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SeaPort Enhanced Program

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Acronyms and Abbreviations

ConOps	Concept of Operations
COR	Contracting Officer's Representative
DASN (A&LM)	Deputy Assistant Secretary of the Navy (Acquisition and Logistics Management)
DFARS	Defense Federal Acquisition Regulation Supplement
FAR	Federal Acquisition Regulation
GAO	Government Accountability Office
IDIQ	Indefinite-Delivery, Indefinite-Quantity
NAVAIR	Naval Air Systems Command
NAVFAC	Naval Facilities Engineering Command
NAVSEA	Naval Sea Systems Command
NAVSUP	Naval Supply Systems Command
PPMAP	Procurement Performance Management Assessment Program
QASP	Quality Assurance Surveillance Plan
SeaPort-e	SeaPort Enhanced
SPAWAR	Space and Naval Warfare Systems Command
SYSCOM	Systems Command



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

May 6, 2009

MEMORANDUM FOR DIRECTOR, DEFENSE PROCUREMENT AND
ACQUISITION POLICY AND STRATEGIC SOURCING
NAVAL INSPECTOR GENERAL

SUBJECT: SeaPort Enhanced Program (Report No. D-2009-082)

We are providing this report for review and comment. We considered comments on a draft of this report from the Director of Defense Procurement and Acquisition Policy and Strategic Sourcing, the Naval Sea Systems Command Director of Contracts, and the Chief of Staff/Policy for the Deputy Assistant Secretary of the Navy (Acquisition and Logistics Management) in preparing the final report.

DoD Directive 7650.3 requires that all recommendations be resolved promptly. The Director of Defense Procurement and Acquisition Policy and Strategic Sourcing agreed with our recommendation, and his comments were responsive. The Department of the Navy's comments resulted in draft Recommendations A.2.a., A.2.b., B.1.a., B.1.b., B.1.c., B.1.d., and B.1.e. being revised; combined into A.2.a., A.2.b., B.1., B.2., and B.3.; and redirected to the Deputy Assistant Secretary of the Navy (Acquisition and Logistics Management). Therefore, we request additional comments from the Deputy Assistant Secretary by June 8, 2009. See the recommendations table on page ii.

Please provide comments that conform to the requirements of DoD Directive 7650.3. If possible, send your comments in electronic format (Adobe Acrobat file only) to audacm@dodig.mil. Copies of your comments must have the actual signature of the authorizing official for your organization. We are unable to accept the / Signed / symbol in place of the actual signature. If you 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, reading "Richard B. Jolliffe", is positioned above the printed name.

Richard B. Jolliffe
Assistant Inspector General
Acquisition and Contract Management



Results in Brief: SeaPort Enhanced Program

What We Did

The overall audit objective was to review the award and administration of the SeaPort Enhanced (SeaPort-e) program. We determined whether SeaPort-e contracts and task orders were consistent with Federal and DoD acquisition and contracting policies.

What We Found

The SeaPort-e internal controls were not adequate. We identified internal control weaknesses in contract award and administration. Of the 133 task orders valued at \$2.1 billion that we reviewed, 39 valued at \$469.3 million were not awarded based on adequate competition. The program office did not ensure that task orders were open for bidding for the length of time specified in the Concept of Operations. The SeaPort-e program office also deviated from Federal Acquisition Regulation (FAR) criteria by not performing adequate market research. We estimate that, of the 1,106 task orders from which we drew our sample of 133, 29.3 percent were not awarded based on adequate competition.

In October 2008 the Government Accountability Office issued a legal decision counter to the conclusion in our draft report that small business set-asides are inappropriate in a multiple-award contract. As a result, we concluded there is a conflict in the FAR concerning small business set-asides. Regardless, competition was still limited in SeaPort-e because contracting officers did not conduct adequate market research to ensure there were two or more small businesses capable of completing the requirement for set-aside task orders.

We also found that 118 task orders valued at \$1.4 billion did not meet quality assurance requirements. The SeaPort-e program manager did not ensure task orders were written to be performance based, had quality assurance surveillance plans (QASPs), or had contracting officer's representatives assigned. We estimate that, of 1,106 total task orders, 89 percent did not meet quality assurance requirements.

What We Recommend

The Director, Defense Procurement and Acquisition Policy should request that the Defense Acquisition Regulation Council determine the need for changes to the FAR regarding small business set-asides.

