provided in FY 2007 and obligated after March 1, 2007. There are currently expired funds remaining at NIH that were funded in advance of services being performed. These funds should be deobligated. See Appendix D for a complete discussion of funds to be deobligated.

Because of the problems identified in the first audit, in accordance with section 817(a)(2) of Public Law 109-364, we conducted a second review. This review covered FY 2007 purchases made through NIH.

We believe that the memorandum of agreement and the end of the advance funding practice will improve the overall NIH acquisition process.

NIH Contracting Mechanisms

DoD made purchases through NIH primarily under its ECS III and Chief Information Officer-Solutions and Partners 2 Innovations (CIO-SP2i) contracts. However, we also

reviewed one order placed under the Image World 2 new dimensions (IW2nd) contracts. The NIH contracts are Government-wide acquisition contracts governed by the Clinger-Cohen Act. The Clinger-Cohen Act assigns overall responsibility for the acquisition and management of information technology to the Director, Office of Management and Budget. The Office of Management and Budget designated NIH as an executive agent. This designation gave NIH the authority to make the ECS III, CIO-SP2i, and IW2nd contracts available to the entire Federal Government as Government-wide acquisition contracts.

The ECS III multiple-award contracts provide commercial off-the-shelf information technology products and services and are structured as indefinite-delivery, indefinite-quantity contracts using firm-fixed-price delivery orders. DoD contracting officers can use direct acquisition¹ to award delivery orders under the ECS III contracts.

The CIO-SP2i multiple-award contracts provide information technology services. The CIO-SP2i contracts are structured as indefinite-delivery, indefinite-quantity contracts. The task orders may be time-and-materials, firm-fixed-price, cost-sharing, cost-plus-fixed-fee, or cost-plus-award-fee. Customers can use either direct or assisted² acquisition to award task orders under the CIO-SP2i contracts. Although DoD contracting officers can use direct acquisition to award task orders under the CIO-SP2i contracts, an NIH contracting officer must review the statement of work to determine whether the work is within the scope of the contract, and NIH issues the request for proposal. NIH contracting officers can use assisted acquisition to award task orders under the CIO-SP2i contracts on behalf of other Government organizations.

The IW2nd contracts provide hardware, software, and services for the implementation of imaging technology requirements. The IW2nd contracts are structured as indefinite-delivery, indefinite-quantity contracts using firm-fixed-price delivery or task orders. DoD contracting officers can use direct acquisition to award either delivery or task orders on the IW2nd contracts. However, an NIH contracting officer must review the statement of work to determine whether the work is within the scope of the contract, and NIH issues the request for proposals.

Review of Internal Controls

At the sites visited, we identified material internal control weaknesses as defined by DoD Instruction 5010.40, "Managers' Internal Control Program Procedures," January 4, 2006. DFARS 217.7802 required Departments and agencies to implement procedures for justifying the use of non-DoD contracts. At the sites we visited, contracting officials either did not justify or did not adequately justify the use of a non-DoD contract. We are not issuing a recommendation to the Under Secretary of Defense for Acquisition, Technology, and Logistics to improve the internal control deficiencies found during the audit because we reported similar issues in recent audit reports. The Under Secretary of

¹ Direct acquisitions are task or delivery orders awarded by DoD officials using a contract awarded by a non-DoD organization.

² Assisted acquisitions are task or delivery orders awarded on behalf of DoD by a non-DoD organization.

Defense for Acquisition, Technology, and Logistics is aware of the issues and is taking corrective action. We will provide a copy of the report to the senior officials responsible for internal controls in the Office of the Under Secretary of Defense for Acquisition, Technology, and Logistics and in the Office of the Under Secretary of Defense (Comptroller)/Chief Financial Officer.

Finding A. Direct Acquisition Through National Institutes of Health Contracts

DoD contracting officials did not comply with the FAR and DFARS when making purchases through the NIH multiple-award contracts. We reviewed 34 delivery and task orders, valued at \$221.0 million.

For the 29 delivery orders (orders for goods) awarded under the ECS III multiple-award contract, DoD contracting officers:

- provided insufficient competition for 21 delivery orders, valued at \$13.9 million; and
- did not prepare an award document for 5 delivery orders, valued at \$0.9 million.

For the four task orders (orders for services) awarded under the CIO-SP2i multiple-award contract, DoD contracting officers:

- did not verify price reasonableness for two orders, valued at \$23.1 million;
- poorly planned two orders, valued at \$23.0 million; and
- provided inadequate contract oversight for two orders, valued at \$23.0 million.

For the delivery order awarded under the IW2nd multiple-award contract, valued at \$5.7 million, DoD contracting officers provided insufficient competition and did not verify price reasonableness.

DoD contracting officials were unaware of, improperly followed, or misinterpreted FAR and DFARS requirements and used poor judgment. As a result, DoD has no assurance it obtained the best value, has no assurance that the prices were fair and reasonable for services, and may have caused a bona fide needs rule (BFNR) violation of \$0.5 million for one order.

Delivery and Task Orders Reviewed

We reviewed 34 delivery and task orders valued at \$221.0 million and awarded as follows:

- 29 delivery orders, valued at \$16.8 million, awarded under the ECS III multiple-award contract;
- 4 task orders, valued at \$198.4 million, awarded under the CIO-SP2i multiple-award contract; and
- 1 delivery order, valued at \$5.7 million, awarded under the IW2nd multiple-award contract.

ECS III Delivery Orders

During FY 2007, we identified 49 delivery orders awarded by DoD with values greater than \$100,000, using the ECS III multiple-award contract. The total value of the 49 delivery orders was \$19.7 million. We reviewed 27 of these delivery orders, valued at

\$13.6 million, which represented 69 percent of the total dollar value of FY 2007 DoD delivery orders.

In addition, we reviewed two non-FY 2007 delivery orders: one was awarded during FY 2006 and one during FY 2003. We reviewed the delivery order awarded during FY 2006, valued at \$167,411, because we had indications that there may be a BFNR violation. We reviewed the delivery order awarded during FY 2003, valued at \$3.1 million, because the order had options that extended into FY 2007.

Therefore, we reviewed 29 delivery orders, valued at \$16.8 million, awarded on the ECS III multiple-award contract.

DoD contracting officials did not comply with the FAR when using ECS III multiple-award contracts. Specifically, DoD contracting officials did not provide a fair opportunity for all vendors to be considered for award on the ECS III multiple-award contract and did not document the basis for award.

Fair Opportunity

Of the 29 ECS III delivery orders reviewed, DoD contracting officials did not provide vendors a fair opportunity or adequately document an exception to fair opportunity for 21 delivery orders valued at \$13.9 million. FAR 16.505(b)(1), “Fair Opportunity,” requires the contracting officer to provide all vendors on a multiple-award contract with a fair opportunity to be considered for award unless there is a documented exception to the fair opportunity process. Exceptions to fair opportunity may be made when a purchase is urgent, there is only one capable vendor, sole-sourcing is in the interest of economy and efficiency because the order is a logical follow-on to an order already issued under the contract, or the award is necessary to satisfy a minimum guarantee.

Additionally, DFARS 216.505-70, “Orders Under Multiple Award Contracts,” requires contracting officers to compete multiple-award delivery orders exceeding \$100,000, unless a waiver from competition is obtained. DFARS 216.505-70 states that an order is “competitive” only if the contracting officer provides fair notice of the intent to make the purchase to all contractors offering the required supplies or services under the multiple-award contract, and affords all contractors responding to the notice a fair opportunity to submit an offer and have that offer fairly considered. DFARS 216.505-70 states that this requirement applies to orders placed by non-DoD agencies on behalf of DoD.

Instead of requesting quotes from all 65 vendors on the ECS III multiple-award contract, contracting officers used a variety of incorrect procedures to award these delivery orders. Contracting official(s):

- incorrectly followed FAR 8.405-1, “Ordering Procedures for Supplies, and Services Not Requiring a Statement of Work,” which governs the General Services Administration’s Federal Supply Schedule program and requires contracting officers to survey at least three supply schedule contractors. Some contracting officers thought they provided adequate price competition by receiving quotes from any three vendors on any contract, even if those contracts

were not part of the General Services Administration's Federal Supply Schedule program.

- awarded orders on a sole-source basis without adequate justification for doing so.
- believed that obtaining any competition at all satisfied the fair opportunity requirement of FAR 16.505.

Clearly, contracting officers were unaware of the regulations governing the ECS III multiple-award contract. Failure to provide a fair opportunity to all vendors on multiple-award contracts could prevent DoD from obtaining the best value. Furthermore, it is even more important to follow the correct procedures because new regulations permit multiple-award contractors to protest the award of individual task and delivery orders greater than \$10 million, a change that could delay performance of important tasks or receipt of necessary equipment.

Award Documentation

Of the 29 ECS III delivery orders reviewed, DoD contracting officials did not prepare award selection documents for 5 delivery orders, valued at \$853,212. FAR 16.505(b)(4), "Decision Documentation for Orders," requires DoD to document the basis for award selection. In addition, FAR Subpart 4.8, "Government Contract Files," requires contracting officers to include in the contract files documentation supporting the basis for award. Contracting officers claimed to be unaware of these requirements.

Previous Reporting of the Same Deficiencies

This lack of FAR knowledge is a continuing problem at some of the sites we visited. We previously reported the same results regarding DoD contracting officers' improper use of non-DoD multiple-award contracts in DoD IG Report No. D-2008-022 (previous NIH Report) and DoD IG Report No. D-2007-023, "FY 2005 DoD Purchases Made Through the National Aeronautics and Space Administration," November 13, 2006 (NASA Report). We reviewed orders from a total of 25 different contracting offices during the previous two audits and this audit. Contracting officers at each of these 25 contracting offices did not properly use the multiple-award contracts.

The previous NIH Report discussed contracting officers not providing a fair opportunity at:

- Naval Air Systems Command, Patuxent River, Maryland;
- Space and Naval Warfare Systems Center Atlantic, Charleston, South Carolina;
- Headquarters Air Force Materiel Command, Aeronautical Systems Center Directorate of Operational and Central Support Contracting (Aeronautical Systems Center), Wright-Patterson Air Force Base, Ohio; and
- Defense Information Technology Contracting Office Scott, Scott Air Force Base, Illinois.

The NASA Report discussed contracting officers not providing a fair opportunity at:

- Space and Naval Warfare Systems Center Atlantic, and
- Defense Information Technology Contracting Office, Scott Air Force Base.

For this audit we visited the following sites again:

- Naval Air Systems Command,
- Space and Naval Warfare Systems Center Atlantic,
- Aeronautical Systems Center, and
- Defense Information Technology Contracting Office, Scott Air Force Base.

Of these four sites, only two sites have shown any improvement—Defense Information Technology Contracting Office, Scott Air Force Base and Naval Air Systems Command. We reviewed four orders at each of these sites and found that, for only one order at each site, the contracting officer did not provide fair opportunity. Contracting officers at Air Force Materiel Command, Aeronautical Systems Center, and Space and Naval Warfare Systems Center Atlantic continued not providing a fair opportunity to all ECS III vendors.

In November 2006, Space and Naval Warfare Systems Center Atlantic provided training to its contracting officers to clarify and describe the specific procedures for awarding orders on the General Services Administration Federal Supply Schedules, the ECS III multiple-award contract, and the National Aeronautics and Space Administration’s Scientific and Engineering Workstation Procurement multiple-award contract. We found that the contracting officers made the same mistakes when awarding FY 2007 orders on the ECS III multiple-award contract as they did when using the ECS III multiple-award contract in FY 2006 and when using the National Aeronautics and Space Administration’s Scientific and Engineering Workstation Procurement multiple-award contract. One contracting officer stated that she did not see a problem with having only three quotes if the quotes were all from NIH contractors, clearly showing that she does not understand the FAR training provided to all contracting officers by Space and Naval Warfare Systems Center management. Space and Naval Warfare Systems Center Atlantic officials have not taken enough steps to prevent their contracting officers from continuing to misapply and misunderstand FAR 16.505 and FAR Subpart 8.4, “Federal Supply Schedules.”

Three of the contracting officials who failed to properly compete ECS III orders in FY 2006 again failed to properly compete them in FY 2007. Two of these contracting officials worked at the Space and Naval Warfare Systems Center Atlantic, and one worked at the Aeronautical Systems Center. In our opinion, DoD should take appropriate disciplinary or administrative action against contracting officials who repeatedly fail to comply with acquisition requirements. Contracting officials have the authority to spend taxpayer money, and they must take due care to ensure that the money is spent efficiently.

CIO-SP2i Task Orders

During FY 2007, DoD awarded two task orders, valued at \$1.2 million, using the CIO-SP2i multiple-award contract. We reviewed both of these orders. In addition, we reviewed one task order awarded in FY 2006 valued at \$174.8 million. The period of performance for that task order did not begin until FY 2007. We also reviewed a task

order, valued at \$22.5 million, awarded in FY 2004. Therefore, we reviewed four task orders valued at \$198.4 million awarded on the CIO-SP2i multiple-award contract.

Although fair opportunity was provided to all vendors on the CIO-SP2i multiple-award contract, DoD contracting officials used improper contracting procedures when awarding and administering task orders. Specifically, contracting officials did not verify that the prices paid were reasonable. Also, contracting officials poorly planned acquisitions and conducted poor contract oversight, potentially causing a BFNR violation.

Price Reasonableness

Of the four CIO-SP2i task orders reviewed, DoD contracting officials did not conduct adequate price reasonableness determinations for two task orders valued at \$23.1 million (Table 1). FAR 15.404-1, “Proposal Analysis Techniques,” states that the objective of proposal analysis is to ensure that the final agreed-to price is fair and reasonable and states that the contracting officer is responsible for evaluating the reasonableness of offered prices. Even when fair opportunity is provided and only one offer is received, contracting officials must be cognizant of their responsibility to obtain reasonable prices.

Table 1. CIO-SP2i Task Orders Without Price Reasonableness Determinations

Order	Awarded by	Value
FA8604-07-F-7145	Aeronautical Systems Center—Wright-Patterson Air Force Base, Ohio	\$688,774
SP4700-04-F-0347	Defense Logistics Agency—Fort Belvoir, Virginia	22,460,223
Total		\$23,148,997

For example, contracting officials at the Aeronautical Systems Center did not conduct a complete analysis when they determined that the proposed price for task order FA8604-07-F-7145 was fair and reasonable. Contracting officials received just one bid for the task order, and the bid was from the incumbent contractor. Contracting officials determined that there was adequate price competition based on the negotiated labor rates on the CIO-SP2i multiple-award contract.

By addressing only the labor rates, contracting officials made an incomplete and inadequate price reasonableness determination. While the labor rates from the CIO-SP2i multiple-award contract had already been determined reasonable, this does not mean that the overall price was reasonable. Contracting officials needed to verify that the appropriate labor categories were used and that the hours proposed were reasonable. To illustrate this point, in FY 2007, the contractor had 70 labor categories ranging from \$61.47 per hour to \$290.13 per hour on its CIO-SP2i contract. Without verifying the labor categories and proposed hours per labor category, contracting officials could not ensure that the overall price was reasonable. An adequate price reasonableness determination for a task order for services cannot be made without addressing the type and quantity of labor hours because labor hours drive the overall price. If contracting officials had conducted a sufficient price reasonableness analysis, the Government may have obtained a better price.

Planning

Of the four CIO-SP2i task orders reviewed, DoD contracting officials inadequately planned for two orders valued at \$23.0 million (Table 2). FAR Subpart 2.1, “Definitions,” defines acquisition planning as “the process by which the efforts of all personnel responsible for an acquisition are coordinated and integrated through a comprehensive plan for fulfilling the agency need in a timely manner and at a reasonable cost.”

Table 2. CIO-SP2i Task Orders With Poor Planning

Order	Awarded by	Value
SP4700-04-F-0347	Headquarters Defense Logistics Agency—Fort Belvoir, Virginia	\$22,460,223
SP1300-07-F-0454	Defense Distribution Center—New Cumberland, Pennsylvania	499,895
Total		\$22,960,118

For example, the DoD technical point of contact at Defense Logistics Agency (DLA) in Fort Belvoir, Virginia, and contracting officials at the Defense Distribution Center’s Acquisitions Directorate-Contracting (Defense Distribution Center), New Cumberland, Pennsylvania, used poor planning and judgment when awarding task order SP1300-07-F-0454. This poor planning contributed to a potential BFNR violation. See finding C for a complete description of the potential BFNR violation.

The Defense Distribution Center awarded the task order on September 29, 2007, for \$499,895 under the CIO-SP2i multiple-award contract. To fund the order, DLA headquarters provided FY 2007 Operation and Maintenance (O&M) funds that expired on September 30, 2007. DLA officials stated that these funds were remaining from an earmark project, but we could not find any documentation to substantiate that statement.

DLA headquarters poorly planned this task order by preparing an inadequate statement of work (SOW) and by not considering the funding needed for the requirement. The technical point of contact at DLA headquarters prepared a SOW on May 21, 2007, but it contained numerous deficiencies. After a few revisions, the technical point of contact provided the DoD contracting officer with an acceptable SOW prepared on August 23, 2007, 3 months later.

As required for the CIO-SP2i multiple-award contract, the Defense Distribution Center provided NIH with the SOW, and NIH contracting officials provided eligible contractors with a fair opportunity for award consideration. Only one contractor submitted a proposal. The contractor submitted the proposal on September 5, 2007, for \$3.5 million and a 42-month period of performance. The 42-month period was in accordance with the August 23, 2007, SOW. However, the program and contracting officials decided it would be more prudent to award a contract with options because there was uncertainty regarding future funding for the requirement. Contracting officials asked the contractor to revise the proposal to use a 12-month base period, two 12-month option periods, and one 6-month option period. The contractor submitted the revised proposal on

September 21, 2007, with a base period price of \$959,041. The overall proposed price including the base and options remained at \$3.5 million.

With the FY 2007 O&M funds expiration date of September 30, 2007, approaching, more problems arose. On September 27, 2007, the technical point of contact informed the contracting officials that she had only \$500,000 in funds available to pay for the base period, which was approximately half the contractor’s proposed base price. On the morning of September 28, 2007, the contract specialist asked DLA headquarters to revise the SOW so that it could accommodate a price under \$500,000. Although it took 3 months for the technical point of contact to prepare an acceptable SOW, she managed to provide a revised SOW in less than 2 hours. Defense Distribution Center contracting officials awarded the order on September 29, 2007, for a 1-year period of performance with no options at a price of \$499,895.

Clearly, the customer did not adequately plan for this requirement, and the lack of a plan had a negative effect on the task order award. It took 3 months for DLA to revise the SOW sufficiently for contracting officials at both DoD and NIH to determine that it was acceptable for solicitation. Later, DLA had to rush a 2-hour revision to the SOW to cut its scope in half in order to make the price fit the available funding before the funds expired. Furthermore, the technical point of contact did not obtain the funding necessary to fulfill the SOW. As a result, the price of the order was simply based on the available funding. The price should be determined by how much money is reasonably required to perform the work, not by how much funding is available.

Furthermore, even though the task order stated that the period of performance would begin on September 29, 2007, the contractor did not begin working on the order until March 2008. This order also had poor contract oversight, which is discussed in the next section.

Contract Oversight

Of the four CIO-SP2i task orders reviewed, DoD contracting officials conducted inadequate contract oversight for two task orders, valued at \$23.0 million (Table 3). FAR 46.101, “Definitions,” defines quality assurance as “the various functions, including inspection, performed by the Government to determine whether a contractor has fulfilled the contract obligations pertaining to quality and quantity.” One way to ensure quality assurance is to develop a quality assurance surveillance plan. FAR 46.401, “General,” states that these plans should specify all work requiring surveillance and the method of surveillance.

Table 3. CIO-SP2i Task Orders Lacking Contract Oversight

Order	Awarded by	Value
SP4700-04-F-0347	Defense Logistics Agency—Fort Belvoir, Virginia	\$22,460,223
SP1300-07-F-0454	Defense Distribution Center—New Cumberland, Pennsylvania	499,895
Total		\$22,960,118

The technical point of contact at DLA headquarters and contracting officials at the Defense Distribution Center used poor judgment when designating a contracting officer's representative (COR) for order SP1300-07-F-0454 and may have contributed to a potential BFNR violation.

For order SP1300-07-F-0454, the technical point of contact at DLA requested that Defense Distribution Center contracting officials designate an employee within DLA's Office of Operations Research and Resource Analysis as the COR. The contracting officials questioned the designation of this employee and thought, as we do, that the appropriate designation would be the DLA technical point of contact who had worked with their office to develop the SOW and award the order. According to the contracting officials, the technical point of contact stated that the Office of Operations Research and Resource Analysis employee would be an appropriate COR because the employee would be working with the contractor. However, the COR stated that she did not work with the contractor and that her role was limited to reviewing and approving the invoices. She also stated that her office had no role in the requirement.

The COR designation letter stated that duties included maintaining communications with the contractor and keeping the contracting officer informed by immediately notifying the contracting officer if difficulties arose that could impede contract schedule, quality, or cost. By signing the letter, the COR agreed to perform these duties.

However, the COR was clearly remiss in her duties. Although the period of performance for the task order was from September 29, 2007, through September 28, 2008, the contractor did not begin performing work on the task order until March 1, 2008. The COR did not inform the Defense Distribution Center contracting officials until February 14, 2008, that no work had been performed. In addition, the COR did not know where the contractor employees were supposed to be working.