We redirected all Recommendations except A.1. to the Deputy Assistant Secretary of the Navy (Acquisition and Logistics Management) to verify that contracting officers using SeaPort-e are following the FAR, implement the Concept of Operations as requirements and then verify correct use, ensure contracting officers receive training in and issue performance-based task orders that include a QASP, restrict the scope of each task order to known requirements, and verify compliance with DFAR 201.602.

Management Comments and Our Responses

The Director of Defense Procurement and Acquisition Policy agreed and his comments were responsive. The comments of the Department of the Navy led us to redirect five recommendations to the Deputy Assistant Secretary of the Navy (Acquisition and Logistics Management), from whom we request additional comments by June 8, 2009. See the recommendations table on page ii.

Recommendations Table

Management	Recommendations Requiring Comment	No Additional Comments Required
Director, Defense Procurement and Acquisition Policy and Strategic Sourcing		A.1.
Deputy Assistant Secretary of the Navy (Acquisition and Logistics Management)	A.2.a., A.2.b., B.1., B.2., B.3.	

Please provide comments by June 8, 2009.

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Introduction

Objectives

Our overall audit objective was to review the award and administration of the SeaPort Enhanced (SeaPort-e) program. Specifically, we determined whether SeaPort-e contracts and task orders were consistent with Federal and DoD acquisition and contracting policies. Refer to Appendix A for a discussion of scope and methodology and prior coverage.

Background

SeaPort-e consists of a series of indefinite-delivery, indefinite-quantity (IDIQ) contracts and a Web-based system to facilitate proposing, awarding, and administering task orders.

SeaPort-e Contracts

As of December 18, 2007, 1,285 task orders totaling \$16 billion had been awarded under 1,279 IDIQ contracts that have a ceiling of \$47.8 billion. The contract scope includes 22 support areas, such as research and development; engineering, system engineering, and process engineering; and program support. The first task order was issued on May 28, 2004. The users of the SeaPort-e contract are the Navy Systems Commands (SYSCOMs) (Naval Sea Systems Command [NAVSEA], Naval Air Systems Command [NAVAIR], Naval Supply Systems Command [NAVSUP], Space and Naval Warfare Systems Command [SPAWAR]); the U.S. Marine Corps; Military Sealift Command; Strategic Systems Programs; Naval Facilities Engineering Command (NAVFAC); the Office of Naval Research; and the Defense Threat Reduction Agency.

SeaPort-e contracts have a base period of 5 years with the possibility of 10 additional award years. A memorandum of agreement signed by the four Navy Systems Commands states that all four are required to use SeaPort-e as their acquisition contract for engineering, financial, and program management services. Use of SeaPort-e is not mandatory if:

- there is an existing contract for a support service (in which case the contract is permitted to be used until it expires),
- the required service is not within the scope of SeaPort-e, or
- another option would be in the best interest of the Government.

The original participants in SeaPort-e, NAVAIR, NAVSUP, and SPAWAR, are charged the same fee, and NAVSEA contributes the remainder of the amount needed to cover the program's recurring costs. Since 2007, NAVSEA has allowed other DoD components to use SeaPort-e. NAVSEA serves as the SeaPort-e program office and created the SeaPort-e Concept of Operations (ConOps) to make sure there was consistency throughout the SeaPort-e ordering offices. SeaPort-e program is centrally managed by NAVSEA but has decentralized the ordering structure so that DoD component's contracting officers award the task orders.

For SeaPort-e, the program office decided to divide the United States into seven geographic zones in which each task order could be competed. According to the SeaPort-e program office, it created the zones to improve competition within market areas.

SeaPort-e Portal

The SeaPort-e portal, located at <http://www.seaport.navy.mil/>, is a tool used by the Government and contractors to manage the solicitations and task orders that are issued and to track and bid on solicitations, respectively. SeaPort-e has a list of approved contractors and uses a rolling admissions process to expand the contractor base. The first rolling admissions were in 2005. As of December 18, 2007, there were 1,279 contract holders, including the 152 admitted at the inception of SeaPort-e, another 489 admitted in 2005, 248 contractors admitted in 2006, and 390 in 2007. The Navy needs to evaluate whether the rolling admission of so many contractors meets the Federal Acquisition Regulation (FAR) 16.504(c)(1)(ii)(A) to avoid a situation in which awardees specialize exclusively in one or a few areas of the statement of work. In October 2004, all of the SYSCOM commanders signed a memorandum of agreement in which they committed to provide resources as required to execute the SeaPort-e program. According to the SeaPort-e program manager, NAVAIR, NAVSUP, and SPAWAR are charged \$500,000 per year, and NAVSEA contributes \$800,000 per year to cover the \$2.3 million in recurring costs of SeaPort-e. The minimum award for each contractor that was awarded a contract was \$10,000 for the first 152 awardees; since 2005 the amount has been \$2,501 for new contractors. See Appendix B for more details about the funding of SeaPort-e and the guaranteed minimum awards not made.

Review of Internal Controls

We determined that material internal control weaknesses in the SeaPort-e program office existed as defined by DoD Instruction 5010.40, "Managers' Internal Control (MIC) Program Procedures," January 4, 2006. The SeaPort-e program office did not have internal controls for contract administration and management procedures to determine whether task orders should be set aside for small businesses or whether contracting officers should follow SeaPort-e guidance on competition. Implementing Recommendations A.1. and A.2. will improve the internal controls for competition. In addition, the SeaPort-e program office did not have adequate procedures and controls to ensure task orders were performance based, had quality assurance surveillance plans (QASPs), and had designated contracting officer's representatives (CORs). Implementing Recommendations B.1., B.2., and B.3. will improve the program office's compliance with Federal and DoD policies for quality assurance. We will provide a copy of this report to the senior official responsible for internal controls in the Navy.

Statistical Sample

We conducted the audit using a statistical sample of SeaPort-e task orders. The SeaPort-e program office provided the audit team a list of 1,285 task orders awarded as of December 18, 2007. Of the 1,285 task orders, we limited our population to 1,106 valued

at approximately \$14 billion based on location. We selected the offices with the highest concentration of task orders based on the potential dollar value of those task orders and the number of task orders awarded. The DoD Office of Inspector General Quantitative Methods and Analysis Division selected a statistical sample of 133 task orders valued at \$2.1 billion for our review. See Appendix A for a list of the ordering offices we visited.

Results

To accomplish our objectives, we reviewed competition, quality assurance, information assurance, task order administration, and task order fees. Finding A discusses limits to competition, and finding B discusses the need for more quality assurance for performance-based task orders. We did not identify systemic issues for information assurance, task order administration, or task order fees. Appendix C summarizes results of our review of task orders, and Appendix D explains the estimates based on those results.

Finding A. Competition for Task Orders

Of the 133 task orders valued at \$2.1 billion that we reviewed, 39¹ valued at \$469.3 million were not awarded based on adequate competition. The SeaPort-e program manager restricted competition by not enforcing the ConOps regarding the open period for solicitations and deviated from the FAR by not ensuring contracting officers performed adequate market research on small business set-aside task order contracts. As a result, Navy officials may not always receive the best value for the SeaPort-e customer. Additionally, we identified a conflict in the FAR related to setting aside task orders that has resulted in inconsistent application of the regulation. We estimate that the SeaPort-e program manager and contracting officers restricted competition on 29.3 percent (324) of the 1,106 SeaPort-e task orders as discussed in Appendix D.

Open Period for Solicitations

The SeaPort-e ConOps provides various lengths of time a task order solicitation should be open based on the task order's dollar value. The ConOps states that proposal submission guidelines were established in order to promote competition. Specifically, the ConOps states that a task order with a value between \$1 million and \$50 million should be open for 11 to 24 days. If the solicitation is not open for a sufficient amount of time, as defined by the ConOps, contractors may not have adequate time to develop a competitive bid. For example, we found a \$2.3 million task order solicitation open for 6 days. The solicitation received only one bid, which was from the incumbent contractor. Another task order, valued at \$56 million, was open for bidding for only 19 days, even though the ConOps stipulates that a task order with a value greater than \$50 million should remain open for at least 25 days. Overall, 30 task orders out of the 133 in our sample, valued at \$458 million, did not meet the ConOps guidance on how long to leave the solicitation open. Therefore, the SeaPort-e program manager must enforce the ConOps through quarterly reviews of task orders and establish consequences for contracting officers who do not follow the ConOps, to ensure that contractors have a fair opportunity to bid on task orders.