We believe the lack of planning and oversight associated with this task order contributed to a potential BFNR violation. DLA headquarters provided FY 2007 O&M funds, which were available for 1 year and expired on September 30, 2007. Therefore, work on the task order was required to begin no later than September 30, 2007. Because the contractor did not begin work on the task order until 5 months after the funds expired, we believe that FY 2008 funds would have been the proper funds for the task order. See finding C for a complete discussion of the potential BFNR violation associated with this order.

We discussed this issue with Defense Distribution Center contracting officials on March 18, 2008. They stated that they mistakenly believed that the order was funded with FY 2007 research, development, test, and evaluation funds, which have a longer availability period than O&M funds. When we informed them that the order had been paid for with FY 2007 O&M funds, but work did not begin in FY 2007, they immediately realized that using those funds to pay for the work performed in FY 2008 would

potentially violate the BFNR, and they issued a stop-work order to the contractor the next day, March 19, 2008.

For another order, SP4700-04-F-0347, contracting officials at DLA in Fort Belvoir, Virginia, did not appropriately designate someone to perform contract oversight or develop a quality assurance surveillance plan. This may have led to cost overruns and to inadequate performance by the contractor going unnoticed.

DoD did not sufficiently monitor the contractor's performance. This was a cost-plus-fixed-fee task order, so the contractor was reimbursed for its actual incurred costs plus a fixed fee. Therefore, it was necessary for DLA program officials to monitor the contractor's performance and ensure that the contractor worked efficiently and billed accurately.

A contracting officer may designate a representative to perform contract oversight duties as long as that designation is made in accordance with DFARS 201.602-2, "Responsibilities." DFARS 201.602-2 allows contracting officers to designate qualified personnel as their authorized representatives to assist in the technical monitoring or administration of a contract and provides the guidelines for doing so, which include designating the individual in writing and ensuring that the individual is qualified by training and experience to perform the duties. However, DLA headquarters did not designate a COR until 11 months into performance and assigned a total of three CORs over a 22-month period. DLA did not prepare a designation letter for any of these CORs, and there was no evidence that any of them were properly trained. Furthermore, only one of the three CORs performed contract surveillance; however, she was assigned as the COR for only 4 months. In addition, contracting officials did not develop a quality assurance surveillance plan, as required by FAR 46.401. A quality assurance surveillance plan would have outlined what the COR should monitor and what method to use.

By not designating CORs appropriately and by not developing a quality assurance surveillance plan, DLA had little assurance that the contractor worked efficiently or billed accurately for almost the first 3 years.

Administration of this task order was transferred from DLA to the U.S. Transportation Command on July 19, 2007. Since taking over the task order administration, the Command has performed adequate contractor surveillance. The Command assigned a properly trained COR to the task order and specified his job responsibilities in a COR designation letter. The Command also provided the COR with a thorough quality assurance surveillance plan. Finally, the COR maintained detailed records showing that he monitored the contractor's performance.

IW2nd Delivery Order

We reviewed one IW2nd delivery order valued at \$5.7 million that DoD awarded in FY 2005. We reviewed this delivery order because in FY 2007 DoD added \$99,814 to the delivery order.

By not providing a fair opportunity to all vendors and not issuing an award selection document, DoD contracting officials did not comply with the FAR when using the IW2nd multiple-award contracts. In addition, DoD contracting officials should have considered this requirement a purchase of both goods and services, not a purchase of only goods. Also, the contracting officer did not determine whether the price for the order was fair and reasonable.

Fair Opportunity and Award Documentation

The contracting officer did not provide a fair opportunity to all vendors on the IW2nd multiple-award contracts or document an exception to the fair opportunity process, as required by FAR 16.505(b), "Orders Under Multiple Award Contracts." The contracting officer considered only one vendor for award. By not providing a fair opportunity to all vendors on multiple-award contracts, DoD may not have obtained the best value.

The Fleet Industrial Supply Center Gulfport Detachment, formerly the Naval Construction Battalion Center, awarded delivery order J421 on April 22, 2005, for \$5.5 million using the IW2nd multiple-award contract. DoD originally scheduled the period of performance for 1 year but ultimately extended it to December 31, 2006.

For the IW2nd multiple-award contract, NIH has separate rules for awarding task orders (orders for services) and delivery orders (orders for goods). For task orders, NIH requires the customer to provide an SOW and then uses that SOW to solicit a request for proposals from IW2nd vendors. It is NIH's responsibility to provide a fair opportunity to all vendors. For delivery orders, NIH allows DoD to issue a request for quotes directly to the vendors. Fleet Industrial Supply Center contracting officials awarded delivery order J421 directly to the contractor on a sole-source basis without an adequate justification. The contracting officials stated that the contractor had worked on the project previously, but provided no reason why the other multiple-award contractors could not perform the work.

In our opinion, Fleet Industrial Supply Center contracting officials mistakenly identified this project as a delivery order. The requirement was for the purchase and installation of equipment, and the order had a period of performance of 1 year. The services associated with this purchase were clearly more involved than those one would typically see on a delivery order. We believe the contracting officer should have issued this as a task order. Had the contracting officer issued this as a task order, it would have been NIH's responsibility to provide fair opportunity to all the IW2nd vendors. Throughout this audit and our previous audit of DoD's use of NIH contracts, NIH contracting officials consistently provided all contractors with a fair opportunity when soliciting proposals. If the requirement had been provided to NIH for solicitation, DoD may have been able to obtain a better price through competition.

In addition, the contracting officer did not document the basis for award, as required by FAR 16.505 and FAR Subpart 4.8.

Price Reasonableness

The contracting officer did not determine whether the price was fair and reasonable. As previously noted, FAR 15.404-1 states that the contracting officer is responsible for evaluating the reasonableness of offered prices. Because delivery order J421 was a sole-source award, there was no price competition; the contractor submitted its price proposal knowing that it would be awarded the order. Contracting officials were required to perform analysis to ensure that the Government paid a reasonable price; however, Fleet Industrial Supply Center accepted the noncompetitive \$5.5 million proposal without any price analysis and did not make a determination that the price was reasonable.

Knowledge of Regulations

Based on interviews and documentation in the contract files, it is clear that DoD contracting officials were unaware of, improperly followed, or misinterpreted acquisition regulations governing the use of NIH's three different multiple-award contracts.

DoD contracting officials are required to have knowledge of the legislation and regulations used in acquiring goods and services at fair and reasonable prices on behalf of the Government and to have the skills to apply the guidance to specific actions. The FAR is the primary acquisition regulation in the Federal Government; therefore, contracting officials should be well-versed in FAR criteria and how those criteria relate to specific contracts. Contracting officials should have basic FAR knowledge about providing fair opportunity on multiple-award contracts and documenting award decisions. In addition, the contracting officers may receive advice from specialists in law, audit, engineering, transportation, finance, or other functions; however, the contracting officers remain responsible and accountable for the contracts.

DoD contracting officials showed a lack of FAR and DFARS knowledge related to:

- fair opportunity and preparing award selection documentation—FAR 16.505 and FAR 4.8.
 - Contracting officers were unaware of the difference between a multiple-award schedule (a type of contract offered by the General Services Administration as part of its Federal Supply Schedule program), which is governed by FAR 8.4, and a multiple-award contract (such as the three NIH contracts we reviewed), which is governed by FAR 16.505.
 - Contracting officers awarded orders on a sole-source basis without providing proper justification for doing so, as required by FAR 16.505.
 - Contracting officers did not prepare award selection documents that outline the basis and rationale for the award, as required by FAR 16.505 and FAR 4.8.
- price reasonableness determinations—FAR 15.404.
 - Contracting officers did not determine whether offered prices were fair and reasonable, as required by FAR 15.404.
- contract oversight—FAR 46.101, FAR 46.401, and DFARS 201.602-2.
 - Contracting officials did not conduct contract oversight because they did not develop quality assurance surveillance plans or properly designate

CORs. Without the duties and responsibilities for contract oversight being defined or assigned to a proper individual, surveillance and monitoring of the contractor's performance, required by FAR 46.101, were not executed.

Some of the contracting officials who did not understand the above regulations have been working as contracting officials for more than 20 years. Experienced contracting officials should have a better understanding of these regulations. Because of the continuing problems DoD contracting officers have had regarding the proper use of multiple-award contracts and because new regulations allow contractors to protest certain task or delivery order awards, DoD needs to make training mandatory for DoD contracting officers. The training should address how the rules and regulations governing multiple-award contracts differ from those governing the General Services Administration's Federal Supply Schedules, including the award and administration of task and delivery orders. Furthermore, the training should direct contracting officers to consult the applicable agency's Web site prior to using that agency's multiple-award contract.

In our previous report, D-2008-022, we recommended that the Under Secretary of Defense for Acquisition, Technology, and Logistics direct contracting officers to use the NIH Web site's Request for Quote system when using the ECS III multiple-award contract. The Under Secretary of Defense for Acquisition, Technology, and Logistics agreed with this recommendation and stated that DoD would coordinate with NIH to post language on the Web site to require DoD users of the ECS III multiple-award contract to use the Web site's Request for Quote system. However, the NIH Web site states that "it is highly recommended that DoD contracting officers use the ECS III quoting system." This is not the same as making use of the system mandatory. We would like the Under Secretary of Defense for Acquisition, Technology, and Logistics to work with NIH to change this language to reflect that use of the ECS III quoting system is not optional.

Summary

The foundation of good contracting when using multiple-award contracts is competition, and its importance should not be overlooked. Adequate competition ensures that the Government receives the best value. However, contracting officers at the DoD sites visited did not foster a competitive environment because they did not provide ECS III and IW2nd multiple-award vendors with a fair opportunity. The intent of multiple-award contracting is to use an efficient acquisition process to achieve competition without increasing the Government's risk. Consistently failing to provide fair opportunity prevents the Government from achieving savings through competition and is contrary to FAR 16.505.

In addition, DoD contracting officers neglected to perform sufficient price analysis when awarding task orders for services, in violation of FAR 15.402(a), which states that contracting officers must purchase supplies and services at fair and reasonable prices. This is one of the most important responsibilities contracting officers have because it requires them to spend taxpayer money efficiently. On two of the orders reviewed, this responsibility was ignored.

Also, poor planning and organization by DoD contracting and program officials led to inadequate contractor oversight and a potential BFNR violation.

DoD contracting officers did not consistently prepare award selection documents, violating FAR 16.505.

Recommendations, Management Comments, and Our Response

A.1. We recommend that the Under Secretary of Defense for Acquisition, Technology, and Logistics institute mandatory training for DoD contracting officers. This mandatory training should address how the rules and regulations governing multiple-award contracts differ from those governing the General Services Administration's Federal Supply Schedules, including the award and administration of task and delivery orders. Furthermore, the training should direct contracting officers to consult the applicable agency's Web site before using that agency's multiple-award contract.

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

The Director of Defense Procurement provided comments for the Under Secretary of Defense for Acquisition, Technology, and Logistics. The Director partially agreed with the recommendation. The Director stated that the training currently provided by Defense Acquisition University addresses how the rules and regulations governing multiple-award contracts differ from those governing the General Services Administration's Federal Supply Schedules, including the award and administration of task and delivery orders. The Director stated that the office would review the course materials to ensure they are accurate and complete.

Our Response

Although the Director of Defense Procurement only partially agreed with the recommendation, the comments were responsive because they meet the intent of the recommendation. No additional comments are needed.

A.2. We recommend that the Commanding Officer, Space and Naval Warfare Systems Center Atlantic perform a review and initiate appropriate disciplinary or administrative action against contracting officers who have repeatedly failed to follow acquisition regulations and continue to use incorrect award procedures when using multiple-award contracts.

Space and Naval Warfare Systems Center Atlantic Comments

The Commanding Officer of the Space and Naval Warfare Systems Center Atlantic provided comments through the Navy Office of the Assistant Secretary for Research, Development, and Acquisition. The Commanding Officer agreed with the

recommendation and stated that the appropriate disciplinary or administrative action would be initiated, with an estimated completion date of March 31, 2009.

Our Response

The comments of the Commanding Officer, Space and Naval Warfare Systems Center Atlantic were responsive. No additional comments are needed.

A.3. We recommend that the Commander, Aeronautical Systems Center perform a review and initiate appropriate disciplinary or administrative action against contracting officers who have repeatedly failed to follow acquisition regulations and continue to use incorrect award procedures when using multiple-award contracts.

Aeronautical Systems Center Comments

The Commander of the Aeronautical Systems Center provided comments that met the intent of the recommendation. The Commander stated that the Aeronautical Systems Center performed a thorough review of orders recently awarded against multiple-award contracts, would hold mandatory training for contract specialists and contracting officers in the proper use of fair opportunity procedures when awarding orders against multiple-award contracts, took administrative action against the contracting official who repeatedly failed to provide fair opportunity on multiple-award contracts, and would conduct quarterly self-inspections using a new checklist to ensure fair opportunity procedures are followed on awards under multiple-award contracts. The quarterly inspections have an estimated completion date of June 2009.

Our Response

The comments of the Commander, Aeronautical Systems Center were responsive. No additional comments are needed.

Finding B. Assisted Acquisition Through National Institutes of Health Contracts

DoD program officials and NIH contracting officials did not comply with the FAR and DFARS when making purchases through the CIO-SP2i multiple-award contracts.

For the five task orders reviewed, valued at \$262.9 million, DoD program officials:

- provided an advantage to the incumbent on two task orders with a potential price of \$13.1 million, and
- did not adequately monitor contractor performance on three task orders with a potential value of \$258.7 million.

For the five task orders reviewed, NIH contracting officials, assisted by DoD program officials:

- improperly administered three task orders, with a potential value of \$258.7 million;
- awarded three task orders, with a potential value of \$68.0 million, without adequately ensuring that the price was reasonable; and
- awarded all five task orders without preparing an award selection document.

The first two of these problems occurred primarily because DoD officials were biased toward their incumbent contractor and because DoD officials responsible for contractor surveillance had an excessive workload. The other three problems occurred primarily because of the unclear division of responsibilities between NIH contracting officials and DoD program officials. As a result, DoD and NIH did not ensure that reasonable prices were negotiated when task orders were awarded, and they did not ensure that prices were sufficiently controlled as task orders were administered.

As stated previously, DoD and NIH entered into a memorandum of agreement in April 2008 that defined the responsibilities of each party when DoD makes purchases using NIH contracts. If both parties fulfill their responsibilities, they will solve many of the problems we identified.

Task Orders Reviewed

During FY 2007, NIH awarded four task orders on behalf of DoD with a total potential value of \$261.4 million. We reviewed those four task orders. We also reviewed an order NIH awarded on behalf of DoD in FY 2005 with a total potential value of \$1.5 million. We reviewed this order because it was not previously identified and was incrementally funded in FY 2007. Therefore, we reviewed five task orders with a total potential value of \$262.9 million. We reviewed these task orders for contracting problems.

DoD program officials demonstrated a bias toward the incumbent contractor and did not perform adequate contract oversight. NIH contracting officials, assisted by DoD program

officials, did not properly administer task orders, did not adequately ensure that prices were fair and reasonable, and did not document award selection.

Advantage for Incumbent Contractor

Of the five CIO-SP2i task orders reviewed that NIH awarded on behalf of DoD, two task orders with a potential value of \$13.1 million were awarded with a bias toward the incumbent contractor (Table 4).

Table 4. CIO-SP2i Task Orders Awarded With A Bias Toward the Incumbent Contractor

Order	Customer	Potential Value
2520	Defense Intelligence Agency—Bolling Air Force Base, Washington, DC	\$11,594,692
2430	Assistant Secretary of Defense for Homeland Defense	1,506,184
Total		\$13,100,876

NIH awarded task order 2520 on behalf of the Defense Intelligence Agency (DIA) Directorate of Information Management Enterprise Group, Bolling Air Force Base, Washington, D.C., on October 27, 2006, to Computer Sciences Corporation. The task order was for 1 base year and 2 option years and had a total price of \$11.6 million. Computer Sciences Corporation was the incumbent contractor, having performed similar tasks for 4 years before the task order award.

A DIA program official stated that the reason DIA decided to use the CIO-SP2i multiple-award contract was because Computer Sciences Corporation was one of the contractors. NIH competed the order among all eligible CIO-SP2i multiple-award contractors and received two proposals—one from Computer Sciences Corporation for \$11.6 million and one from Northrop Grumman for \$10.0 million. Even though Northrop Grumman’s proposed price was \$1.6 million lower than Computer Sciences Corporation’s, DIA officials concluded that Computer Sciences Corporation had submitted the better proposal, rating Computer Sciences Corporation superior on nonprice factors such as past performance, technical ability, personnel, and management.

Although DIA officials gave Computer Sciences Corporation higher nonprice ratings than Northrop Grumman, they also conceded in their contractor selection document that “in the evaluators’ view, the responders are equally capable of providing an acceptable level of performance in all areas over time.” This concession, and the fact that DIA decided to use the CIO-SP2i multiple-award contract because it included the incumbent contractor, make it questionable whether DIA officials fairly evaluated the proposals and whether the Computer Science Corporation advantages in nonprice factors were worth an additional \$1.6 million. DIA should not exercise the upcoming option and should instead recompile the requirement and conduct a professional unbiased analysis of the bids received.

In another instance, NIH awarded task order 2430 on behalf of the Office of the Assistant Secretary of Defense for Homeland Defense on September 12, 2005, to Systems Research and Applications Corporation. The task order was for 1 base year and 2 option years and had a total price of \$1.5 million. Systems Research and Applications Corporation was the incumbent contractor for this requirement, having performed similar tasks for the Office of the Assistant Secretary of Defense for Homeland Defense in the past.

The COR had a bias toward the incumbent contractor. On August 3, 2005, the COR stated in an e-mail to the NIH contracting officer, “Our people are anxious to get started on project w SRA [Systems Research and Applications Corporation].” The COR sent this e-mail approximately 3 weeks before NIH issued the solicitation. The NIH contracting officer did not address this concern, but instead stated that NIH was in the process of sending the solicitation to the vendors. If the requirement was legitimate sole-source procurement, it should have been treated as one, and negotiations with the contractor should have taken place. Instead, the solicitation was considered competitive although it was open for only 6 business days. This time frame did not give contractors other than the incumbent much time to thoroughly review the SOW and prepare a proposal. The incumbent contractor submitted the only proposal and was awarded the task order. Based on the e-mail from the COR, it is questionable whether the Office of the Assistant Secretary of Defense for Homeland Defense would have given any consideration to proposals from other contractors if they had tried to compete for the award.

In the April 2008 memorandum of agreement, DoD and NIH agreed to collaborate to ensure that all vendors are provided a fair opportunity to be considered for award, unless an exception applies. As part of this effort, both parties need to ensure that all contractors are evaluated objectively, without bias. If DoD and NIH officials make an award to a vendor that was not the lowest bidder, they need to thoroughly justify that the winning bidder’s nonprice factors were worth the extra money.

Contract Oversight and Administration

Of the five CIO-SP2i task orders reviewed that NIH awarded on behalf of DoD, three task orders with a potential value of \$258.7 million had insufficient contract oversight and improper contract administration (Table 5). Contract oversight, also known as contract surveillance or quality assurance, is a way for the Government to ensure the contractor meets the terms of the contract. FAR 46.101 defines Government contract quality assurance as “the various functions, including inspection, performed by the Government to determine whether a contractor has fulfilled the contract obligations pertaining to quality and quantity.” One way to ensure quality assurance is to develop a quality assurance surveillance plan. FAR 46.401 states that these plans should specify all work requiring surveillance and the method of surveillance.

Table 5. CIO-SP2i Task Orders With Insufficient Contract Oversight and Improper Contract Administration

Order	Customer	Potential Value
2494	Joint Strike Fighter Program Office—Arlington, Virginia	\$63,701,110
2524	Enterprise Solutions Competency Center—Fort Belvoir, Virginia	183,369,146
2520	Defense Intelligence Agency—Bolling Air Force Base, Washington, DC	11,594,692
Total		\$258,664,948

The COR for task order 2494 did not sufficiently monitor contractor performance, was not designated by the contracting officer in a written letter, and could not produce a copy of the task order or its modifications. Therefore, the COR could not be sure the contractor was working efficiently and was completely unaware of the period of performance and ceiling limit for the task order.

NIH awarded task order 2494 on behalf of the Joint Strike Fighter Program Office on October 1, 2006. The period of performance was 1 base year and 4 option years, with a total potential value of \$63.7 million. This was a cost-plus-award-fee task order, which meant that the contractor would be reimbursed by the Joint Strike Fighter Program Office for all allowable costs plus an associated fee, up to the task order ceiling price of \$63.7 million. If the contractor worked more efficiently than expected and incurred fewer costs, the Joint Strike Fighter Program Office would save money. Therefore, it was necessary for the Joint Strike Fighter Program Office to monitor the contractor’s performance to ensure that the contractor worked efficiently and accurately billed the Government.

A quality assurance surveillance plan could have guided the COR in performing contract oversight. However, Joint Strike Fighter Program Office officials did not develop a plan, as required by FAR 46.401. In addition, the COR was not properly designated, as required by DFARS 201.602-2. DFARS 201.602-2 allows contracting officers to designate qualified personnel as their authorized representatives to assist in the technical monitoring or administration of a contract and provides the guidelines for doing so, which include designating the individual in writing and ensuring that the individual is qualified by training and experience to perform the duties.

However, the COR was not designated in writing, had only 4 hours of training, and had no prior experience with performing the necessary duties. In addition, he stated that he did not actively monitor the contractor’s performance and had other duties that occupied a significant amount of his time. Although he reviewed the contractor’s invoices and status reports, he acknowledged that about 20 of the 60 contractor personnel worked off-site, and he had no controls in place to ensure that they billed for their actual hours worked. Therefore, there was no assurance that the contractor’s invoices showed their actual costs. Given the high dollar value of this order, there is a risk that the Joint Strike

Fighter Program Office could waste a significant amount of taxpayer money. DoD should devote appropriate resources to the surveillance of high-dollar-value purchases.