Adequate Market Research for Set-Asides

Although the use of small business set-asides is allowable in IDIQ contracts according to the Government Accountability Office (GAO) Decision B-400403,² SeaPort-e contracting officers did not conduct adequate market research to ensure there were two or more small businesses capable of completing the requirement. FAR 19.502-2(b) states “the contracting officer shall set aside any acquisition over \$100,000 when there is a

¹ The 39 task orders without adequate competition are a combination of 30 task orders that did not meet ConOps requirements on how long to leave a solicitation open and 14 task orders that did not meet FAR market research requirements. To avoid double-counting, we removed five task orders that did not meet either ConOps or FAR requirements, resulting in a total of 39.

² GAO Decision details appear on page 6.

reasonable expectation that offers will be obtained from at least two responsible small business concerns.”

We evaluated SeaPort-e set-aside task orders following the ConOps provided by the program office and the basic SeaPort-e contract, which allows SeaPort-e users to set aside task orders for small business concerns. Of the 133 task orders, 55 valued at \$457.7 million were set aside for small businesses. Of the 55 small business set-asides, 14 valued at \$95 million did not provide adequate evidence of market research for being set aside, and each received only 1 small business bid. For example, three task orders at two locations were set aside for small business concerns because the prior task order was also set aside and the incumbent was a small business. At another location, the Deputy for Small Business stated that all task orders are set aside for small business concerns unless the contracting officer justifies not setting the task order aside. Of the 11 task orders set aside for small business concerns at this location, 5 had only 1 bid and provided inadequate justification for setting the task order aside. Without having a reasonable expectation that two or more small businesses are able to complete a task order, SeaPort-e users are limiting competition.

The SeaPort-e solicitation states that, following the evaluation of offers, the award of a task order goes to the contractor whose proposal is most advantageous to the Government. However, if the number of possible bidders has been limited by an improper small business set-aside, the SeaPort-e program office cannot guarantee that the DoD has received the best value proposal. Therefore, the SeaPort-e program manager should ensure that task orders are being set aside for small businesses in accordance with FAR 19.502-2(b), “Total Small Business Set-Asides.”

Small Business Set-Asides Under Multiple-Award Indefinite-Delivery, Indefinite-Quantity Contracts

The Federal Acquisition Streamlining Act of 1994, dated January 25, 1994, amends section 2304 of title 10, United States Code, to state that the head of an agency shall obtain full and open competition through the use of competitive procedures in accordance with the requirements of the FAR. We determined that the SeaPort-e program manager failed to comply with FAR 16.505, “Ordering” by allowing small business set-asides on task orders issued through the SeaPort-e portal. FAR 16.505(b) requires the contracting officer to provide each contractor a fair opportunity to be considered for each order exceeding \$3,000 issued under multiple-award IDIQ contracts. The four exceptions to the fair opportunity requirement are the following.

- The agency need for the supplies or services is so urgent that providing fair opportunity would result in unacceptable delays.
- Only one awardee can provide the kind and quality of supplies or services required because the supplies or services ordered are unique or highly specialized.
- A sole-source order is in the interest of economy and efficiency because it is a logical follow-on to an order already issued under the contract, provided all awardees were given a fair opportunity to be considered for the task order.
- Placing an order is necessary to satisfy a minimum guarantee.

FAR 16.505(b) states that the contracting officer must not use a method, such as an allocation or designation of a preferred awardee, that would “not result in fair consideration being given to all awardees prior to placing each order.”

According to officials in the SeaPort-e program office, they presented plans to use small business set-asides to the Small Business Administration. The presentation, given in October 2003, stated that the deputies for small business would assist contracting officers in determining whether task orders should be set aside. According to the SeaPort-e program manager, officials at the Small Business Administration supported setting aside task orders under SeaPort-e. Furthermore, the SeaPort-e program manager stated that, by signing a contract, the large contractors in SeaPort-e agreed to all contract terms, including the language regarding small business set-asides. Each contract states that, during the ordering process for a task order, the Government may set aside a task order for small business concerns.

However, neither the SeaPort-e program manager nor the Small Business Administration has authority to override FAR 16.505(b) or the statute which it is based on 10 USC 2304 c (b); special authority is required. Congress granted an exception to the fair opportunity process of multiple-award IDIQ contracts in 2002 when it allowed the U.S. Agency for International Development to set aside task orders for any category of small business.³

GAO Decision on Small Business Set-Asides

After the release of the Discussion Draft Report, the SeaPort-e program manager provided the audit team with GAO Decision B-400403, regarding a protest by Delex Systems, Incorporated, October 8, 2008. A portion of this legal decision differed from our conclusions about the appropriateness of SeaPort-e task orders set aside for small businesses. The GAO decision illustrates the conflicts in the use of FAR 16.505(b) and FAR 19.502-2(b).