In another instance, the COR insufficiently monitored contractor performance on, and both DoD and NIH officials improperly administered, task order 2524. NIH awarded task order 2524 on behalf of the Enterprise Solutions Competency Center (the Center), Fort Belvoir, Virginia, on December 1, 2006. The Center is governed by the Software Engineering Center-Belvoir, Fort Belvoir, Virginia. The task order was for 1 base year and 4 option years, and had a total ceiling price of \$183.4 million. This is a time-and-materials task order, a contract type used when the quantity of required work is not well known at the time of award.

The task order was to provide core functional support for the Center and to provide contractor support to the Center's customers through interagency agreements between the customer and the Center. Each of the customers requiring contractor support for a particular requirement would be identified as a new contract line item on task order 2524.

By the end of FY 2007, NIH had modified the task order 40 times. The Center had 12 customers on the task order plus its own core support and had provided \$10.5 million for services on 34 separate MIPRs. The NIH contracting officer stated that she believed that the Center would provide large amounts of funds periodically, but did not realize the full extent of contract administration required. In addition, according to NIH officials, the accounting system at NIH could not handle the volume of financial transactions associated with this order and associated with the contractor for this order, causing significant discrepancies in the accounting records. Fortunately, the COR has a well-developed tracking system to identify each invoice and the MIPR that the invoice should be applied against.

Given the high dollar value, number of customers, the administrative workload, and accounting problems for this task order, it is clear that it was not reasonable to administer this requirement under a single task order. We believe this project should have been administered under a separate task order contract under which each customer would have a task order devoted to its particular requirement. The Center should have its own contract, preferably with multiple awards, so that individual task orders could be issued for each customer's requirements. Alternatively, the Center could continue to use an existing multiple-award contract, but should require each customer's requirements to be issued under its own task order. Either approach would enable the Center to assign a separate COR to oversee the work done for each customer. In our opinion, it was unrealistic to expect a single COR to monitor all tasks performed under the 2524 order because of its high dollar value and the number and location of customers.

The Under Secretary of Defense for Acquisition, Technology, and Logistics memorandum, "Enhanced Competition for Task and Delivery Order Contracts," May 23, 2008, implements section 843 of the National Defense Authorization Act for Fiscal Year 2008. The memorandum states, "No task or delivery order contract in an amount estimated to exceed \$100 million (including all options) may be awarded to a single

source unless the Head of the Agency determines” that one of several special circumstances exist. Task order 2524 has a total ceiling price of \$183.4 million and was issued to one contractor. Although this new requirement applies to orders issued on or after May 27, 2008, this new guidance is yet another reason for the Center to address the administration of this task order.

Option 1 for task order 2524 expired on November 30, 2008. During the audit, we recommended that the Center not exercise the next option period for the task order. Instead, the Center should support each customer by a separate task order, whether it continues to use the CIO-SP2i multiple-award contract, uses a different existing multiple-award contract, or establishes its own task order contract.

In another instance, the COR and NIH officials poorly administered task order 2520. NIH awarded this task order on behalf of DIA on October 27, 2006. The task order was for 1 base year and 2 option years and was awarded to Computer Sciences Corporation. It had a base year price of \$3.7 million and a total price of \$11.6. It was a firm-fixed-price order requiring Computer Sciences Corporation to provide a variety of information technology services.

Less than 3 months after NIH awarded the task order, DIA officials determined that a large portion of the services would no longer be required. DIA informed NIH of this decision. DIA officials contacted Computer Sciences Corporation and requested that it submit a revised price proposal that removed the costs of these services. Computer Sciences Corporation eventually submitted a revised price proposal to DIA on April 6, 2007. In the revised proposal, Computer Sciences Corporation offered to reduce the base year price by \$936,150 from \$3.7 million to \$2.8 million. Computer Sciences Corporation also offered to reduce the total price by \$3.0 million from \$11.6 million to \$8.6 million.

Although Computer Sciences Corporation had proposed in writing to reduce the price by close to \$1.0 million per year, DoD and NIH officials failed to issue a modification to reduce the task order price. DIA officials told us that they contacted the NIH contracting officer and requested that he issue a modification to reduce the task order price in accordance with Computer Sciences Corporation’s revised proposal. However, DIA officials could produce no documentation of these requests. NIH officials had no record of any such requests either. DIA officials told us that after the NIH contracting officer did not respond to their requests, they eventually just found other work for Computer Sciences Corporation to do.

The failure of DIA and NIH officials to reduce the price of task order 2520 represents a direct waste of taxpayer money. The contractor offered in writing to reduce the Government cost by nearly \$1.0 million for the base year, but the offer was not accepted simply because of Government inaction. When Computer Sciences Corporation offered in writing to reduce the price, it should have been a simple and routine task for DoD and NIH officials to modify the task order. The failure to complete this simple task cost DoD approximately \$1.0 million for the base year.

When NIH contracting officials exercised Option 1 on October 27, 2007, the task order ceiling was increased by the original Option 1 price of \$3,863,474, not the proposed reduced Option 1 price of \$2,861,051. A new COR was assigned to the task order for Option 1 and is being more proactive. In July 2008, he conducted a program review to determine what services DIA required from Computer Sciences Corporation, and to determine the appropriate price of Option 1. As a result of the program review, the price of Option 1 was reduced by \$1,072,206 from \$3,863,474 to \$2,791,268. He stated that DIA does not plan to exercise Option Year 2.

As a result of the bias toward the incumbent contractor and the failure to properly integrate a nearly million-dollar-per-year price reduction, DIA should not exercise the next option for this task order and should instead recompet the requirement.

In the April 2008 memorandum of agreement, DoD and NIH agreed to ensure that quality assurance surveillance plans are developed before award and used after award. Quality assurance surveillance plans could help eliminate problems with administration and oversight. However, the plans need to include measures to ensure that contractors work efficiently and bill accurately. Furthermore, oversight will not be effective if CORs have excessive workloads.

Price Reasonableness

For the five CIO-SP2i task orders reviewed that NIH awarded on behalf of DoD, DoD and NIH officials did not conduct adequate price reasonableness determinations for three task orders with a total potential value of \$68.0 million (Table 6). FAR 15.404-1 states that the objective of proposal analysis is to ensure that the final agreed-to price is fair and reasonable and states that the contracting officer is responsible for evaluating the reasonableness of offered prices. Even when a requirement is competed, contracting officials must be cognizant of their responsibility to obtain reasonable prices. When NIH awarded task orders on behalf of DoD, the NIH contracting officer left the price analysis to DoD program officials, who then conducted insufficient analysis. Consequently, DoD and NIH did not ensure that the proposed prices were reasonable.

Table 6. CIO-SP2i Task Orders With Inadequate Price Reasonableness Determinations

Order	Customer	Potential Value
2430	Office of the Assistant Secretary of Defense for Homeland Defense—Pentagon, Washington, D.C.	\$1,506,184
2494	Joint Strike Fighter Program Office—Arlington, Virginia	63,701,110
2537	National Guard Bureau—Crystal City, Virginia	2,749,994
Total		\$67,957,288

As stated in the previous section, NIH awarded task order 2430 on behalf of the Office of the Assistant Secretary of Defense for Homeland Defense on September 12, 2005, to

Systems Research and Applications Corporation. The task order was for 1 base year and 2 option years and had a total price of \$1.5 million. The solicitation was open for only 6 business days. Only Systems Research and Applications Corporation, the incumbent, submitted a proposal. The contractor selection document prepared by the Office of the Assistant Secretary of Defense for Homeland Defense included no discussion of the price or why the price was reasonable. The NIH contracting officer accepted this document and signed the order with no additional price analysis. Thus, there was no assurance that the proposal of \$1.5 million represented a reasonable price.

In another instance, NIH awarded task order 2494 on behalf of the Joint Strike Fighter Program Office, Arlington, Virginia, on October 1, 2006, to Stanley Associates. The period of performance was for 1 base year and 4 option years, with a total potential price of \$63.7 million. Stanley was the incumbent contractor, having performed similar tasks for the Joint Strike Fighter Program Office in the past.

Stanley Associates was the only contractor to submit a proposal. The contractor selection document prepared by the Joint Strike Fighter Program Office stated that the \$63.7 million proposal was reasonable because “Stanley’s cost estimate is in line with the government cost estimate, based on historical expenditures.” Once again, the NIH contracting officer accepted this document and signed the order with no additional price analysis.

Thus, the Joint Strike Fighter Program Office and NIH officials determined that the \$63.7 million price was reasonable solely by comparing it with the Government estimate. Although a Government cost estimate is not required, if DoD uses one, it should be reliable and thorough enough that the contracting officer can be sure that the estimate itself represents a reasonable price. However, the estimate was extremely vague and included far too little detail to provide assurance that it represented a reasonable price.

All labor costs for the base year and first option year were estimated simply as 152,667 “Professional” labor hours at a total cost of \$5.7 million. Additionally, the estimate simply stated total costs for other items for the base year and first option year, such as \$5.0 million for materials, supplies, and equipment and \$1.3 million for subcontracts. The estimated costs for option years 2 through 4 included even less detail; the estimate merely stated a single total cost for each of these 3 years. The estimate included no documentation to support these prices.

As a result, DoD and NIH had little assurance the \$63.7 million price was reasonable. In the April 2008 memorandum of agreement, DoD and NIH agreed to collaborate to ensure that adequate price analysis is performed. The analysis should ensure that all elements of a task order price are reasonable. The elements include direct labor rates, indirect rates, the number of labor hours, subcontractor costs, and costs for materials. Furthermore, DoD and NIH need to ensure that the appropriate labor categories are used.

Award Selection Documents

For all five of the CIO-SP2i task orders reviewed that NIH awarded on behalf of DoD, NIH contracting officials did not document the basis for award. FAR 16.505 requires contracting officers to provide decision documents for orders awarded on multiple-award contracts. The decision documents must state the rationale for the award and the price of each order. The failure to establish price reasonableness could be attributed in part to contracting officials' not preparing an award selection document. Preparing an award selection document would have forced the NIH contracting officer to address why the price was reasonable.

Conclusion

DoD and NIH officials did not ensure that DoD obtained sufficient value for its money on five of the six task orders they awarded using the assisted acquisition method. The officials made numerous contracting mistakes and, in one case, wasted taxpayer money. Some of these mistakes resulted in DoD and NIH officials awarding task orders with little or no assurance that they paid reasonable prices. DoD officials were also unable to sufficiently monitor contractor performance. In one case, DoD and NIH officials made mistakes that directly resulted in the DoD loss of approximately \$1 million of taxpayer money.

Some of the problems were related to the size of the task orders. Task orders from indefinite-delivery, indefinite-quantity contracts are intended for specific requirements. However, DoD awarded two very large requirements as individual task orders. Task order 2494 had a potential price of \$63.7 million, and task order 2524 had a potential price of \$183.4 million. Despite the large dollar values, the solicitations for these two orders were open for only 11 and 6 business days, respectively. Only one bid was received for task order 2494, and only two bids were received for task order 2524. DoD should be able to obtain more competition than this when awarding orders for large information technology requirements.

Additionally, DoD overburdened its COR by awarding such large requirements on individual task orders and expecting a single COR to monitor orders of this magnitude, particularly when work is performed at multiple locations. These two task orders were awarded on a cost-reimbursable and time-and-materials basis. The contractors had little incentive to control their costs, so it was necessary for DoD to have reasonable assurance that the contractors worked efficiently and billed for their correct costs.

Another major area of concern is price analysis of one-bid task orders. It is the contracting officer's responsibility to determine that the price of a task order is fair and reasonable. This responsibility often was not fulfilled because the NIH contracting officer allowed DoD officials to conduct the contractor proposal analysis, but the contracting officer did not verify that the proposal analysis was sufficient to conclude that the price was reasonable.

DoD and NIH officials have made an effort to solve problems such as the unclear responsibility for documenting price analysis. DoD and NIH entered into a memorandum of agreement on the use of NIH Government-wide acquisition contracts in April 2008. The memorandum of agreement clarifies the responsibilities of NIH and DoD officials during the award process. Regarding price analysis, the memorandum of agreement states, “DoD and NIH will collaborate to ensure that adequate price analysis is performed and best value determinations are made consistent with the respective solicitation.”

The memorandum of agreement should help improve price analysis for task order awards. Nevertheless, NIH and DoD officials need to make a concerted effort to ensure that adequate price analysis and negotiations are conducted. In particular, DoD and NIH officials need to improve their use of independent Government cost estimates. In the last 2 years, we have found that DoD and NIH officials have used independent Government cost estimates as their basis for price analysis on several task orders, some exceeding \$50 million. The independent Government cost estimates were extremely vague and lacked any supporting documentation; therefore, we believe that the independent Government cost estimates were not a legitimate basis for price analysis.

If DoD and NIH officials use an independent Government cost estimate as the basis to determine that the contractor’s proposed price is reasonable, then the officials need assurance that the independent Government cost estimate itself represents a reasonable price. In the future, DoD and NIH officials need to ensure that their independent Government cost estimates include enough specific information to represent a reasonable price. Because DoD and NIH entered into this agreement in April, we are not making any recommendations regarding the communication weaknesses between DoD and NIH.

Unsolicited Management Comments on the Finding and Our Response

The NIH Office of Management Assessment provided unsolicited comments on the finding. For the full text of the NIH comments, see the Management Comments section of the report. A summary of the comments follows.

National Institutes of Health Comments

First, NIH disagreed with our statement that task order 2494 did not have a COR designated in writing. NIH stated that the original COR was designated in writing on September 27, 2006, and that the replacement COR was designated in writing on April 5, 2008.

Second, NIH disagreed with our statement that NIH failed to issue a modification to reduce the price of task order 2520. NIH stated that the order was not modified because NIH never received a request from DIA to reduce the price.

Third, NIH disagreed with our statement that NIH officials, assisted by DoD program officials, did not prepare an award selection document for the five CIO-SP2i task orders

that we reviewed. NIH stated that all five orders contain a Solution Recommendation Document Package, which documents the award decision rationale and order price.

Our Response

In response to the first comment, the replacement designated on April 5, 2008, was actually the third COR assigned to this order. The second COR, who was assigned to order 2494 at the time we reviewed it, was never designated in writing. Furthermore, he had not taken COR training.

As for the second comment, the report states in this same paragraph that neither DIA nor NIH had any documentation that specifically showed that DIA requested that the order be modified in accordance with the contractor's April 2007 proposal. However, DIA provided documentation showing that DIA had previously asked NIH to reduce the task order price.

On December 29, 2006, the DIA COR sent an e-mail to the NIH contracting officer stating, "I was wondering if the MOD is completed for the reduction in our services."

On February 16, 2007, the DIA COR sent another e-mail to the NIH contracting officer asking, "Do you know when we'll receive the MOD decommitting funds against the contract?"

DIA officials provided us with these two e-mails but did not provide us with documentation of any acknowledgment of the e-mails by the NIH contracting officer.

In response to the third comment, the report states that for all five of these orders, "NIH contracting officials did not document the basis for the award." This statement is correct. The Solution Recommendation Document Packages were prepared and signed by DoD program officials, not by the NIH contracting officer. FAR 16.505 requires the contracting officer to document the basis for contract award. By passing the contractor selection decision on to DoD program officials, the NIH contracting officer failed to meet this requirement.

Recommendations, Management Comments, and Our Response

B.1. We recommend that the Commander, Software Engineering Center-Belvoir not exercise the next option for order 2524 through the Chief Information Officer-Solutions and Partners 2 Innovations multiple-award contract and either:

- a. Require individual task orders for each customer against an existing multiple-award contract; or**
- b. Have a DoD contracting office award a multiple-award contract on behalf of the Software Engineering Center-Belvoir and issue individual task orders for each customer against the contract.**

Software Engineering Center-Belvoir Comments

The Commander of the Software Engineering Center-Belvoir provided comments that met the intent of the recommendations. The Commander stated the Software Engineering Center-Belvoir is participating in the creation of an indefinite-delivery, indefinite-quantity multiyear contract. Until that contract is awarded, the Center has developed two additional task orders through the National Institutes of Health to supplement task order 2524 for the final option year. In addition, the Software Engineering Center-Belvoir has added CORs to help support the efforts on those task orders.

Our Response

The comments of the Commander, Software Engineering Center-Belvoir were responsive. No additional comments are needed.

B.2. We recommend that the Director, Defense Intelligence Agency not exercise the next option for order 2520 through the Chief Information Officer-Solutions and Partners 2 Innovations multiple-award contract and instead recompet the requirement.

DIA Comments Required

The Defense Intelligence Agency Director did not comment on the recommendation. We request that the Director provide comments in response to the final report.

Finding C. Funding Analysis

When using direct acquisition, DoD officials did not comply with appropriation laws and regulations for 3 of the 34 direct acquisitions we reviewed, causing potential BFNR violations totaling \$845,508.

Similarly, DoD and NIH officials did not comply with funding laws and regulations on 13 of the 24 assisted acquisitions we reviewed. Of the 13 orders, we identified:

- 10 orders with potential BFNR violations totaling \$12.2 million (\$3.5 million worth of potential BFNR violations on 6 of the 10 orders were not corrected, but violations on the remaining 4 orders were corrected);
- 1 order with a potential Purpose Statute violation totaling \$455,087; and
- 2 orders with potential Antideficiency Act violations totaling \$53,601.

Also, 4 of the 24 orders did not have potential violations, but had funds remaining that were expired and should be deobligated. The remaining seven orders had no funding deficiencies.

In addition, we identified one task order the General Services Administration awarded on behalf of DoD using the CIO-SP2i multiple-award contract that contained similar problems. See Appendix C for a discussion of this task order.

DoD and NIH officials were either unaware of, did not follow, or misinterpreted funding regulations. As a result, DoD's use of funds was inconsistent with the uses and limitations of fund authority mandated by Congress.

Direct Acquisitions

We analyzed the funding for 34 orders awarded by DoD with total obligations of \$221.0 million. We reviewed the orders to determine whether the funds obligated on the orders were the appropriate type and whether the purchase represented a bona fide need in the fiscal year for which the funds were appropriated. Using the wrong appropriation would violate the Purpose Statute, and not using funds valid for use when the goods or services are actually needed would violate the BFNR. We identified \$845,508 in potential BFNR violations on three orders. See Appendix D, Table D-1, for a summary of the funding analysis for each order.

The BFNR is codified in section 1502, title 31, United States Code (31 U.S.C. 1502), "Balances available," which states, "The balance of an appropriation or fund limited for obligation to a definite period is available only for payment of expenses properly incurred during the period of availability." BFNR violations may cause Antideficiency Act violations. Also, 31 U.S.C. 1501, "Documentary evidence requirement for Government obligations," requires a written binding agreement between two agencies for an obligation to occur.

Purchasing Goods—Delivery Orders

We identified \$345,613 in potential BFNR violations on two delivery orders. DoD officials caused the potential violations by scheduling the delivery of goods in a fiscal year subsequent to the period in which the funds were available for use. This demonstrates that the goods were not needed in the fiscal year of the funds.

Both the Government Accountability Office *Principles of Federal Appropriations Law* (commonly known as the Red Book), third edition, volume I, chapter 5, section B.4, “Delivery of Materials beyond the Fiscal Year,” and the Under Secretary of Defense (Comptroller)/Chief Financial Officer memorandum, “Non-Economy Act Orders,” October 16, 2006, discuss delivery of goods in a year subsequent to the funds’ expiration. The memorandum states that delivery is permitted as long as “the time intervening between contracting and delivery is not excessive and the procurement is not for standard commercial off the shelf (COTS) items readily available from other sources.” The memorandum also states, “The delivery of goods may not be specified to occur in the year subsequent to the funds’ availability.” Therefore, all readily available commercial goods purchased with funds having a limited availability must be delivered within the period of the funds’ availability.

For two delivery orders, one awarded by the Army Contracting Agency, W91QV1-07-F-2M06, and one awarded by the Space and Naval Warfare Systems Center Atlantic, N65236-06-F-3817, DoD contracting officers scheduled the delivery of commercial off-the-shelf goods in a fiscal year subsequent to the funds’ expiration. DoD scheduled delivery of the goods purchased on W91QV1-07-F-2M06 for October 18, 2007, using FY 2007 O&M funds, which expired on September 30, 2007. DoD scheduled delivery of the goods on N65236-07-F-3817 for October 25, 2006, using FY 2006 O&M funds, which expired on September 30, 2006. Therefore, both orders potentially violated the BFNR. Order W91QV1-07-F-2M06 had a potential BFNR violation of \$178,202 and N65236-07-F-3817 had a potential BFNR violation of \$167,411, for a total potential BFNR violation of \$345,613.

Purchasing Services—Task Orders

As discussed in finding B, we identified \$499,895 in a potential BFNR violation on one task order. The potential BFNR violation exists because the contractor started performing the contracted work after the funds had expired.

In addition to 31 U.S.C. 1502 mentioned previously, 10 U.S.C. 2410a, “Contracts for periods crossing fiscal years: severable services contracts; leases of real or personal property,” states that DoD can enter into a contract for procurement of severable services for a period that begins in one fiscal year and ends in the next fiscal year if (without regard to any option to extend the period of performance of the contract) the contract period of performance does not exceed 1 year. To meet these requirements, the Office of the Under Secretary of Defense (Comptroller)/Chief Financial Officer issued “Non-Economy Act Orders” on October 16, 2006, specifying that funds for severable services must be obligated and performance started during the funds’ period of availability.

Also, 31 U.S.C. 1501 requires a binding written agreement between two agencies in order for an obligation to occur.

The DLA Defense Distribution Center's Acquisitions Directorate awarded order SP1300-07-F-0454 on September 29, 2007, for \$499,895 on the CIO-SP2i contract. The customer for the order was the DLA Automatic Identification Technology office. The customer provided FY 2007 O&M funds for the task order. O&M funds are available for obligation for 1 year. These O&M funds expired on September 30, 2007. Therefore, the task order was required to have a period of performance beginning no later than September 30, 2007. Although the task order listed a period of performance beginning on September 29, 2007, the contractor did not actually begin working on this order until March 2008. We believe this requirement was for FY 2008 and should have been funded accordingly. To eliminate a potential BFNR violation, the FY 2007 O&M funds should be deobligated, and FY 2008 O&M funds should be provided by the DoD customer.

The contracting officials stated that they mistakenly believed that the order was funded with FY 2007 research, development, test, and evaluation funds, which have a longer availability period than O&M funds. When we informed the contracting officials that the funds were O&M, they immediately realized that using those funds to pay for the work performed in FY 2008 would violate the BFNR, and they issued a stop-work order the following day. In addition, we met with officials from the DLA Automatic Identification Technology office, the customer, who stated that they understood that the funds originally provided should not be used and that they were attempting to find available funds to pay for the approximately \$50,000 in work performed prior to the contracting officials' issuance of the stop-work order.

If DLA officials cannot provide the FY 2008 O&M funds to pay for this work, a BFNR violation will occur.

Assisted Acquisitions

We analyzed the funding for 24 task orders awarded by NIH with total obligations of \$286.2 million. We reviewed the orders to determine whether funds needed to be obligated or deobligated, which included determining whether there were potential BFNR, Purpose Statute, or Antideficiency Act violations. We identified \$3.5 million in potential BFNR violations, \$455,000 in potential Purpose Statute violations, \$54,000 in potential Antideficiency Act violations, \$5.6 million in funds that DoD should ask NIH to deobligate, and \$2.2 million in funds that DoD should provide to NIH. See Appendix D, Table D-2, for a summary of the funding analysis for each order.

Bona Fide Needs Rule

NIH officials paid contractors \$12.2 million for work performed outside the funds' period of availability for 10 task orders, resulting in potential BFNR violations. In our previous audit of DoD use of the NIH contracts, DoD IG Report No. D-2008-022, we reported potential BFNR violations. The U.S. Department of Health and Human Services Office of the IG, the IG for NIH, also reported potential BFNR violations in its audit. In an attempt to correct some of these violations, NIH and DoD officials deobligated funds. As

of June 1, 2008, NIH and DoD officials had not corrected \$3.5 million in potential BFNR violations for six task orders. See Appendix E for a detailed description of each of the 10 task orders with potential BFNR violations.

The \$12.2 million in potential violations occurred when NIH used funds to pay for work performed outside the funds' period of availability. Typically, the correct funds were provided on the task order. However, in most cases, funds remaining after a period of performance were not deobligated even if those funds were expired. Instead, NIH used the expired funds to pay for work performed in later periods. Appropriated funds have a limited period of availability when they can be used to pay for services. Using appropriated funds to pay for work performed outside of their period of availability violates the BFNR. As previously noted, the BFNR is codified in 31 U.S.C. 1502, which states, "The balance of an appropriation or fund limited for obligation to a definite period is available only for payment of expenses properly incurred during the period of availability." BFNR violations may cause Antideficiency Act violations.

Both 10 U.S.C. 2410a and the Office of the Under Secretary of Defense (Comptroller)/Chief Financial Officer memorandum, "Non-Economy Act Orders," issued on October 16, 2006, allow funds to cross fiscal years for severable service contracts with periods of performance not to exceed 1 year as long as the funds are obligated during their period of availability. In addition, 31 U.S.C. 1501 requires a binding written agreement between two agencies for an obligation to occur.

In our previous NIH report, D-2008-022, we reported eight orders with potential BFNR violations that were not corrected. Each of these eight orders was awarded on the CIO-SP2i multiple-award contract and is discussed in this report in Appendix E. We determined from our review of these eight orders that:

- no funds were returned to correct the potential BFNR violations for four orders,
- the incorrect amount and type of funds were returned for one order, and
- the correct amount and type of funds were returned for the remaining three orders.

Orders for which no funds were returned were orders 2204, 2315, 2377, and 2380. We believe that potential BFNR violations of \$3 million remain for these four orders.

The Under Secretary of Defense (Comptroller)/Chief Financial Officer stated in comments on 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, that the office would "monitor all potential ADA [Antideficiency Act] violation cases arising from interagency agreements." Although the Under Secretary of Defense (Comptroller)/Chief Financial Office (Comptroller's Office) initially contacted DoD organizations about the potential BFNR violations, the Comptroller's Office did not follow up to ensure appropriate actions were taken. For the four orders described above, the Comptroller's Office did not have records of the BFNR violations in its tracking system. In addition, the Comptroller's Office could not explain why the potential BFNR violations for those four orders were not investigated.

The Under Secretary of Defense (Comptroller)/Chief Financial Officer should direct DoD organizations that have provided funding to NIH to work with NIH to deobligate expired funds, obligate funds to cover all work performed, and correct potential BFNR violations. The Under Secretary of Defense (Comptroller)/Chief Financial Officer should also ensure that DoD organizations are notified of potential BFNR violations and that those organizations take the appropriate steps to resolve the BFNR violations. In addition, the Under Secretary of Defense (Comptroller)/Chief Financial Officer should determine how its office failed to follow up on four of the BFNR violations reported last year and take action to ensure such an oversight does not happen in the future.

Purpose Statute

For task order 2412, NIH officials obligated \$455,087 in Procurement funds provided by the Air Force Office of the Deputy Chief of Staff for Operations, Plans, and Requirements, resulting in a potential Purpose Statute violation that may violate the Antideficiency Act.

The Purpose Statute is codified in 31 U.S.C. 1301, “Application,” which states, “Appropriations shall be applied only to the objects for which the appropriations were made except as otherwise provided by law,” meaning that appropriations should be used for their intended purposes. Purpose Statute violations may cause Antideficiency Act violations.

The DoD Financial Management Regulation, volume 2A, chapter 1 provides guidelines for determining the correct appropriation to use when planning acquisitions. Section 010201 provides guidance on determining whether a purchase is an investment or an expense. Expenses are defined as “costs of resources consumed in operating and maintaining the Department of Defense,” and investments are defined as “costs to acquire capital assets such as real property and equipment.” This section of the Financial Management Regulation also states that O&M funds should be used for expenses and that Procurement funds should be used for investments.

Task order 2412 was for services, which are expenses. Therefore, it was inappropriate for the Air Force Office of the Deputy Chief of Staff for Operations, Plans, and Requirements to provide Procurement funds for this task order. To correct this potential Purpose Statute violation, the Air Force Office of the Deputy Chief of Staff for Operations, Plans, and Requirements should request that NIH deobligate:

- MIPR F1AFH5252G002 Basic providing FY 2005 Procurement funds, of which NIH obligated \$248,784 for services; and
- MIPR F1AF1H6167G001 Basic providing FY 2006 Procurement funds, of which NIH obligated \$206,302 for services.

After NIH deobligates these funds, there will not be enough funds to cover all work performed in option 1. Therefore, the Air Force Office of the Deputy Chief of Staff for Operations, Plans, and Requirements should provide NIH with an additional \$462,220 in FY 2006 or FY 2007 O&M funds (the option 1 period of performance—July 1, 2006, through June 30, 2007—crosses FY 2006 and FY 2007).

The Under Secretary of Defense (Comptroller)/Chief Financial Officer should direct the Air Force Office of the Deputy Chief of Staff for Operations, Plans, and Requirements to provide O&M funds in lieu of the Procurement funds already provided. This potential Purpose Statute violation may violate the Antideficiency Act.

Antideficiency Act

NIH officials paid contractors \$53,601 for work performed prior to the funds' period of availability for two task orders, resulting in potential Antideficiency Act violations. As of June 1, 2008, NIH and DoD officials had not corrected these violations.

The Antideficiency Act is codified in 31 U.S.C. 1341, "Limitations on expending and obligating amounts." Section (a)(1)(B) states that the Government may not get involved in a contract or obligation for the payment of money before an appropriation is made, unless authorized by law. Therefore, funds obligated on a task order should be available to pay for work performed at the start of that task order's period of performance.

In addition, one of the orders was firm-fixed-price. The DoD Financial Management Regulation, volume 3, chapter 8, section 080501 requires that an obligation be recorded for the total amount stated in the contract at the time it is executed. Therefore, DoD has provided and NIH should have obligated the full fixed-price amount when awarding the task order and when exercising an option.

Task Order 2409

NIH awarded task order 2409 on behalf of the U.S. Army Special Operations Command on September 15, 2005. The task order's period of performance consisted of a 1-year base period and four 1-year option periods. Option 1 ended on September 14, 2007. From the base through option 1, NIH obligated \$5.6 million in O&M funds provided by the U.S. Army Special Operations Command. NIH used \$27,548 in FY 2007 O&M funds to pay for work performed outside of the funds' period of availability, causing a potential Antideficiency Act violation.

DoD funded the base period, September 15, 2005, through September 14, 2006, with \$3.7 million in FY 2005 and FY 2006 O&M funds. When DoD funded the option 1 period, it did not comply with the Antideficiency Act; the officials did not obligate funds appropriate to pay for work performed at the start of option 1, which began in FY 2006. By not obligating FY 2006 funds upon exercising the option, U.S. Army Special Operations Command and NIH caused a potential Antideficiency Act violation.

DoD funded the option 1 period, September 15, 2006, through September 14, 2007, with \$1.9 million in FY 2007 O&M funds. However, \$27,548 of work invoiced was performed in FY 2006, from September 16 through September 30, 2006. This \$27,548 of work was incurred during the option 1 period, but could not be paid with FY 2007 O&M funds. FY 2007 O&M funds were not available for obligation until October 1, 2006. Therefore, to properly pay for that FY 2006 work, DoD needed to provide NIH with FY 2006 O&M funds of \$27,548. This \$27,548 is a potential Antideficiency Act violation.

The total invoices for work performed during option 1 totaled \$1.5 million. Excluding the \$27,548, FY 2007 O&M funds amounting to \$338,582 remain.

As of June 1, 2008, NIH had not corrected this potential violation. To do so, the U.S. Army Special Operations Command should provide NIH with \$27,548 in FY 2006 O&M funds. In addition, to prevent further misuse of expired funds, U.S. Army Special Operations Command should request that NIH deobligate \$338,582 in FY 2007 O&M funds.

Task Order 2430

NIH awarded task order 2430 on behalf of the Office of the Assistant Secretary of Defense for Homeland Defense on September 12, 2005. The task order's period of performance consisted of a 1-year base period and two 1-year option periods. Option 1 ended on September 11, 2007. From the base through option 1, NIH obligated \$986,918 in O&M funds provided by the Office of the Assistant Secretary of Defense for Homeland Defense. NIH used \$26,053 in FY 2007 O&M funds to pay for work performed outside of the funds' period of availability, causing a potential Antideficiency Act violation.

DoD funded the base period, September 12, 2005, through September 11, 2006, with \$485,057 in FY 2005 O&M funds. However, when DoD funded the option 1 period, it did not comply with the DoD Financial Management Regulation or the Antideficiency Act. Officials did not obligate any option 1 funding at the time NIH exercised the option. By not obligating funds for the full fixed-price amount, the Office of the Assistant Secretary of Defense for Homeland Defense and NIH caused a potential Antideficiency Act violation.

DoD funded the option 1 period, September 12, 2006, through September 11, 2007, with \$501,861 in FY 2007 O&M funds. However, \$26,053 of work invoiced was performed in FY 2006, from September 12 through September 30, 2006. This \$26,053 of work was incurred during the option 1 period, but could not be paid with FY 2007 O&M funds. FY 2007 O&M funds are not available for obligation until October 1, 2006. Therefore, to properly pay for that FY 2006 work, DoD needed to provide NIH with FY 2006 O&M funds of \$26,053. This \$26,053 is a potential Antideficiency Act violation.

As of June 1, 2008, NIH had not corrected this potential violation. To correct this potential violation and cover the cost of all work performed from the base through option 1, the Office of the Assistant Secretary of Defense for Homeland Defense should request that NIH deobligate \$26,053 in FY 2007 O&M funds and should provide NIH with \$26,053 in FY 2006 O&M funds.

Additional Deobligations

In addition to the deobligations discussed in the "Bona Fide Needs Rule," "Purpose Statute," and "Antideficiency Act" sections of this report, there is an additional \$781,255 in expired funds on four orders that DoD should request NIH to deobligate. For three of

these orders, if NIH does not deobligate these funds and uses them to pay for work performed outside their period of availability, it will potentially cause additional BFNR violations.

Task Order 2311

NIH awarded task order 2311 on behalf of Air Force Materiel Command A6 on April 30, 2004. The task order ended on December 31, 2007. Over the life of the task order, NIH obligated \$761,606 in Defense Working Capital funds provided by Air Force Materiel Command A6. After paying for all work performed for the task order, Air Force Materiel Command A6 had \$92,942 in Defense Working Capital funds remaining that it should request NIH to deobligate.

Task Order 2331

NIH awarded task order 2331 on behalf of the Defense Manpower Data Center on November 5, 2004. The task order's period of performance consisted of a 1-year base period and five 1-year option periods. Option 2 ended on November 4, 2007. From the base through option 2, NIH obligated \$10.6 million³ in O&M funds provided by the Defense Manpower Data Center.

DoD funded the base period, November 5, 2004, through November 4, 2005, with \$4.5 million in FY 2005 O&M funds. The invoices for work performed during the base period totaled \$4.5 million. FY 2005 O&M funds of \$4,888 remained. However, on modification 8, which was effective September 15, 2006, NIH deobligated \$21,383 in FY 2005 O&M funds tied to the base, which was \$16,496 too much.

DoD funded the option 1 period, November 5, 2005, through November 4, 2006, with \$3.2 million in FY 2006 O&M funds. The invoices for work performed during the base period totaled \$3.1 million. FY 2006 O&M funds of \$17,839 remained. FY 2006 O&M funds were available for obligation during the base period. Therefore, the remaining FY 2006 O&M funds tied to option 1 offset the excessive deobligation from the base, leaving \$1,343 in FY 2006 O&M funds to be deobligated.

DoD funded the option 2 period, November 5, 2006, through November 4, 2007, with \$3 million in FY 2007 O&M funds. The invoices for work performed during that time totaled \$3 million. There are no remaining funds.

The Defense Manpower Data Center should request that NIH deobligate \$1,343 in FY 2006 O&M funds. If NIH and DoD fail to deobligate the \$1,343 in FY 2006 O&M funds and instead use them to pay for work performed outside their period of availability, NIH and DoD will potentially violate the BFNR.

³ The sum of base and option period funding differs from \$10.6 million due to rounding.

Task Order 2376

NIH awarded task order 2376 on behalf of the Defense Manpower Data Center on March 4, 2005. The task order's period of performance consisted of a 1-year base period and four 1-year option periods. Option 2 ended on March 3, 2008. From the base through option 2, NIH obligated \$21.0 million in O&M funds provided by the Defense Manpower Data Center.

DoD funded the base period, March 4, 2005, through March 3, 2006, with \$6.3 million in FY 2005 O&M funds. The invoices for work performed during that time totaled \$5.6 million. FY 2005 O&M funds of \$705,499 remained. On modification 7, which was effective November 20, 2006, NIH deobligated these funds.

DoD funded the option 1 period, March 4, 2006, through March 3, 2007, with \$7 million in FY 2006 O&M funds. The invoices for work performed during that time totaled \$6.8 million. FY 2006 O&M funds of \$219,942 remained.

DoD funded the option 2 period, March 4, 2007, through March 3, 2008, with \$7.7 million in FY 2007 O&M funds. The invoices for work performed during that time totaled \$7.3 million. FY 2007 O&M funds of \$390,581 remained.

The Defense Manpower Data Center should request that NIH deobligate \$219,942 in FY 2006 O&M funds and \$390,581 in FY 2007 O&M funds. If NIH and DoD fail to deobligate these funds and instead use them to pay for work performed outside their period of availability, NIH and DoD will potentially violate the BFNR.

Task Order 2519

NIH awarded task order 2519 on behalf of the Office of the Assistant Secretary of Defense (Networks and Information Integration)/DoD Chief Information Officer on September 28, 2006. The task order's period of performance consisted of a 1-year base period and four 1-year option periods. The base ended on September 27, 2007.

DoD funded the base period, September 28, 2006, through September 27, 2007, with \$325,854 in FY 2006 and FY 2007 O&M funds. Although the base period of performance ended on September 27, 2007, the FY 2007 O&M funds provided by DoD could be used until September 30, 2007. The invoices for work performed during the base through September 30, 2007, amounted to \$249,407. FY 2006 or FY 2007 O&M funds of \$76,447 remained.

The Office of the Assistant Secretary of Defense (Networks and Information Integration)/DoD Chief Information Officer should request that NIH deobligate FY 2006 or FY 2007 O&M funds of \$76,447. If NIH and DoD fail to deobligate these funds and instead use them to pay for work performed outside their period of availability, NIH and DoD will potentially violate the BFNR.

The Under Secretary of Defense (Comptroller)/Chief Financial Officer should direct DoD organizations that have provided funding to NIH to work with NIH to deobligate expired funds and obligate funds to cover all work performed.

Summary

The potential BFNR and Purpose Statute violations occurred primarily because NIH and DoD officials did not know, misinterpreted, or did not follow the regulations related to funding. In addition, DoD CORs did not adequately keep track of funds sent to NIH and the balance of those funds as they approved invoices. As a result, funds were not used for the purposes mandated by Congress.

Management Comments on the Finding and Our Response

The Commanding Officer, Space and Naval Warfare Systems Center Atlantic provided comments on the finding.

Space and Naval Warfare Systems Center Atlantic Comments

The Commanding Officer stated that the Space and Naval Warfare Systems Center Atlantic performed a review of the potential bona fide needs rule violation for delivery order N65236-06-F-3817. The review concluded that there was a need for the purchased items during the year of the funds' availability and that the lead time for producing the items was 2 to 4 weeks. The Center does not believe that a potential BFNR violation occurred.

Our Response

Both the Government Accountability Office's *Principles of Federal Appropriations Law* (commonly known as the Red Book), third edition, volume I, chapter 5, section B.4, "Delivery of Materials beyond the Fiscal Year," and the Under Secretary of Defense (Comptroller)/Chief Financial Officer memorandum, "Non-Economy Act Orders," October 16, 2006, discuss delivery of goods in a year subsequent to the funds' expiration. The memorandum states that delivery is permitted as long as "the time intervening between contracting and delivery is not excessive and the procurement is not for standard commercial off the shelf (COTS) items readily available from other sources." Delivery order N65236-06-F-3817 was on one of the ECS III multiple-award contracts, and all items available on ECS III are considered to be COTS. The memorandum also states, "The delivery of goods may not be specified to occur in the year subsequent to the funds' availability." Therefore, all COTS goods purchased with funds having a limited availability must be delivered within the period of the funds' availability. Based on these policies, we believe that order N65235-06-F-3817 is a violation of the BFNR.

Unsolicited Management Comments on the Finding and Our Response

Although not required to comment, the Chief of Staff of the U.S. Army Special Operations Command provided the following comments on the finding. Our

recommendation for this finding was directed to the Under Secretary of Defense (Comptroller)/Chief Financial Officer with the intent to work with all DoD activities identified during our audit to fix any funding problems. We did not make recommendations to each individual command. For the full text of the U.S. Army Special Operations Command comments, see the Management Comments section of the report. In addition, although not required to comment, the NIH Office of Management Assessment provided unofficial comments on the finding. For the full text of the NIH comments, see the Management Comments section of the report.

U.S. Army Special Operations Command Comments

The Chief of Staff for the U.S. Army Special Operations Command stated that the Command did not provide all of the \$5.6 million in funds that NIH obligated on task order 2409. The Chief of Staff stated that the funds came from multiple sources.

In addition, the Chief of Staff stated that there was no potential Antideficiency Act violation based on documentation the U.S. Army Special Operations Command obtained from the National Institutes of Health showing that the funds in question were actually FY 2007 monies.

The Chief of Staff reported that the Command asked NIH on January 22, 2009, to return \$311,095.27 in remaining FY 2007 funds for deobligation.

Our Response

We stated in the report that U.S. Army Special Operations Command provided the funds associated with the task order because the U.S. Army Special Operations Command is the customer for the task order. The statement of work is titled “U.S. Army Special Operations Command (USASOC) Strategic Support Program” and indicates that work will be performed at the Command in Fort Bragg, North Carolina. In addition, the task order identifies a U.S. Army Special Operations Command employee as the contracting officer’s representative for the task order. Although individual MIPRs came from several sources, the U.S. Army Special Operations Command is the overall customer for this task order, which is why we listed it as providing the funds for the task order.

The Chief of Staff has not yet demonstrated that there was no Antideficiency Act violation. FY 2007 O&M funds totaling \$27,548 were used to pay for work performed from September 16 through September 30, 2006. As stated in the finding, FY 2007 O&M funds cannot be used to pay for work performed in FY 2006 because that work was performed prior to the funds’ period of availability, and funds can be used only to pay for work performed during the funds’ period of availability. Therefore, any work performed in FY 2007 should be paid for with FY 2007 funds. Work performed prior to FY 2007 should not be funded with FY 2007 O&M funds. If FY 2006 O&M funds had been used to pay for the \$27,578 in work performed from September 16 through September 30, 2006, there would not have been a potential violation. However, NIH obligated \$3,701,127 of FY 2005 and FY 2006 funds on the task order during the base period, and the contractor invoiced \$3,701,066 of work performed during the base period. This left a remainder of only \$61. The only funds that could have been used to pay for the work

performed from September 16 through September 30, 2006, were FY 2006 O&M funds. Use of the FY 2007 funds to pay for work performed during the period in question is not permitted and potentially violates the Antideficiency Act.

National Institutes of Health Comments

NIH stated that the NIH Information Technology Acquisition and Assessment Center is currently working with DoD customers to correct funding issues and that it relied on DoD customers to provide appropriate funding. NIH disagreed with our statement that task order 2409 resulted in an Antideficiency Act violation because the Army Special Operations Command provided records to the DoD OIG that showed the contractor's performance was during the period for which the funds were expended.

Our Response

The Assistant Deputy Under Secretary of Defense (Financial Management), representing the Under Secretary of Defense (Comptroller)/Chief Financial Officer, stated that the Office of the the Under Secretary of Defense (Comptroller)/Chief Financial Officer also is working with DoD customers to rectify the funding issues. See the comments below. We continue to believe that it is the responsibility of both the sending and receiving offices to ensure that proper funds are used for purchases. For task order 2409, see our response to the U.S. Army Special Operations Command comments.

Recommendations, Management Comments, and Our Response

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

1. Instruct DoD organizations that provided funds to the National Institutes of Health for assisted acquisition, including the Defense Acquisition University discussed in Appendix C, to work with National Institutes of Health officials to determine funds needing to be obligated and deobligated to correct potential bona fide needs rule violations, address potential Purpose Statute violations, correct potential Antideficiency Act violations, prevent the misuse of and return expired funds, and fully cover the cost of all work performed.

2. Verify that DoD organizations properly and accurately address the funding issues identified above. If funds are not available to correct the potential bona fide needs rule violations, the Under Secretary of Defense (Comptroller)/Chief Financial Officer should initiate preliminary reviews for potential Antideficiency Act violations.

3. Determine why staff in the Office of the Under Secretary of Defense (Comptroller)/Chief Financial Officer did not follow up on four bona fide need rule violations reported last year, and take action to ensure such an oversight does not happen in the future.

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

The Assistant Deputy Under Secretary of Defense (Financial Management) agreed with the recommendations. The Assistant Deputy Under Secretary of Defense (Financial Management) stated that the Office of the Under Secretary of Defense (Comptroller)/Chief Financial Officer would work with both the National Institutes of Health and DoD Components to identify funds to be obligated and deobligated, track the progress of actions taken to address funding issues, and determine why the office did not follow up on four previously reported bona fide needs rule violations. Additionally, the Office of the Under Secretary of Defense (Comptroller)/Chief Financial Officer established a single accountable official, within the Business Integration Office, who is responsible for entering and reconciling potential Antideficiency Act cases.

Our Response

The comments of the Assistant Deputy Under Secretary of Defense (Financial Management) were responsive. No additional comments are needed.

Appendix A. Scope and Methodology

We conducted this 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.

We performed the audit as required by section 817 of Public Law 109-364, “John Warner National Defense Authorization Act for FY 2007,” October 17, 2006 (the Act). The Act requires the Inspector General of the Department of Defense and the Department of Health and Human Services to conduct a joint review of interagency transactions between DoD and the National Institutes of Health (NIH). We reviewed DoD use of the NIH Electronic Commodities Store III (ECS III), Chief Information Officer-Solutions and Partners 2 Innovations (CIO-SP2i), and Image World 2 new dimensions (IW2nd) multiple-award contracting vehicles. The ECS III multiple-award contracting vehicle consisted of 65 contracts that were categorized into 6 information technology lots. The CIO-SP2i multiple-award contracting vehicle consisted of 48 contracts that were categorized into 9 information technology task areas. The IW2nd multiple-award contracting vehicle consisted of 24 contracts that were categorized into 3 information technology functional areas. The ECS III, CIO-SP2i, and IW2nd are multiple-award contracts that provide Government agencies access to information technology products and services.

Direct Acquisitions

We did not jointly review delivery order contracts with the Health and Human Services Office of the Inspector General because the interagency purchases were made through direct acquisition. That is, DoD contracting officials made all award decisions and funds for those purchases remained within DoD for ECS III delivery orders; as a result, NIH contracting, financial, and accounting officials had no involvement in the award process. However, for CIO-SP2i and IW2nd contracts where a task order for services is awarded, an NIH contracting officer must review the statement of work to determine whether the work is within the scope of the contract and NIH issues the request for proposal.

Our primary source for the FY 2007 direct acquisitions made through NIH on the ECS III multiple-award contract was the Electronic Document Access (EDA) System. The EDA system is an online document access system that provides acquisition related information for use by all of the DoD. To supplement the data obtained through the EDA system, NIH provided us with a list of all FY 2007 direct purchases.

ECS III Orders

We limited our scope of ECS III orders to those with values greater than \$100,000. Based on the EDA system, we identified 37 ECS III orders awarded in FY 2007 for amounts greater than \$100,000 and with a total value of \$17.0 million. Using the data

provided by NIH, we identified an additional 12 orders awarded in FY 2007 for amounts greater than \$100,000 and with a total value of \$2.7 million. Therefore, our total scope for FY 2007 ECS III orders greater than \$100,000 was 49 orders with a total value of \$19.7 million.

In addition, we included 22 FY 2006 ECS III orders in our scope that had values greater than \$100,000 and a total value of \$5.5 million. We included these orders because they were not identified by NIH in our previous audit and:

- for 17 of the orders, valued at \$4.2 million, the delivery of goods was scheduled for FY 2007,
- for two of the orders, valued at \$459,485, there were funds provided in FY 2007 to modify the order, and
- for three of the orders, valued at \$791,921, the period of performance extended into FY 2007.

We also included one order awarded in FY 2003 that was funded in FY 2007 to extend an option. The value of that order was \$3 million.

Ultimately, we identified 72 ECS III orders valued over \$100,000 with a total price \$28.1 million. Based on dollar value and geographic location, we reviewed 29 of these delivery orders with a total value of \$16.8 million.

CIO-SP2i Orders

We used the same method to identify direct CIO-SP2i orders and we included orders awarded in fiscal years other than FY 2007. Through the EDA system, we identified two CIO-SP2i orders awarded for amounts greater than \$100,000 with a total value of \$49.4 million. Using the data provided by NIH, we identified an additional order valued at \$1.5 million. In addition, while conducting a site visit at NIH, we identified two additional CIO-SP2i orders awarded at the end of FY 2007 and valued at \$1.2 million. Therefore, our total scope for CIO-SP2i orders was five orders with a current total value of \$52.1 million.

Based on dollar value and geographic location, we reviewed four of these task orders, which had a potential total value of \$198.4 million at the time of review.

IW2nd Order

We used the same method to identify direct IW2nd orders. Through the EDA system, we identified one IW2nd order with a modified value of \$5.7 million. Although the order was awarded in FY 2005, funds totaling \$99,814 were provided in FY 2007. This was the only order in our scope for the IW2nd multiple-award contract. Based on dollar value and geographic location, we reviewed this order.

Methodology for Review of Direct Acquisitions

For 34 direct acquisitions, we reviewed the order files maintained by DoD contracting offices, and any files maintained by NIH for task orders, to determine whether:

- DoD contracting officers provided a fair opportunity to contractors and documented source selection in accordance with Federal Acquisition Regulation 16.505;
- DoD contracting officers or program officials adequately justified the use of a non-DoD contract for purchases in accordance with Defense Federal Acquisition Regulation Supplement Subpart 217.7802;
- DoD officials used the appropriate fund type for the items purchased in accordance with Purpose Statute, 31 U.S.C. 1301; and
- DoD had a bona fide need for the requirement in accordance with 31 U.S.C. 1502.

We interviewed DoD contracting officers, contracting specialists, and program officials involved in the procurement process.

Assisted Acquisitions

We jointly reviewed assisted acquisitions with the Health and Human Services Office of the Inspector General. The assisted acquisitions were purchases made by NIH contracting officers on DoD's behalf, so NIH contracting personnel were involved with the award process.

CIO-SP2i Orders Awarded by NIH

NIH identified the assisted acquisitions where DoD provided funding in FY 2007. We included in our scope both orders that were awarded in FY 2007 as well as purchases originally awarded before FY 2007 that provided funding during FY 2007. Based on the information received from NIH, in FY 2007 DoD provided funding or deobligated funds for 31 assisted acquisitions. The total funding received was \$107.7 million. All 31 orders were made using NIH's CIO-SP2i multiple-award contract. We reduced the scope by three orders because:

- two of the orders did not provide any funding, but deobligated less than \$5,000 each; and
- the third order had an obligation and deobligation for the same amount, making the total funds provided in FY 2007 for that order equal \$0.

Therefore, our final scope was 28 orders with \$107.7 million in funds provided or deobligated in FY 2007.

Of these 28 orders:

- 22 orders with \$74.7 million in funds provided during FY 2007 were reviewed during last year's audit, so during this audit we conducted a review of funding only and did not review the award procedures and administration of these orders;
- 1 order with \$1.4 million in funds deobligated during FY 2007 was reviewed during last year's audit, so during this audit we conducted a review of funding only and did not review the award procedures and administration of this order; and

- 5 orders with \$34.4 million in funds provided during FY 2007, were not reviewed during last year's audit, so we conducted a full review of these 5 orders to include funding, award procedures, and contract administration.

CIO-SP2i Order Awarded by the General Services Administration

In addition to the above assisted acquisitions, NIH identified one task order awarded by the General Services Administration with a total value of \$3.2 million. The General Services Administration awarded this order on behalf of DoD by using the CIO-SP2i multiple-award contract. Therefore, DoD provided its funds for this requirement to the General Services Administration and the General Services Administration acted as the contracting office for the requirement. However, as required with all orders awarded on the CIO-SP2i multiple-award contract, NIH reviewed the statement of work and issued the request for proposal. We conducted a full review of this order.

Methodology for Review of Assisted Acquisitions

For six assisted acquisitions, we reviewed the order files maintained by DoD program offices, the NIH contracting office, and the General Services Administration contracting office, to determine whether:

- NIH contracting officers provided a fair opportunity to contractors in accordance with FAR 16.505;
- NIH and General Services Administration contracting officers documented source selection in accordance with FAR 16.505;
- DoD program officials, NIH contracting officers, and General Services Administration contracting officers documented their bid analysis, including price reasonableness of the awardee's proposal, and whether DoD recommended the appropriate contractor for award;
- DoD officials adequately justified the use of a non-DoD contract in accordance with DFARS 217.7802;
- DoD officials used the appropriate fund type for the items purchased in accordance with the DoD Financial Management Regulation, volume 2A, chapter 1, and the Purpose Statute, 31 U.S.C. 1301;
- DoD use funds in accordance with the bona fide needs rule, 31 U.S.C. 1502; and
- NIH and General Services Administration contracting officers appointed a COR and whether the COR conducted adequate contract oversight by developing quality assurance surveillance plans and documenting contractor performance in accordance with FAR 46.103, "Contracting office responsibilities," and FAR Subpart 46.4, "Government Contract Quality Assurance."

While reviewing the assisted orders, we interviewed NIH and General Services Administration contracting and funding personnel and DoD program personnel.

Use of Computer-Processed Data

We used two sets of computer-processed data to identify delivery orders and task orders to review. First, NIH provided a list of orders DoD awarded with both the assisted and direct acquisition method from the ECS III, CIO-SP2i, and IW2nd contracting vehicles.

Second, we used the EDA system to identify additional orders awarded with the direct acquisition method from the ECS III, CIO-SP2i, and IW2nd contracting vehicles.

We did not perform a reliability assessment of the data because we used the data only to identify orders to review. Once we selected an order, we reviewed it using the documentation from the order file. Therefore, the computer-processed data did not affect the performance of our audit steps.

We did identify discrepancies between the direct acquisition data provided by NIH and the data from the EDA system. We identified a total of 49 direct acquisitions awarded in FY 2007 for greater than \$100,000 to potentially review. Of those 49 orders, we found 37 through the EDA system. NIH identified a total of 28 orders, 16 of which were also found in the EDA system. Therefore, there were 21 orders identified solely by using the EDA system and 12 orders identified solely by NIH. NIH identified an additional four orders as being awarded in FY 2007; however, three of those orders were awarded in FY 2006, and one of the orders was not a DoD order. Clearly, neither set of data was complete. It is possible that there were direct acquisitions that were not included in either set of data. If there were, we could not identify those orders to review.

Appendix B. Prior Coverage

During the last 5 years, the Government Accountability Office (GAO), DoD IG, Army Audit Agency, and Air Force Audit Agency have issued 25 reports discussing interagency and information technology contracting. Unrestricted reports can be accessed over the Internet: GAO, <http://www.gao.gov>; DoD IG, <http://www.dodig.mil/audit/reports>; Army, <http://www.hqda.army.mil>; and Air Force, <http://www.afaa.hq.af.mil>.

GAO

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-05-274, “Contract Management: Opportunities to Improve Surveillance of Department of Defense Service Contracts,” March 2005

GAO Report No. GAO-05-207, “High-Risk Series: An Update,” January 2005

DoD IG

DoD IG Report No. D-2009-043, “FY 2007 DoD Purchases Made Through the U.S. Department of Veterans Affairs,” January 21, 2009

DoD IG Report No. D-2008-122, “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, “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-2007-098, "The Use and Control of Intragovernmental Purchases at the Defense Intelligence Agency," May 18, 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 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, Testing, and Evaluation, Defense-Wide Appropriation Account 97 FY1989/1990 0400," May 28, 2004

Army

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

Air Force

Air Force Report No. F2004-0006-FBP000, "GSA Military Interdepartmental Purchase Requests 353d Special Operations Group Kadena AB Japan," November 10, 2004

Air Force Report No. F2004-0046-FBP000, "GSA Military Interdepartmental Purchase Requests 390th Intelligence Squadron Kadena AB Japan," August 11, 2004

Appendix C. Task Order Awarded by the General Services Administration

During our audit, we reviewed all purchases made on behalf of DoD using the NIH CIO-SP2i contract. One of the awards under that contract was made by the General Services Administration. General Services Administration Fed Learn awarded a task order using the NIH CIO-SP2i multiple-award contract on behalf of the Defense Acquisition University (DAU). DAU has an interagency agreement with General Services Administration Fed Learn for e-learning and knowledge management support. This task order satisfies one of the interagency agreement's requirements.

We performed contracting and funding analysis for this task order. We identified an administrative issue related to how DAU provides funding to General Services Administration Fed Learn and how General Services Administration Fed Learn tracks the obligation of funds. In addition, we identified a \$700,056 potential BFNR violation and additional funds to be deobligated. See Appendix D, Table D-3, for a summary of the violations.

Obligating Funds After They Expire

Although DoD IG previously reported in both FY 2005 and FY 2007 on the General Services Administration's misuse of DoD funds accepted into the General Services Administration information technology fund, the General Services Administration continues to misunderstand the limitations of DoD appropriations by obligating funds after they expire. DoD IG reports D-2005-096, "DoD Purchases Made Through the General Services Administration," issued on July 29, 2005, and D-2007-007, "FY 2005 DoD Purchases Made Through the General Services Administration," issued on October 30, 2006, both identified problems with the General Services Administration's use of DoD funds accepted into the General Services Administration's revolving information technology fund. These reports state that both the General Services Administration and DoD officials misunderstood the law establishing the information technology fund, 40 U.S.C. 757, which states that the information technology fund "shall be available without fiscal year limitation." General Services Administration and DoD officials interpreted this statement to mean that expiring funds could be "parked" or "banked" at the General Services Administration for future purchases. To the contrary, the statement "shall be available without fiscal year limitation" applies to the capitalized fund itself. The funds reimbursing the capitalized fund must follow appropriations law.

General Services Administration officials continue to misunderstand the limitations of expired appropriations. A General Services Administration Financial Management official stated during the review that expired funds could be used "as long as funds are obligated to a task order during their period of availability or reasonable period of time thereafter (usually 90 days)." The latter part of this statement is not factual when the services are severable. We agree that the funds may be obligated during their period of availability; however, once appropriations have expired, they cannot be used to award new contracts or orders.

DAU should have in place internal controls to prevent misuse of its funds. DAU should provide a separate MIPR for each requirement under the interagency agreement. In addition, DAU should be aware of all fiscal law and regulations related to the funds it provides to General Services Administration Fed Learn and should keep track of when these funds expire, when they are obligated, and when they are used to pay for work performed.

MIPR Descriptions

The MIPRs provided by DAU to General Services Administration Fed Learn should be more specific. DAU sometimes provides MIPRs that are tied to multiple projects under the interagency agreement. DFARS PGI 253.208-1(c)(3)(ii) provides instructions for completing MIPRs and states that DoD should “normally restrict a MIPR to one major end item.” Providing one MIPR to cover multiple projects within the interagency agreement conflicts with this guidance and makes the funds’ audit trail more difficult to follow.

To identify the project or projects associated with a particular MIPR, DAU provided a DAU MIPR Request Form. The form outlines how much of the funds provided on the MIPR should be allotted for each particular project under the interagency agreement. However, of the 14 MIPRs that DAU provided through September 5, 2007, 1 of 14 MIPRs did not have a DAU MIPR Request Form, and 13 of 14 MIPRs did not have a fully completed DAU MIPR Request Form. There is a box labeled “MIPR #” on the form that would easily allow one to associate the MIPR with the DAU MIPR Request Form, but DAU did not complete the box for any of the 13 forms provided. For the remaining MIPR, DAU’s Executive Director for the e-Learning & Technologies Center wrote in the proper projects on the amendment to the interagency agreement. By not fully completing the DAU MIPR Request Form, DAU made it more difficult to determine which projects applied to each MIPR.

DAU should provide a more specific description on the MIPR and limit each MIPR to one project under the interagency agreement. By providing greater detail on the MIPR, it would eliminate the need for the DAU MIPR Request Form and would make it easier for both DAU and General Services Administration Fed Learn to ensure that the funds are used for their intended purpose. However, if DAU wishes to continue using the DAU MIPR Request Form, officials should ensure that the MIPR description states that further information is provided on the DAU MIPR Request Form and that the “MIPR #” box is completed on the form.

The General Services Administration Fed Learn’s accounting system lacked an audit trail for MIPRs. General Services Administration Fed Learn officials could not identify which MIPRs they obligated on the task order and its modifications. The officials told the audit team that they use a first-in, first-out methodology. This lack of control over use of MIPRs led to a potential BFNR violation.

Bona Fide Needs Rule

The BFNR is codified in 31 U.S.C. 1502, which states, “The balance of an appropriation or fund limited for obligation to a definite period is available only for payment of expenses properly incurred during the period of availability.” BFNR violations may cause Antideficiency Act violations.

In order to prevent these violations when using interagency acquisition, the Office of the Under Secretary of Defense (Comptroller)/Chief Financial Officer has issued numerous policy memoranda. The office issued “Proper Use of Interagency Agreements for Non-Department of Defense Contracts Under Authorities Other Than the Economy Act” on March 24, 2005. It stated, “DoD expired funds may *not* be used by a servicing agency to enter into a severable services contract.” On March 27, 2006, the office issued another memorandum with the same title stating that, despite previous guidance, “the use and control of DoD funds under interagency agreements require improvement. DoD purchases made through non-DoD entities continue to violate ... policies and existing regulations.” “Non-Economy Act Orders,” issued on October 16, 2006, reiterates that funds for severable services must be obligated during the funds’ period of availability. In order for an obligation to occur, 31 U.S.C. 1501 requires a binding written agreement.

However, the proliferation of these memoranda and DoD IG’s FY 2005 and FY 2007 reports on purchases that the General Services Administration made on behalf of DoD did not prevent another potential BFNR violation.

General Services Administration Fed Learn awarded order GST0007AC3004 on behalf of DAU on November 8, 2006, for a total ceiling price of \$17,088,533. The base period ended on November 5, 2007. During the base period, General Services Administration Fed Learn obligated \$3.5 million in O&M funds provided by DAU. On the task order award (effective November 6, 2006) and on modification 3 (effective February 27, 2007), General Services Administration Fed Learn obligated \$700,056 in FY 2006 O&M funds when FY 2007 O&M funds should have been used. FY 2006 O&M funds were available for obligation from October 1, 2005, through September 30, 2006. By obligating the FY 2006 O&M funds on the task order, General Services Administration Fed Learn potentially violated the BFNR.

In order to correct this potential BFNR violation, DAU should request that General Services Administration Fed Learn deobligate \$700,056 in FY 2006 O&M funds. In addition, after paying all invoices for work performed during the base period, there are FY 2007 O&M funds available for deobligation. DAU should request that General Services Administration Fed Learn deobligate \$169,817.69 in FY 2007 O&M funds tied to the base period. If General Services Administration Fed Learn does not deobligate these funds, and uses them to pay for work performed outside their period of availability, this will cause an additional BFNR violation. All deobligated funds should be returned to DoD for reporting to the Department of the Treasury.

Conclusion

These problems occurred primarily because the General Services Administration Fed Learn and DAU officials did not know, misinterpreted, or did not follow regulations. DAU officials did not adequately keep track of funds sent to the General Services Administration for each project under the interagency agreement. As a result, funds were not used as intended by Congress. The Under Secretary of Defense (Comptroller)/Chief Financial Officer should address the potential bona fide needs rule violation and other funding issues related to the Defense Acquisition University when it implements Recommendation C.

Unsolicited Management Comments on the Appendix and Our Response

Although not required to comment, the Acting Commissioner of the General Services Administration's Federal Acquisition Service provided the following comments on this appendix. For the full text of the Acting Commissioner's comments, see the Management Comments section of the report.

General Services Administration's Federal Acquisition Service Comments

The Acting Commissioner stated that the use of the FY 2006 funds to pay for work performed after the funds' period of availability does not constitute a bona fide needs rule violation: "GSA's obligation of funds complied with GSA policies in place during the time frame in which the contracting actions occurred." The Acting Commissioner also stated that the General Services Administration did not issue new guidance regarding the obligation of expiring funds until November 2006, which was after it awarded this order.

The Acting Commissioner stated that there is a system for tracking all activities associated with client funding (MIPRs) and provided the specific MIPRs associated with each modification of the task order. In particular, the Acting Commissioner stated that the General Services Administration obligated FY 2007 funds on modification 3. Therefore, he concluded that there was only \$475,236 in FY 2006 funds that the General Services Administration did not obligate according to DoD policy.

Our Response

On May 6, 2008, the audit team met with General Services Administration funding officials. During this meeting, we asked if the officials could identify which particular MIPR was obligated on a particular modification, and the funding officials stated that they could not. The funding officials stated that they used a first-in, first-out methodology for obligating funds. Based on this information, the audit team determined that the General Services Administration obligated FY 2006 funds on modification 3. Although the comments state that the General Services Administration obligated FY 2007 funds on modification 3, this documentation was not provided to the audit team during the audit, and as indicated previously, funding officials stated that they used a first-in, first-out methodology for obligating funds on the task order. If the General

Services Administration provided documentation to support its assertions that it obligated FY 2007 funds on modification 3, the audit team would agree that the use of those funds was proper and does not represent a potential bona fide needs rule violation. However, the FY 2006 funds obligated at the award of the task order remain a potential bona fide needs rule violation.

The General Services Administration stated that the use of FY 2006 funds to award a task order in FY 2007 was not a violation of the bona fide needs rule, only a violation of DoD policy. The bona fide needs rule, 31 U.S.C. 1502, states, “The balance of an appropriation or fund limited for obligation to a definite period is available only for payment of expenses properly incurred during the period of availability or to complete contracts properly made within that period of availability and obligated consistent with section 1501 of this title.” Section 1501 requires a binding written agreement between two agencies for an obligation to occur. The binding written agreement for the purpose of obligation would be the task order, which contractually binds the Government to pay for services. Therefore, it seems clear that obligating funds after those funds expired is a violation of the bona fide needs rule, which is codified in United States Code and in the FAR, which applies to the entire executive branch of the Federal Government, not just DoD. The General Services Administration’s statement that it did not have its new funding policy in place until November 2006 does not render the General Services Administration blameless. The General Services Administration should still be familiar with appropriations law. It seems that the agency’s original policy, to allow funds to be obligated for “a reasonable period of time” after the funds expired, was not legal.

An agency that chooses to do business with DoD should follow all relevant DoD policies, especially when obligating DoD funds. In short, the General Services Administration cannot use DoD funds in a manner that DoD could not use then. We disagree with the Acting Commissioner’s determination that the use of the FY 2006 funds to award the task order does not violate the bona fide needs rule.

Appendix D. Funding Analysis Summary

Table D-1. Funding Summary for Direct Acquisitions

Delivery Order	NIH Multiple-Award Contract	Potential Bona Fide Needs Rule Violation
W91QV1-07-F-2M06	ECS III	\$178,201.90
N65236-07-F-3817	ECS III	167,411.24
SP1300-07-F-0454	IW2nd	499,895.00
Total		\$845,508.14

Table D-2. Funding Summary for CIO-SP2i Assisted Acquisitions Awarded by NIH

Task Order	Amount Obligated*	Potential Bona Fide Needs Rule Violation Not Corrected	Potential Purpose Statute Violation	Potential Anti-deficiency Act Violation	Total To Deobligate	Total To Obligate
2054	\$38,566,339.91	\$37,878.17			\$37,878.17	\$562,286.96
2204	12,659,550.22	514,605.54			592,551.42	
2213	2,128,019.00					
2215	12,965,873.63	476,045.97			476,045.97	71,202.18
2228	43,622,277.01					
2232	18,022,029.96				140,635.25	141,642.32
2311	761,605.76				92,941.68	
2315	6,648,176.56	10,366.74			10,366.74	10,376.64
2323	6,518,049.12					
2331	10,590,037.91				1,343.21	
2361	5,354,573.83					
2369	11,428,094.78				268,393.70	
2376	20,332,953.41				610,523.16	
2377	19,120,954.19	83,744.99			84,520.35	
2380	20,476,791.18	2,395,814.42			2,395,814.42	924,055.13
2407	1,756,423.79					
2409	5,553,601.09			\$27,547.70	338,581.59	27,547.70
2412	4,397,982.77		\$455,086.82		455,086.82	462,220.17
2425	28,191,940.97					
2430	986,918.00			26,052.89	26,052.89	26,052.89
2480	1,304,148.68					
2503	10,753,297.55					
2519	325,853.66				\$76,446.57	
2520	3,741,049.00					
Total	\$286,206,541.98	\$3,518,455.83	\$455,086.82	\$53,600.59	\$5,607,181.94	\$2,225,383.99

* “Amount Obligated” is based on period of performance ending on or before March 31, 2008.

Appendix D. Funding Analysis Summary (continued)

Table D-3. Funding Summary for CIO-SP2i Assisted Acquisition Awarded by the
General Services Administration

Task Order	Amount Obligated	Bona Fide Needs Rule Violation Not Corrected	Total To Deobligate
GST0007AC3004	\$3,504,803.81	\$700,056.00	\$869,873.69

Appendix E. Potential Bona Fide Needs Rule Violations

We identified 10 task orders with potential BFNR violations totaling \$12.2 million. See Appendix D for a summary of the remaining violations.

Task Order 2054

We reported funding problems for this task order in our previous audit. We reviewed this order again to determine whether NIH corrected the potential BFNR violation.

NIH awarded task order 2054 on behalf of the United States Southern Command on October 1, 2001. The task order's period of performance consisted of a 1-year base period and four 1-year option periods. The task order ended on September 30, 2006. Over the life of the task order, NIH obligated \$40.0 million in O&M funds provided by United States Southern Command. NIH officials used \$3.6 million of those funds to pay for work performed outside of the funds' period of availability, causing a potential BFNR violation.

DoD funded the base period, October 1, 2001, through September 30, 2002, with \$7.9 million in FY 2002 O&M funds. The invoices for work performed during the base period totaled \$6.2 million. Although FY 2002 O&M funds of \$1.7 million remained, NIH used these funds to pay for work performed outside of the funds' period of availability.

DoD funded the option 1 period, October 1, 2002, through September 30, 2003, with \$12.0 million in FY 2002 and FY 2003 O&M funds. The FY 2002 O&M funds provided were atypical because they had a 2-year period of availability. The invoices for work performed during the option 1 period totaled \$10.6 million. Although FY 2002 or FY 2003 O&M funds of \$1.4 million remained, NIH used these funds to pay for work performed outside of the funds' period of availability.

DoD funded the option 2 period, October 1, 2003, through September 30, 2004, with \$8.7 million in FY 2004 O&M funds. The invoices for work performed during the option 2 period totaled \$8.5 million. Although FY 2004 O&M funds of \$192,297 remained, NIH used these funds to pay for work performed outside of the funds' period of availability.

DoD funded the option 3 period, October 1, 2004, through September 30, 2005, with \$7.9 million in FY 2005 O&M funds. The invoices for work performed during the option 3 period totaled \$7.7 million. Although FY 2005 O&M funds of \$0.3 million⁴ remained, NIH used these funds to pay for work performed outside of the funds' period of availability.

⁴ The discrepancy in remaining option 3 funds results from rounding.

DoD funded the option 4 period, October 1, 2005, through September 30, 2006, with \$5.3 million in FY 2006 O&M funds. The invoices for work performed during the option 4 period totaled \$8 million. Option 4 was underfunded by \$2.7 million and was partially paid for with expired funds from earlier option periods.

To correct the BFNR violations, DoD should have requested that NIH deobligate:

- \$1,736,388 in FY 2002 O&M funds;
- \$1,412,794 in FY 2003 O&M funds;
- \$192,297 in FY 2004 O&M funds; and
- \$264,423 in FY 2005 O&M funds.

In addition, to fully cover the cost of all work performed under option 4, DoD should have provided \$2,745,287 in FY 2006 O&M funds.

In an attempt to correct these potential BFNR violations, NIH deobligated \$3.6 million and United States Southern Command provided \$2.1 million. However, the amounts of each particular fund that NIH deobligated were incorrect. NIH deobligated the \$3.6 million on modification 44, which was effective June 20, 2007—almost a full 9 months after the task order ended. Specifically, NIH deobligated:

- \$1,750,647 in FY 2002 O&M funds;
- \$1,415,697 in FY 2003 O&M funds;
- \$154,419 in FY 2004 O&M funds; and
- \$285,139 in FY 2005 O&M funds.

DoD provided \$2,183,000 in FY 2006 O&M funds. Therefore, there is still a potential BFNR violation of \$37,878 in FY 2004 funds related to option 2 that were not corrected and \$562,287 in FY 2006 O&M funds are necessary to fully fund option 4. Until these discrepancies are fixed, the potential BFNR violation still exists and may lead to an Antideficiency Act violation.

Task Order 2204

We conducted a funding review of this task order in our previous audit. We reviewed this order again to determine whether NIH corrected the potential BFNR violation.

NIH awarded task order 2204 on behalf of the Joint Task Force-Global Network Operations on September 30, 2002. The task order's period of performance consisted of a 2-year base period and four 1-year option periods. Option 3 ended on September 29, 2007. From the base through option 3, NIH obligated \$12.7 million in O&M funds provided by Joint Task Force-Global Network Operations. NIH officials used \$514,606 of those funds to pay for work performed outside of the funds' period of availability, causing a potential BFNR violation.

DoD funded the base period, September 30, 2002, through September 29, 2004, with \$4 million in FY 2002, FY 2003, and FY 2004 O&M funds. The invoices for work performed during the base period totaled \$3.7 million. Although O&M funds of \$252,037 remained, NIH used these funds to pay for work performed outside of the funds' period of availability.

DoD funded the option 1 period, September 30, 2004, through September 29, 2005, with \$2.3 million in FY 2005 O&M funds. The invoices for work performed during the option 1 period totaled \$2.1 million. Although FY 2005 O&M funds of \$215,061 remained, NIH used these funds to pay for work performed outside of the funds' period of availability.

DoD funded the option 2 period, September 30, 2005, through September 29, 2006, with \$3.2 million in FY 2005 and FY 2006 O&M funds. The invoices for work performed during the option 2 period totaled \$3.2 million. FY 2005 or FY 2006 O&M funds of \$47,508 remained.

DoD funded the option 3 period, September 30, 2006, through September 29, 2007, with \$3.2 million in FY 2006 and FY 2007 O&M funds. The invoices for work performed during the option 3 period totaled \$3.1 million. FY 2006 or FY 2007 O&M funds of \$77,946 remained.

To correct the BFNR violations and deobligate expired funds, DoD should request that NIH deobligate:

- \$252,037 in FY 2002, FY 2003, or FY 2004 O&M funds tied to the base;
- \$215,061 in FY 2005 O&M funds tied to option 1;
- \$47,508 in FY 2005 or FY 2006 O&M funds tied to option 2; and
- \$77,946 in FY 2006 or FY 2007 O&M funds tied to option 3.

As of June 1, 2008, NIH had not corrected these potential BFNR violations. Until these funds are deobligated, the potential BFNR still exists and may lead to an Antideficiency Act violation.

Task Order 2215

NIH awarded task order 2215 on behalf of the Naval Education and Training Command on January 1, 2003. The task order's period of performance consisted of a 1-year base period and five 1-year option periods. Option 4 ended on December 31, 2007. From the base through option 4, NIH obligated \$13.0 million⁵ in O&M funds provided by Naval Education and Training Command. NIH officials used \$476,036 of those funds to pay for work performed outside of the funds' period of availability, causing a potential BFNR violation.

DoD funded the base period, January 1 through December 31, 2003, with \$2.1 million in FY 2003 and FY 2004 O&M funds. The invoices for work performed during the base period totaled \$1.9 million. O&M funds of \$266,886 remained, of which \$24,959 were FY 2004 O&M funds. NIH used the remaining \$241,927 of FY 2003 funds to pay for work performed outside of the funds' period of availability.

⁵ The sum of base and option funding differs from \$13.0 million due to rounding.

DoD funded the option 1 period, January 1 through December 31, 2004, with \$2.2 million in FY 2004 O&M funds. The invoices for work performed during the option 1 period totaled \$2.3 million. Option 1 was underfunded by \$34,780. The FY 2004 O&M funds from the base period were available to be obligated during the option 1 period of performance. Therefore, the \$24,959 remaining in the base period offsets the deficit from option 1, leaving a \$9,821 deficit.

DoD funded the option 2 period, January 1 through December 31, 2005, with \$3.6 million in FY 2005 O&M funds. The invoices for work performed during the option 2 period totaled \$3.4 million. FY 2005 O&M funds of \$243,939 remained. The FY 2005 O&M funds were available for obligation during the option 1 period of performance. Therefore, the remaining \$9,821 deficit from option 1 is offset by the remaining FY 2005 O&M funds, leaving an excess of \$234,119 in FY 2005 O&M funds. NIH used the entire \$234,119 in FY 2005 O&M funds to pay for work performed outside of their period of availability.

DoD funded the option 3 period, January 1 through December 31, 2006, with \$2.6 million in FY 2006 O&M funds. The invoices for work performed during the option 3 period totaled \$2.7 million. Option 3 was underfunded by \$114,972.

DoD funded the option 4 period, January 1 through December 31, 2007, with \$2.4 million in FY 2007 O&M funds. The invoices for work performed during the option 4 period totaled \$2.3 million. FY 2007 O&M funds of \$43,770 remained. The FY 2007 O&M funds were available for obligation during the option 3 period of performance. Therefore, the \$114,972 deficit from option 3 is offset by the remaining FY 2007 O&M funds, leaving an option 3 deficit of \$71,202.

To correct the BFNR violations, DoD should request that NIH deobligate a total of \$476,045.97:

- \$241,927 in FY 2003 O&M funds; and
- \$234,119 in FY 2005 O&M funds.

As of June 1, 2008, NIH had not corrected these potential BFNR violations. In addition, to fully fund option 3, DoD should provide \$71,202 in FY 2006 or FY 2007 O&M funds. Until these discrepancies are fixed, the potential BFNR violation still exists and may lead to an Antideficiency Act violation.

Task Order 2228

We conducted a funding review of this task order in our previous audit. We reviewed the order again to determine whether NIH corrected the potential BFNR violation.

NIH awarded task order 2228 on behalf of United States Southern Command on June 1, 2003. The task order's period of performance consisted of a 10-month base period and four 1-year option periods. Option 3 ended on April 30, 2007. From the base through

option 3, NIH obligated \$45.0 million⁶ in O&M funds provided by United States Southern Command. NIH officials used \$2.4 million of those funds to pay for work performed outside of the funds' period of availability, causing a potential BFNR violation.

DoD funded the base period, June 1, 2003, through April 30, 2004, with \$9.5 million in FY 2003 O&M funds. The invoices for work performed during the base period totaled \$7.7 million. Although FY 2003 O&M funds of \$1.8 million remained, NIH used the entire balance of those funds to pay for work performed outside of the funds' period of availability.

DoD funded the option 1 period, May 1, 2004, through April 30, 2005, with \$10.7 million in FY 2004 O&M funds. The invoices for work performed during the option 1 period totaled \$11.5 million. Option 1 was underfunded by \$806,065.

DoD funded the option 2 period, May 1, 2005, through April 30, 2006, with \$10.8 million in FY 2005 O&M funds. The invoices for work performed during the option 2 period totaled \$10.2 million. Although FY 2005 O&M funds of \$598,677 remained, NIH used the entire balance of those funds to pay for work performed outside of the funds' period of availability.

DoD funded the option 3 period, May 1, 2006, through April 30, 2007, with \$13.9 million in FY 2006 O&M funds. The invoices for work performed during the option 3 period totaled \$14.2 million. Option 3 was underfunded by \$237,512.

To correct the BFNR violations, DoD should have requested that NIH deobligate:

- \$1.8 million FY 2003 O&M funds; and
- \$598,677 in FY 2005 O&M funds.

In addition, to fully cover the cost of all work performed under options 1 and 3, DoD should have provided:

- \$806,065 in FY 2004 or FY 2005 O&M funds; and
- \$237,512 in FY 2006 or FY 2007 funds.

NIH deobligated the appropriate funds on modification 16, which was effective on June 20, 2007. United States Southern Command provided NIH with \$806,605 in FY 2004 O&M funds and \$237,512 in FY 2006 O&M funds that NIH obligated on modification 1 in the new business system, which was effective September 7, 2007. For work performed from the base through option 3, all potential BFNR violations were corrected and there are no further funds to be obligated or deobligated.

⁶ The sum of base and option funding differs from \$45.0 million due to rounding.

Task Order 2232

We conducted a funding review of this task order in our previous audit. We reviewed this order again to determine whether NIH corrected the potential BFNR violation.

NIH awarded task order 2232 on behalf of Joint Interagency Task Force South on May 1, 2003. The task order's period of performance consisted of a 5-month base period and six 1-year option periods. Option 4 ended on September 30, 2007. From the base through option 4, NIH obligated \$18.8 million in O&M funds provided by Joint Interagency Task Force South. NIH officials used \$512,620 of those funds to pay for work performed outside of the funds' period of availability, causing a potential BFNR violation.

DoD funded the base period, May 1, 2003, through September 30, 2003, with \$1.4 million in FY 2003 O&M funds. The invoices for work performed during the base period totaled \$1.4 million. The base was underfunded by \$11,111.

DoD funded the option 1 period, October 1, 2003, through September 30, 2004, with \$3.6 million in FY 2004 O&M funds. The invoices for work performed during the option 1 period totaled \$3.6 million. Option 1 was underfunded by \$43,526.

DoD funded the option 2 period, October 1, 2004, through September 30, 2005, with \$4.2 million in FY 2005 O&M funds. The invoices for work performed during the option 2 period totaled \$4 million. Although FY 2005 O&M funds of \$0.1 million⁷ remained, NIH used the entire balance of those funds to pay for work performed outside of the funds' period of availability.

DoD funded the option 3 period, October 1, 2005, through September 30, 2006, with \$4.7 million in FY 2006 O&M funds. The invoices for work performed during the option 3 period totaled \$4.3 million. Although FY 2006 O&M funds of \$0.4 million remained, NIH used the entire balance of those funds to pay for work performed outside of the funds' period of availability.

DoD funded the option 4 period, October 1, 2006, through September 30, 2007, with \$4.9 million in FY 2007 O&M funds. The invoices for work performed during the option 4 period totaled \$4.6 million. FY 2007 O&M funds of \$0.4 million⁸ remained.

To correct the BFNR violations and deobligate expired funds, DoD should have requested that NIH deobligate:

- \$130,656 in FY 2005 O&M funds;
- \$381,954 in FY 2006 O&M funds; and
- \$350,635 in FY 2007 O&M funds.

⁷ The discrepancy in remaining option 2 funds results from rounding.

⁸ The discrepancy in remaining option 4 funds results from rounding.

In addition, to fully cover the cost of all work performed during the base and option 1 periods, DoD should have provided:

- \$11,111 in FY 2003 O&M funds; and
- \$43,526 in FY 2004 O&M funds.

NIH deobligated \$599,674 on modification 18, which was effective June 21, 2007. Specifically, NIH deobligated:

- \$130,714 in FY 2005 O&M funds; and
- \$468,959 in FY 2006 O&M funds.

NIH deobligated \$87,006 too much in FY 2006 O&M funds. Therefore, to fully fund all work performed, DoD should provide NIH with a total of \$141,642 in O&M funds:

- \$11,111 in FY 2003 O&M funds;
- \$43,526 in FY 2004 O&M funds; and
- \$87,006 in FY 2006 O&M funds.

In addition, NIH deobligated \$210,000 in FY 2007 O&M funds on modification 19, which was effective on August 10, 2007. Therefore, the potential BFNR violations involving FY 2005 and FY 2006 O&M funds were corrected. However, there is still \$140,635 in FY 2007 O&M funds that DoD should request NIH to deobligate. If NIH uses these funds to pay for work performed after the funds' period of availability, it will cause a potential BFNR violation.

Task Order 2315

We conducted a funding review of this task order in our previous audit. We reviewed this order again to determine whether NIH corrected the potential BFNR violation.

NIH awarded task order 2315 on behalf of the Air Force Materiel Command Communications on May 19, 2004. The task order's period of performance consisted of a 4-month base period, one 1-year option period, and one 19-month option period. The task order ended on April 30, 2007. Over the life of the task order, NIH obligated \$6.6 million in O&M funds provided by Air Force Materiel Command. NIH officials used \$10,367 of FY 2004 O&M funds to pay for work performed outside of the funds' period of availability, causing a potential BFNR violation.

DoD funded the base period, May 19 through September 21, 2004, with \$324,293 in FY 2004 O&M funds. The FY 2004 O&M funds did not expire until September 30, 2004. The invoices for work performed during the base period and through September 30, 2004, totaled \$313,925. Although FY 2004 O&M funds of \$10,367 remained, NIH used the entire balance of those funds to pay for work performed outside of the funds' period of availability.

DoD funded the option 1 period, September 22, 2004, through September 21, 2005, with \$1.7 million in FY 2004 O&M funds and \$1.7 million FY 2005 O&M funds for a total of \$3.4 million. The FY 2005 O&M funds did not expire until September 30, 2005. The

invoices for work performed from October 1, 2004, through September 30, 2005, totaled \$2.9 million. FY 2005 O&M funds of \$460,220 remained.

DoD funded the option 2 period, September 22, 2005, through April 30, 2007, with \$2.9 million in FY 2006 and FY 2007 O&M funds. The invoices for work performed from October 1, 2005, through April 30, 2007, totaled \$3.4 million. Option 2 was underfunded by \$470,597. The FY 2005 funds remaining in option 1 were available for obligation during the option 2 period of performance. Therefore, those funds offset the deficit in the option 2 period, leaving a \$10,377 deficit in option 2.

To correct this BFNR violation, DoD should have requested that NIH deobligate \$10,367 in FY 2004 O&M funds. In addition, to cover the cost of all work performed during option 2, DoD should have provided \$10,377 in FY 2006 or FY 2007 O&M funds.

As of June 1, 2008, NIH had not corrected this potential BFNR violation. Until the funds are deobligated, the potential BFNR violation exists and may lead to a potential Antideficiency Act violation.

Task Order 2361

We conducted a funding review of this task order in our previous audit. The DoD Criminal Investigative Task Force took corrective action prior to the issuance of our previous report. We reviewed this order again to determine whether there were any new funding issues, since the corrective actions were taken.

NIH awarded order 2361 on behalf of the DoD Criminal Investigative Task Force on January 6, 2005. The task order's period of performance consisted of a 1-year base period, a 1-year option period, and a 15-month option period. Option 1 ended on January 5, 2007. Option 2 was originally to end on January 5, 2008; however, the DoD Criminal Investigative Task Force requested that NIH extend the option 2 period of performance through April 5, 2008. From the base through option 1, NIH obligated \$7.5 million in O&M funds provided by DoD Criminal Investigative Task Force. NIH officials used \$1.1 million in FY 2005 O&M funds to pay for work performed outside of the funds' period of availability, causing a potential BFNR violation.

DoD funded the base period, January 6, 2005, through January 5, 2006, with \$3.2 million in FY 2005 O&M funds. The invoices for work performed during the base period totaled \$2.2 million. Although FY 2005 O&M funds of \$1.1 million remained, NIH used the entire balance of these funds to pay for work performed outside of the funds period of availability.

DoD funded the option 1 period, January 6, 2006, through January 5, 2007, with \$4.3 million in FY 2006 O&M funds. The invoices for work performed during the option 1 period totaled \$3.2 million. FY 2006 O&M funds of \$1.1 million remained.

To correct this potential BFNR violation and prevent further misuse of funds, DoD Criminal Investigative Task Force requested that NIH deobligate \$1.1 million in FY 2005

O&M funds and \$1.1 million in FY 2006 funds. NIH deobligated these funds on modification 9, which was effective on May 5, 2007. For work performed from the base through option 1, DoD Criminal Investigative Task Force fully corrected the potential BFNR violation and there are no further funds to be obligated or deobligated. We commend DoD Criminal Investigative Task Force management for their diligence in taking immediate corrective action.

Task Order 2369

We conducted a funding review of this task order in our previous audit. We reviewed this order again to determine whether NIH corrected the potential BFNR violation.

NIH awarded order 2369 on behalf of Defense Information Systems Agency Manpower, Personnel, and Security Directorate on January 27, 2005. The task order's period of performance consisted of a 1-year base period and four 1-year option periods. Option 2 ended on January 26, 2008. From the base through option 2, NIH obligated \$11.4 million in Research, Development, Test, and Evaluation funds provided by Defense Information Systems Agency Manpower, Personnel, and Security Directorate. NIH officials used \$1.2 million of FY 2004 Research, Development, Test, and Evaluation funds to pay for work performed outside of the funds' period of availability, causing a potential BFNR violation.

DoD funded the base period, January 27, 2005, through January 26, 2006, with FY 2004 Research, Development, Test, and Evaluation funds of \$4 million. The invoices for work performed during the base period totaled \$2.8 million. Although FY 2004 funds of \$1.2 million remained, NIH used the entire balance of those funds to pay for work performed outside of the fund's period of availability.

DoD funded the option 1 period, January 27, 2006, through January 26, 2007, with FY 2005 Research, Development, Test, and Evaluation funds of \$3.4 million. The invoices for work performed during the option 1 period totaled \$3.2 million. FY 2005 funds of \$209,695 remained.

DoD funded the option 2 period, January 27, 2007, through January 26, 2008, with FY 2006 Research, Development, Test, and Evaluation funds of \$4 million. The invoices for work performed during the option 2 period totaled \$3.7 million. FY 2006 funds of \$268,394 remained.

To correct the BFNR violation and deobligate expired funds, DoD should have requested that NIH deobligate:

- \$1.4 million in FY 2004 Research, Development, Test, and Evaluation funds; and
- \$268,394 in FY 2006 Research, Development, Test, and Evaluation funds.

In an attempt to correct the potential BFNR violation, NIH deobligated \$1,373,725 in FY 2004 Research, Development, Test, and Evaluation funds on modification 3 in the new business system, which was effective August 1, 2007. Although NIH deobligated \$209,695 too much in FY 2004 funds, the excess FY 2005 funds remaining in option 1

offset the excessive deobligation. The FY 2005 funds were available for obligation during the base period of performance; therefore, they could be used to offset the deficit in the base period. The BFNR violation was corrected and there are no funds to be deobligated for option 1.

There are \$268,394 in FY 2006 Research, Development, Test, and Evaluation funds remaining for option 2. These funds should be deobligated, because they are expired. If NIH uses these funds to pay for work performed after option 2, this will cause a potential BFNR violation.

Task Order 2377

We conducted a funding review of this task order in our previous audit. We reviewed this order again to determine whether NIH corrected the potential BFNR violation.

NIH awarded order 2377 on behalf of the Office of the Secretary of the Air Force Financial Management, Information Systems and Technology Directorate on February 21, 2005. The task order's period of performance consisted of a 1-year base period and four 1-year option periods. Option 2 ended on February 20, 2008. From the base through option 2, NIH obligated \$19.1 million in O&M funds provided by the Office of the Secretary of the Air Force Financial Management, Information Systems and Technology Directorate. NIH officials used \$83,745 in FY 2006 O&M funds to pay for work performed outside of the funds' period of availability, causing a potential BFNR violation.

DoD funded the base period, February 21, 2005, through February 20, 2006, with \$5.7 million in FY 2005 O&M funds. The invoices for work performed during the base period totaled \$5.7 million. The base was underfunded by \$14,521.

DoD funded the option 1 period, February 21, 2006, through February 20, 2007, with \$7.2 million in FY 2006 O&M funds. The invoices for work performed during the base period totaled \$7.1 million. FY 2006 O&M funds of \$98,266 remained. FY 2006 O&M funds were available for obligation during the base period. Therefore, part of the remaining FY 2006 O&M funds from option 1 could be used to offset the \$14,251 deficit from the base. After offsetting the deficit from the base, FY 2006 O&M funds of \$83,745 remained, which NIH used to pay for work performed outside of the funds' period of availability.

DoD funded the option 2 period, February 21, 2007, through February 20, 2008, with \$6.2 million in FY 2007 O&M funds. The invoices for work performed during the option 2 period totaled \$6.2 million. FY 2007 O&M funds of \$775 remained.

As of June 1, 2008, NIH had not corrected this potential BFNR violation. To correct the potential BFNR violation, the Office of the Secretary of the Air Force Financial Management, Information Systems and Technology Directorate should request that NIH deobligate \$83,745 in FY 2006 O&M funds. If the BFNR violation is not corrected, this could lead to an Antideficiency Act violation. In addition, to prevent further misuse of

expired funds, the Office of the Secretary of the Air Force Financial Management, Information Systems and Technology Directorate should request that NIH deobligate \$775 in FY 2007 O&M funds.

Task Order 2380

We conducted a funding review of this task order in our previous audit. We reviewed this order again to determine whether NIH corrected the potential BFNR violation.

NIH awarded order 2380 on behalf of Pentagon Telecommunications Center on February 23, 2005. The task order's period of performance consisted of a 1-year base period and four 1-year option periods. Option 2 ended on February 22, 2008. From the base through option 2, NIH obligated \$23.4 million⁹ in O&M funds provided by Pentagon Telecommunications Center. NIH officials used \$2.4 million in FY 2005 O&M funds to pay for work performed outside of the funds' period of availability, causing a potential BFNR violation.

DoD funded the base period, February 23, 2005, through February 22, 2006, with \$14.4 million in FY 2005 and FY 2006 O&M funds. The invoices for work performed during the base period totaled \$6.6 million. FY 2005 and FY 2006 O&M funds of \$7.8 million remained, of which \$5.4 million were FY 2006 O&M funds. NIH deobligated \$2,874,797 of these expired FY 2006 O&M funds on modification 17, which was effective May 4, 2007. After the deobligation, base funds of \$5 million remained, of which \$2.6 were FY 2006 O&M funds.

DoD funded the option 1 period, February 23, 2006, through February 22, 2007, with \$2.7 million in FY 2006 O&M funds. The invoices for work performed during that time totaled \$6.7 million. Option 1 was underfunded by \$4 million. The FY 2006 O&M funds from the base were available for obligation during the option 1 period. Therefore, the remaining \$2.6 million in FY 2006 O&M funds offset the option 1 deficit, leaving a deficit of \$1.4 million. After using the FY 2006 O&M funds from the base, there were \$2.4 million in FY 2005 O&M funds remaining in the base, which NIH used to pay for work performed outside of the FY 2005 O&M funds' period of availability.

DoD funded the option 2 period, February 23, 2007, through February 22, 2008, with \$6.2 million in FY 2007 O&M funds. The invoices for work performed during the option 2 period totaled \$5.7 million. FY 2007 O&M funds of \$476,579 remained. FY 2007 O&M funds were available for obligation during the option 1 period. Therefore, the balance of FY 2007 O&M funds remaining in option 2 offset a portion of the deficit from the option 1 period. This left an option 1 deficit of \$924,055 and no funds to be deobligated or provided for option 2.

As of June 1, 2008, NIH had not corrected this potential BFNR violation and DoD had not provided funds to cover the cost of all work performed during option 1. To correct

⁹ The sum of base and option funding differs from \$23.4 million due to rounding.

this potential BFNR violation, the Pentagon Telecommunications Center should request that NIH deobligate \$2,395,814 in FY 2005 O&M funds. If this BFNR violation is not corrected, it may lead to an Antideficiency Act violation. In addition, to fully cover the cost of all work performed during option 1, DoD should provide NIH with \$924,055 in FY 2006 or FY 2007 O&M funds.

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



ACQUISITION
TECHNOLOGY
AND LOGISTICS

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

FEB 12 2009

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

THROUGH: DIRECTOR, ACQUISITION RESOURCES, AND ANALYSIS

78
21/2/09

SUBJECT: Response to DoDIG Draft Audit Report on "FY 2007 DoD Purchases
Made Through the National Institutes of Health," (Project No. D2007-
D000CF-0262.000) dated December 15, 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 institute mandatory training for DoD contracting officers. This mandatory training should address how the rules and regulations governing multiple-award contracts differ from those governing the General Services Administration's Federal Supply Schedules, including the award and administration of task and delivery orders. Furthermore, the training should direct contracting officers to consult the applicable agency's web site before using that agency's multiple-award contract.

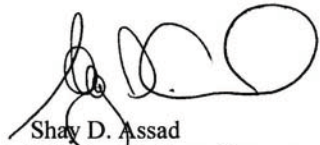
Response: Partially concur. The recommended training is already included in the Defense Acquisition University (DAU) courses, CLC 030 "Essentials of Interagency Acquisitions/Fair Opportunity" and CLC 033 "Contract Format and Schedule for the DoD e-Business Environment." The courses address how the rules and regulations governing multiple-award contracts differ from those governing the General Services Administration's Federal Supply Schedules, including the award and administration of task and delivery orders. DAU has advised that 2,762 students have completed the CLCs in Fiscal Year 2009. We will review the course materials with DAU to ensure they are accurate and complete.

Prior to placing an order under NASA's SEWP contract DoD policy mandates that all warranted contracting officers and purchase card holders complete training provided by NASA (<http://www.sewp.nasa.gov/dod/info.shtml>). In addition, prior to placing an order under an



NIH NITAAC contract, DoD encourages contracting officers to use the “fair opportunity” tools provided on the NIH website (http://nitaac.nih.gov/ecs3_for_dodcustomers.asp)

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

A handwritten signature in black ink, appearing to read 'Shay D. Assad', with a large circular flourish at the end.

Shay D. Assad
Director, Defense Procurement

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



COMPTROLLER

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

MEMORANDUM FOR PROGRAM DIRECTOR, DEFENSE FINANCIAL
AUDITING SERVICE, OFFICE OF INSPECTOR
GENERAL, DEPARTMENT OF DEFENSE

SUBJECT: Draft Audit Report, "FY 2007 DoD Purchases Made Through the
National Institutes of Health", Project No. D2007-D000CF-0262.000

This memo is in response to the subject December 15, 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 at Attachment 1.

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 email at rodney.gregory@osd.mil or by telephone at 703-697-1008.

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

Attachments:
As stated

cc:
ODGC(F)
DCFO

Attachment 1
Response to Draft Audit Report Recommendations

Office of the Inspector General (OIG), Department of Defense (DoD)
Draft Audit Report, "FY 2007 DoD Purchases Made Through the National
Institutes of Health", Project No. D2007-D000CF-0262.000

OIG Recommendation C1. Instruct DoD organizations that provided funds to the National Institutes of Health for assisted acquisition, including the Defense Acquisition University discussed in Appendix C, to work with National Institutes of Health officials to determine funds needing to be obligated and deobligated to correct potential bona fide needs rule violations, address potential Purpose Statute violations, correct potential Antideficiency Act violations, prevent the misuse of and return expired funds, and fully cover the cost of all work performed.

OSD Response. Concur. The OUSD(C) will work with NIH and the DoD Components to identify funds to be obligated and deobligated; and instruct the Components to review and take appropriate action on the assisted acquisition cases identified in Appendix C of the draft report by the end of 2nd Qtr. FY 2009.

OIG Recommendation C2. Verify that DoD organizations properly and accurately addressed the funding issues identified above. If funds are not available to correct the potential bona fide needs rule violations, the Under Secretary of Defense (Comptroller)/Chief Financial Officer should initiate preliminary reviews for potential Antideficiency Act violations.

OSD Response. Concur. OUSD(C) will track the progress of the actions taken to address the funding issues in the previous recommendation; and OUSD(C) will require that Components conduct preliminary reviews for potential Antideficiency Act violations by the end of 2nd Qtr. FY 2009.

OIG Recommendation C3. Determine how its office did not follow up on four BFNR violations reported last year and take action to ensure such an oversight does not happen in the future.

OSD Response. Concur. OUSD(C) has determined that when the cases were first identified, more than one person was responsible for entering potential ADA cases into the OUSD(C) inventory, reconciling with DoDIG information, and ensuring that follow-up action was taken. The lack of a single accountable individual caused a lack of version control and an inability to accurately reconcile interagency cases.

As a result, only one of the cases was included in the OUSD(C) inventory and was investigated for a potential Purpose Statute violation, but not for a BFNR violation. The other three cases were not included in the OUSD(C) inventory and were not investigated. When the DoDIG made this office aware of the oversight, the Components were asked to review the four cases. These cases are now in the OUSD(C) inventory and their disposition will be tracked along with the new cases identified in the draft report.

To resolve the problem, OUSD(C) established a single accountable individual, within the Business Integration Office (BIO), who is responsible for entering and reconciling potential interagency ADA cases. This action ensures that potential interagency cases resulting from future audits will be handled appropriately.

Software Engineering Center-Belvoir Comments



DEPARTMENT OF THE ARMY
U.S. ARMY COMMUNICATIONS-ELECTRONICS COMMAND
SOFTWARE ENGINEERING CENTER-BELVOIR
6000 6TH STREET, SUITE S113
FORT BELVOIR, VIRGINIA 22060-5506

REPLY TO
ATTENTION OF

AMSEL-SE-IS-C

29 January 2009

SUBJECT: Comments for Consideration: Final Draft Report DOD/IG FY2007 DoD Purchases Made through National Institutes of Health

DISCUSSION.

1. On 22 January 2009 SEC-B received the current SAB for review. We would like to submit these comments for consideration.
2. The SEC-B and Enterprise Solutions Competency Center staff met with the DOD IG on or about the 27th of August, 2008 to discuss the findings of the recent review. DODIG personnel agreed that the period of performance of 30 November 2008 for the first contract year prohibited ESCC from taking immediate action to change task orders or the contract vehicle without significant impact to several organizations within DoD that rely on the technical support currently being provided. The 90 days remaining to re-compete another contract was not in the best interests of the government, would cause undue burden on the government to re-compete, and would affect mission capability. In light of these potential issues, DODIG personnel agreed that one additional option year could be granted, caveated with the implementation of the DODIG recommendations.
3. In accordance with Page 23, Para 5, SEC-B has, since the beginning of the audit, developed two additional task orders to supplement TO 2524 for this current (last) option year. SEC-B and the ESCC are participating in the creation of an Indefinite Delivery Indefinite Quantity (IDIQ) Army Contracting Command (SSES follow-on) multi-year contract vehicle that will absorb the scope of work currently within the NIH TOs.
4. In accordance with Page 24, Para 2, SEC-B recognized the increase in efforts prior to the audit and had been taking steps to increase the government project management staff to oversee all work conducted on TO 2524. During the audit, ESCC increased its staff on this program from 2 to 5. To ensure continuity with NIH the original COR maintained his relationship and activity, while additionally trained CORs were brought into the project to manage specific technical efforts.

SUBJECT: Comments for Consideration: Final Draft Report DOD/IG FY2007 DoD Purchase Made through National Institutes of Health

5. The Software Engineering Center, Fort Belvoir, VA strives to use Army and DoD contracts as available. During this period of transition from 2007 to 2008 as the Army Contracting Command was formed and many Military District of Washington (MDW) contracting activities were affected, a sharp decrease in productivity and customer support forced us to use other venues to support our customers. A DODIG review of the customer satisfaction rating of the Army Contracting Command and other PARCs involved in the MDW to support DoD activities may help many of the issues addressed in this report.
6. Point of Contact for this memorandum is Mr Marc Poole 703-806-3189, marc.poole@us.army.mil.



Thomas C. Loper II
Colonel
Commander, United States Army

Space and Naval Warfare Systems Center Atlantic Comments



DEPARTMENT OF THE NAVY
OFFICE OF THE ASSISTANT SECRETARY
RESEARCH, DEVELOPMENT AND ACQUISITION
1000 NAVY PENTAGON
WASHINGTON DC 20380-1000

JAN 30 2009

MEMORANDUM FOR DEPARTMENT OF DEFENSE - INSPECTOR GENERAL
ARLINGTON, VIRGINIA

SUBJECT: Department Of Defense Inspector General Draft
Report Purchases Made Through the National
Institutes of Health (Project No. D2007-D000CF-
0262.000)

The Department of the Navy (DoN) hereby endorses and forwards the attached Space and Naval Warfare Systems Command response to subject draft report. The response provides detailed comments regarding the findings and recommendations contained in the subject draft report. The Navy's response should be incorporated into the final DODIG report.

If you have any questions pertaining to this memo or its attachments, please refer them to Ms. Sherry Bonaiuto at Sherry.Bonaiuto@navy.mil or at 703-693-2931.

A handwritten signature in cursive script that reads "Bruce A. Sharp".

Bruce A. Sharp
Director, Program Analysis and
Business Transformation
Deputy Assistant Secretary of
the Navy (Acquisition and
Logistics Management)

Attachments:
As stated



DEPARTMENT OF THE NAVY
SPACE AND NAVAL WARFARE SYSTEMS COMMAND
4301 PACIFIC HIGHWAY
SAN DIEGO, CA 92116-3127

7502
Ser 8.6/004
22 Jan 09

FIRST ENDORSEMENT on SPAWARSYSCEN Atlantic ltr
Ser 86/09-008 of 13 Jan 2009

From: Commander, Space and Naval Warfare Systems Command
To: Department of Defense, Inspector General
Via: Assistant Secretary of the Navy (Research, Development
and Acquisition)

Subj: DEPARTMENT OF DEFENSE INSPECTOR GENERAL (DODIG) DRAFT AUDIT
REPORT ON FY 2007 DOD PURCHASES MADE THROUGH THE NATIONAL
INSTITUTES OF HEALTH, PROJECT NO. D2007-D000CF-0262,
DATED 15 DECEMBER 2008

1. Forwarded with concurrence.
2. Questions concerning this correspondence may be directed to
Mr. John Gampel, SPAWARSYSCOM Inspector General, at (619) 524-7065
or DSN 524-7065.


R. F. SMITH
Deputy Commander

Copy to:
SPAWARSYSCEN Atlantic



DEPARTMENT OF THE NAVY
SPACE AND NAVAL WARFARE SYSTEMS CENTER ATLANTIC
P.O. BOX 190022
NORTH CHARLESTON, SC 29419-0022

IN REPLY REFER TO:
7502
Ser 86/09-008
13 JAN 2009

From: Commanding Officer, Space and Naval Warfare Systems Center,
Atlantic
To: Department of Defense, Inspector General, Arlington VA
Via: Commander, Space and Naval Warfare Systems Command (8.6)
Subj: DEPARTMENT OF DEFENSE INSPECTOR GENERAL (DODIG) DRAFT AUDIT
REPORT ON FY 2007 DOD PURCHASES MADE THROUGH THE NATIONAL
INSTITUTES OF HEALTH, PROJECT NO. D2007-D000CF-262.000,
15 DECEMBER 2008
Ref: (a) DoDIG E-mail of 15 Dec 08
Encl: (1) SSC Atlantic Response to Recommendation from the DoDIG Draft
Audit Report

1. Reference (a) forwarded the subject draft report for review and comment. Enclosure (1) provides our response to the finding and recommendation contained in reference (a). We concur with the recommendation.
2. My point of contact is Ms. Glenda Algozzini, Code 86, telephone (843) 218-5745, DSN 588-5745.


B. C. URBON

**Space and Naval Warfare Systems Center Atlantic
Response to Recommendation in Department of Defense
Office of Inspector General Draft Audit Report
D2007-D000CF-0262.000**

Recommendation A.2. We recommend that the Commanding Officer, Space and Naval Warfare Systems Center Charleston perform a review and initiate appropriate disciplinary or administrative action against contracting officers who repeatedly failed to follow acquisition regulations and continue to use incorrect award procedures when using multiple-award contracts.

Concur. A review will be performed and appropriate disciplinary or administrative action will be initiated as appropriate.
Estimated Completion Date: 31 March 2009.

Other Comments. Draft report page 30.

This Command also performed a review on the potential bona fide need violation for contract N65236-06-F-3817 as stated in Finding C. "Funding Analysis". The review concluded there was a need for the items during the year of funds availability; however, the lead time for the items was two to four weeks which resulted in a delivery date of October 2007. We do not believe a bona fide need violation occurred.

Enclosure (1)

Aeronautical Systems Center Comments



DEPARTMENT OF THE AIR FORCE
HEADQUARTERS AERONAUTICAL SYSTEMS CENTER (AFMC)
WRIGHT-PATTERSON AIR FORCE BASE OHIO

MEMORANDUM FOR DoD IG (MR TERRY L. MCKINNEY)
DEPARTMENT OF DEFENSE INSPECTOR GENERAL
400 ARMY NAVY DRIVE (ROOM 300)
ARLINGTON VA 22202-4704

16 Jan 2009

FROM: ASC/CC

SUBJECT: Response to DoD IG Audit Project D2007-D00CF-0262.000, 15 Dec 08

1. The below input is ASC's course of action in response to the above DoD IG project requesting that the ASC/CC perform a review and initiate appropriate disciplinary or administrative action against contracting officers who repeatedly failed to follow acquisition regulations and continue to use incorrect award procedures when using multiple award contracts.

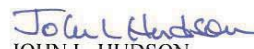
a. Perform a thorough review of recent orders against multiple award contracts to determine if similar problems continue. A preliminary review of orders against multiple award contracts accomplished during 4th Quarter 08 did not disclose any problems. (EST COMPLETION FEB 09)

b. Training on proper use of Fair Opportunity procedures when awarding orders against multiple award contracts will be developed and presented at a PKE Division Call. Attendance at subject training will be mandatory for all Contract Specialists and Contracting Officers. (EST COMPLETION MAR 09)

c. An investigation into the circumstances of the two instances of improper use of multiple award contracts found no evidence that the CO was ever informed that the process she was using was in error. Since these circumstances do not warrant disciplinary action, the Senior Center Contracting Official will take the administrative action of sending a letter to the Contracting Officer documenting the errors made and a copy of said letter will be posted in the official contracting officer warrant file in ASC/PK. (EST COMPLETION MAR 09)

d. Follow up will consist of quarterly self inspections which will include checks on multiple award contracts. The proper use of Fair Opportunity procedures when awarding against multiple award contracts is now included as part of the self-inspection checklist. Personnel performing quarterly inspections will be reminded to give this subject special attention until such time as we are assured no further problems will occur. When there have been no problems in this area for two consecutive self-inspections, this finding will be closed. (EST COMPLETION JUN 09)

2. If you have any questions please contact Ms. June Buddelmeyer ASC/FMHO at (937) 656 5430.


JOHN L. HUDSON
Lieutenant General, USAF
Commander

U.S. Army Special Operations Command Comments



REPLY TO
ATTENTION OF:

DEPARTMENT OF THE ARMY
HEADQUARTERS, UNITED STATES ARMY
SPECIAL OPERATIONS COMMAND
2929 DESERT STORM DRIVE
FORT BRAGG, NORTH CAROLINA 28310-9110

AOIR

28 JAN 2009

MEMORANDUM FOR Director, Acquisition and Contract Management,
Department of Defense Inspector General, Room 300, 440 Army Navy
Drive, Arlington, VA 22202

SUBJECT: Command Response to Draft Report, FY 2007 DoD
Purchases Made Through the National Institutes of Health,
Project No. D2007-D000CF-0262.000, dated December 15, 2008.

1. This command is providing additional facts to correct data relevant to a potential Anti-Deficiency Act violation; and actions that this Command is taking to deobligate funds on task order 2409, discussed on pages 34 and 35 of the subject draft report.

a. The report incorrectly states, "From the base through option 1, NIH obligated \$5.6 million in O&M funds provided by U.S. Army Special Operations Command". Documentation provided by the National Institute of Health showed the \$5.6 million was received on 5 Military Interdepartmental Purchase Requests (MIPRs). USASOC units provided only \$1,898,786 of the \$5.6 million on 2 MIPRs (MIPR7DREFJ9964 and MIPR7DREFJ9965). The National Institute of Health received the remaining \$3,701,214 from three other commands or organizations; the Joint Improvised Explosive Device Defeat Organization; HQDA, Pentagon and the Rapid Equipping Force, Fort Belvoir, VA.

b. The report incorrectly concludes there was a potential Anti-Deficiency Act violation when NIH used \$27,548 in Fiscal Year 2007 O&M funds to pay for work performed during Fiscal Year 2006. Documentation provided by the National Institute of Health Procurement Management Office showed the funds in question were actually Fiscal Year 2007 monies that were correctly disbursed based on work performed in Fiscal Year 2007. Therefore, there was no potential Anti-Deficiency Act violation or misuse of Fiscal Year 2006 funds.

AOIR

SUBJECT: Command Response to Draft Report, FY 2007 DoD
Purchases Made Through the National Institutes of Health,
Project No. D2007-D000CF-0262.000, dated December 15, 2008.

c. The report states, "In addition, to prevent further misuse of expired funds, U.S. Army Special Operations Command should request that NIH deobligate \$338,582 in Fiscal Year 2007 O&M funds". This statement is partially correct, Fiscal Year 2007 funds still need to be deobligated. There has been no misuse of funds. Documentation provided by the National Institute of Health Procurement Management Office showed that \$311,095.27 of Fiscal Year 2007 funds remained to be deobligated. Budget personnel within this Command's Deputy Chief of Staff Comptroller's Office, on 22 January 2009, requested the National Institute of Health return the remaining \$311,095.27 for deobligation.

2. Request you correct the subject draft report to eliminate all references to this Command's involvement in the potential Anti-Deficiency Act violation and misuse of funds. The remaining \$311,095.27 of Fiscal Year 2007 funds on task order 2409 will be deobligated upon receipt from the National Institute of Health.

3. Mr. Janz Johnson, Chief, Internal Review, at (910) 432-8733 or e-mail: johnsoja@soc.mil can provide your staff additional information.



ANDREW N. MILANI II
Colonel, GS
Chief of Staff

CF:
USAAA (SAAG-PMO-O)

National Institutes of Health Comments



DEPARTMENT OF HEALTH & HUMAN SERVICES

Public Health Service

National Institutes of Health
Bethesda, Maryland 20892

www.nih.gov

FEB 20 2009

Terry L. McKinney
Program Director, Acquisition and Contract Management
Office of the Department of Defense Inspector General
400 Army Navy Drive Arlington, Virginia 22202

Dear Mr. McKinney:

The National Institutes of Health (NIH) appreciates the opportunity to provide comments on the Department of Defense Office of Inspector General draft report; *FY 2007 DoD Purchases made through the National Institutes of Health*. We offer the following comments.

1. The report on page 22 states that, on task order 2494, the contracting officer's representative (COR) was not designated in writing.

NIH does not concur: The original COR was appointed in writing on September 27, 2006 (enclosure 1). The original COR was replaced, and the replacement was appointed in writing on April 5, 2008 (enclosure 2). Both appointment letters are documented within the NITAAC task order files.

2. The report on page 24 states that, for firm fixed-price task order 2520 to Computer Sciences Corporation, DoD and NIH official failed to issue a modification to reduce the order price because DIA officials determined that a large portion of the task order's services would no longer be required.

NIH does not concur with "... NIH official failed to issue a modification to reduce the order price." The contract price was not modified because NITAAC never received a request from the Defense Intelligence Agency to issue a contract modification to reduce the price of task order 2520.

3. The report on page 27 states that NIH contracting officials, assisted by DoD program officials, did not prepare an award selection document on all five CIO-SP2i task orders reviewed.

NIH does not concur: All five orders contain a Solution Recommendation Document Package (SRDP). Each package documents the award decision rationale and order price.

Page 2 - Terry L. McKinney

4. The report on page 29 states: "Similarly, DoD and NIH officials did not comply with funding laws and regulations on 13 of the 24 assisted acquisitions we reviewed. Of the 13 orders, we identified:

- 10 orders with potential BFNR violations totaling \$12.2 million (\$3.5 million worth of potential BFNR violations on 6 of the 10 orders were not corrected, but violations on the remaining 4 orders were corrected);
- 1 order with a potential Purpose Statute violation totaling \$455,087; and
- 2 orders with potential Antideficiency Act violations totaling \$53,601."


First bullet: For 6 of the 10 orders not corrected, NITAAC is currently working with the customers to correct the issues.

Second bullet: NIH relied on certification from the DoD customer that the funds provided were appropriate.

Third bullet: NIH partially concurs. For one order (C-2409, for \$27,547.70), the Army Special Operations Command provided records to the DoD OIG that showed the contractor's performance was during the period for which the funds were expended.

If you have any questions, please contact Ms. Wanda F. Russell, Acting Program Director, NITAAC at 301-435-3902.

Sincerely,



Diane J. Frasier
Director, Office of Acquisition
and Logistics Management

Enclosures

General Services Administration Comments



GSA Federal Acquisition Service

January 15, 2009

MEMORANDUM FOR TERRY L. MCKINNEY, PROGRAM DIRECTOR
ACQUISITION AND CONTRACT MANAGEMENT
OFFICE OF DOD INSPECTOR-GENERAL

FROM: TYREE VARNADO 
ACTING COMMISSIONER
FEDERAL ACQUISITION SERVICE (Q)

SUBJECT: DoD OIG Draft Report, "FY 2007 DoD Purchases Made Through
the National Institutes of Health" (Project Number 2007-D000CF-
0262.000)

We have reviewed the subject draft report and appreciate the opportunity to respond prior to its issuance. We must, however, disagree with the overall report assessment of the U.S. General Services Administration (GSA). We offer the attached suggestions for your review and report modification.

Please call me at (703) 605-5400 if you have any questions. Your staff may contact Wayne C. Williams at (703) 605-2177 or wayne.williams@gsa.gov for additional information.

Attachment

cc: Regina O'Brien (JA)
Rolando N. Goco (JA)
Kenneth Crompton (JA-A)
James P. Keegan (JA-A)

U.S. General Services Administration
2200 Crystal Drive
Arlington, VA 20406-0003
www.gsa.gov

GSA Federal Acquisition Service Comments to the DoD IG Draft Audit Report, "FY 2007 DoD Purchases Made Through the National Institutes of Health" Project Number D2007-D000CF-0262.000

Introduction

The DoD IG draft report entitled "FY 2007 DoD Purchases Made Through the National Institutes of Health" *Project No. D2007-D000CF-0262.000*, dated December 15, 2008, includes findings pertaining to a task order issued by the U.S. General Services Administration's (GSA) Fed Learn™ program using an NIH contract on behalf of the Defense Acquisition University on July 29, 2005.

GSA appreciates the opportunity to comment on the report and to provide clarification and explanation in response to the findings.

GSA Response

Report Page i – "What We Found"

The IG report states "In addition, DoD, NIH and GSA officials misused funds, causing potential funding violations."

GSA's response: GSA does not agree that it misused funds in the case cited. Further explanation is provided in our responses below to the findings documented in Appendix C of the Report.

Report Appendix C, Page 47, Second Paragraph

The IG report states "We performed contracting and funding analysis for this task order. We identified a contracting problem and administrative issues related to how DAU provides funding to General Services Administration Fed Learn program and how General Services Administration Fed Learn tracks the obligation of funds. In addition, we identified a \$700,056 potential BFNR violation and additional funds to be deobligated. See Appendix D, Table D-3, for a summary of the violations."

GSA's response: GSA obligated FY 2006 funds in November of FY 2007, however, the total amount of FY 2006 funds obligated was \$475,236, instead of the reported \$700,056. GSA's obligation of funds complied with GSA policies in place during the time frame in which the contracting actions occurred. For reasons further explained below in response to the paragraph entitled, "Obligating Funds After They Expire," GSA does not view the obligation of the FY 2006 funds to constitute a violation of the bona fide needs rule. Rather, the funds were managed in accordance with the applicable GSA guidance and funding policies. In November of 2006, the GSA Administrator issued new guidance that fully implements DoD policy pertaining to use of funds.

GSA also takes exception to the report's assessment that there are issues related to GSA's funds tracking process. GSA utilizes the Online Management Information System (OMIS) system to record and track all activities associated with client funding (MIPRs). OMIS monitors and tracks period of availability of funds and bona fide need of funds as well as all expenses and billings associated with those funds.

GSA recommends that the paragraph in the report be replaced to state:

"We performed contracting and funding analysis for this task order. We identified administrative issues related to how DAU provides funding to the General Services Administration's Fed Learn program and how the General Services Administration's Fed Learn program tracks the obligation of funds. In addition, we identified \$475,236 in funds that were obligated after the period permitted under DoD policy. See Appendix D, Table D-3, for a summary of the funding transaction."

Report Appendix C, Page 47, Paragraph entitled "Contracting"

The IG report states "The task order did not identify the ceiling price. FAR 16.601(c)(2) states that a time-and-materials contract may be used only if 'the contract includes a ceiling price that the contractor exceeds at its own risk.' Therefore, General Services Administration Fed Learn contracting officials did not comply with FAR 16.601(c)(2)."

GSA's response: GSA recommends the paragraph be deleted as written. GSA disagrees with the report's conclusion that the task order does not include a ceiling price. Tab B of Computer Science Corporation's BAFO of 11/02/2006 is part of the official contract file and shows a ceiling price for each CLIN, each option year and total value of the task order. GSA has included this BAFO as an attachment to show ceiling prices. Therefore, GSA complied with FAR 16.601(c)(2).

Report Appendix C, Page 47, Paragraph entitled "Obligating Funds After they Expire"

The DoD report states "These reports state that both General Services Administration and DoD officials misunderstood the law establishing the information technology fund, 40 USC 757, which states that the information technology fund 'shall be available without fiscal year limitation.' General Services Administration and DoD officials interpreted this statement to mean that expiring funds could be 'parked' or 'banked' at General Services Administration for future purchases. To the contrary, the statement 'shall be available without fiscal year limitation' applies to the capitalized fund itself."

Deleted p.54

Attachment omitted
because it
contained
personally
identifiable
information

GSA's response: GSA fully complies with appropriations law. The General Services Administration, in its comments to the DoD IG report for FY 2005, dated August 16, 2008, stated that it agrees GSA should comply with DoD's policy but that the law allows greater latitude in conducting interagency transactions than indicated in the report. GSA also stated it would work with DoD officials to obtain further clarification on the DoD policy and issue implementing instructions. On November 21, 2006, the GSA Administrator issued a policy memorandum entitled "Implementation of the DOD Policy – Non-Economy Act Orders, dated October 16, 2006". This memorandum enforces DoD's policy pertaining to use of funds.

Report Appendix C, Page 48, Paragraph entitled "Obligating Funds After they Expire"

The DoD report states "General Services Administration officials continue to misunderstand the limitation of expired appropriations. A General Services Administration Financial Management official stated during the review that expired funds could be used as 'long as funds are obligated to a task order during their period of availability or reasonable period of time thereafter (usually 90 days).' The latter part of this statement is not factual when services are severable. We agree that the funds may be obligated during their period of availability; however, once appropriations have expired, they cannot be used to award new contracts or task orders."

GSA's response: The paragraph cited above provides only a limited amount of information pertaining to the correspondence between GSA financial officials and DoD IG officials with regard to GSA's funds management policies. On 07/18/08, the Financial Management Official explained her statement and referenced the GSA policy issued 11/21/06 from the GSA Administrator which states that DoD's October 16, 2006 'DoD Policy regarding Non-Economy Act orders' does not apply to orders received prior to October 16, 2006. GSA agreed to process DOD orders consistent with DOD policy for orders received after October 16, 2006. Since GSA received the order in question prior to 10/16/06, GSA followed the "reasonable period of time" rule in effect at the time and awarded the task order on 11/06/06. The GSA Financial Management official further stated "I want to be clear that if this same situation were to present itself today, GSA would request current year funds from the client. At the time, however, use of DAU's FY06 funds was consistent with GSA Agency guidance."

If the IG intends to leave the paragraph in the report, GSA requests that the additional information provided in the paragraph above also be included to ensure GSA's statement is understood within its full context.

While there are differing interpretations of the applicable fiscal rules, GSA has followed the DoD policy pertaining to use of funds since November 21, 2006. As

GSA has stated in previous correspondence to the DoD IG, it is GSA's position that the 10/16/06 USD(C) policy imposes additional restrictions not required by law, regulation and/or GSA directives in the area of fiscal policy. Therefore, GSA does not agree that it misused funds in this case and does not agree that the Bona Fide Needs Rule was violated.

Report Appendix C, Page 49, Paragraph entitled "MIPR Descriptions"

The DoD report states "General Services Administration Fed Learn officials could not identify which MIPRs they obligated on the task order and its modifications."

GSA's response: We disagree. All MIPRs were distributed to a single internal GSA account, #25091ARD-0024, tracked and obligated from that account. These MIPRs are tracked individually in GSA's OMIS financial system, with adherence to the bona fide need of funds and the period of availability of funds. All contract and task order actions in Fed Learn are tracked in GSA's Task Order System (TOS).

GSA requests that the sentence referenced in the report above be deleted.

Report Appendix C, Page 49, Paragraph entitled "Bona Fide Needs Rule"

The fourth paragraph of the report states, "On the task order award (effective November 6, 2006) and on modification 3 (effective February 27, 2007), General Services Administration Fed Learn obligated \$700,056 in FY 2006 O&M funds when FY 2007 O&M funds should have been used."

GSA's response: GSA disagrees. Fed Learn used FY 2007 funds to execute Modification #3. MIPRs from FY07 (MIPR7EDACBL042 sent February 8, 2007, accounting code: 97 7 0100 1101 0 27 WH00 04WH15 252B 12S4LW MIPR7EDCABL042 S4LW12 044008 and MIPR7CDACBL033 sent December 14, 2006, acctg code: 97 7 0100 6102 0 27 0219 03000000000 252B 12S4RH MIPR7CDACBL033 S4RH12 044008) were used by GSA. GSA also disagrees that \$700,056 in FY06 O&M funds were obligated on the task order. FY06 funds were used to award the task order on November 5, 2006 and totaled \$475,236 (MIPR06DAU06104, acctg. code: 97 6 0100 6102 0 27 0219 03000000000 252B 12SMRH MIPR06DAU06104 SMRH12 044008; MIPR06DAU07113, actgc. code: 97 6 0100 6102 0 27 0219 03000000000 252B 12SMRH MIPR06DAU07113 SMRH12 044008; MIPR06DAU08128, acctg code: 97 6 0100 1101 0 27 WH00 04WH15 252B 12S4LW MIPR06DAU08128 S4LW12 044008; MIPR06DAU09139, acctg code: 97 6 0100 6102 0 27 0219 03000000000 252B 12SMRH MIPR06DAU09139 SMRH12 044008; and MIPR06DAU09140, acctg code: 97 6 0100 6102 0 27 0219 03000000000 252B 12SMRJ MIPR06DAU09140 SMRJ12 044008). The use of funds by GSA at the time of obligation complied with the GSA policy and, as stated earlier, the GSA policy now requires compliance with DoD policy.

The fifth paragraph of the report goes on to state "In order to correct this potential BFNR violation, DAU should request that the General Services Administration Fed Learn deobligate \$700,056 in FY 2006 O&M funds. In addition, after paying all invoices for work performed during the base period, there are FY 2007 O&M funds available for deobligation. DAU should request that General Services Administration Fed Learn deobligate \$169,817.69 in FY 2007 O&M funds tied to the base period. If General Services Administration Fed Learn does not deobligate these funds, and uses them to pay for work performed outside their period of availability, this will cause an additional BFNR violation."

GSA response: In accordance with contract close out procedures, GSA will deobligate and return any excess balance.



Inspector General
Department *of* Defense