The GAO decision states that the set-aside provisions of FAR 19.502-2(b), “Total small business set-asides,” apply to competition for task and delivery orders issued under multiple-award contracts. FAR 19.502-2(b) states that the contracting officer should set aside any acquisition over \$100,000 for small business participation when there is a reasonable expectation that offers will be obtained from at least two responsible small business concerns at fair market prices. FAR 19.502-2(b) is also known as the “Rule of Two.”

Delex Systems, a small business and contract holder on the second NAVAIR Training Systems Contract, protested the NAVAIR decision to fully compete task orders under this IDIQ contract. Delex claimed that there were two capable small business contract holders able to do the work for these task orders. The Navy argued that FAR 19.502-2(b) applies to initial contract awards, not to the issuance of task orders. The Navy noted that FAR 6.203(c) requires contracting agencies to follow

³ Public Law 107-115, Section 534, “Special Authorities,” January 10, 2002.

FAR Subpart 19.5, “Set-Asides for Small Business.” However, when an agency is placing task and delivery orders under a multiple-award contract, FAR 16.505(b)(1)(ii) advises that “the competition requirement in FAR 6 does not apply to the ordering process.” Therefore, the Navy stated, NAVAIR was not required to comply with FAR Subpart 19.5. GAO disagreed with this conclusion.

GAO determined that individually competed task orders under multiple-award contracts should be viewed as acquisitions. GAO also stated that competition for a task order is the most meaningful stage for a “Rule of Two” analysis because that is when holders of multiple-award IDIQ contracts offer prices and solutions to meet specific agency needs. As a result, GAO concluded that FAR 19.502-2(b) applies to task and delivery competitions among multiple-award contract holders.

We spoke with members of the GAO General Counsel Office responsible for this decision. They stated that the decision was final as of October 8, 2008. The Navy did not contest the decision. The officials also stated that there is much confusion on this topic, and legislative action will likely be necessary to clarify the intent of the “Rule of Two.”

Clarification Needed in the FAR

Having reviewed our original analysis and the GAO decision, we concluded that there is a conflict between FAR Part 16, “Types of Contracts,” and FAR Part 19, “Small Business Programs,” regarding setting aside task orders for small business concerns. Public Law 107-115, Section 534 part (f) further supports our conclusion. In it, Congress gives the U.S. Agency for International Development authority to set aside task orders under IDIQ contracts for small business concerns. If task orders were already allowed to be set aside for small business concerns as stated by GAO, then the U.S. Agency for International Development should not have needed authority to do so.

In its “Report of the Acquisition Advisory Panel to the Office of Federal Procurement Policy and the United States Congress,” January 2007, the Acquisition Advisory Panel⁴ also determined that explicit guidance is necessary for setting task orders aside for small business concerns for orders against multiple-award contracts. The panel recognized that agencies are limiting competition for orders to small business concerns under full and openly competed multiple-award IDIQ contracts, even though there is no express legal authority to limit competition for orders based on socioeconomic status. The panel further determined that this procurement strategy is not contrary to the fair opportunity provisions in FAR 16.505(b), but is contrary to Section 803 of the National Defense Authorization Act of 2002 concerning DoD orders for services valued at more than \$100,000. In contrast to the fair opportunity provisions, Section 803 and its implementing regulations state that, when ordering services valued at more than \$100,000, DoD must inform all contractors offering the required services of its intent to

⁴ The Acquisition Advisory Panel was authorized by section 1423 of the Services Acquisition Reform Act of 2003. The panel reviews laws, regulations, and Government-wide acquisition policies regarding various contracting and acquisition topics.

purchase. DoD must provide a description of the work and the basis on which selection will be made, unless one of the fair opportunity exceptions in Defense Federal Acquisition Regulation Supplement (DFARS) 216.505-70, “Orders under multiple award contracts,” applies. Further, DoD must afford “all contractors responding to the notice a fair opportunity to submit an offer and have that offer fairly considered.”

Finally, the panel stated that, because there is no express authority for the procurement strategy, there are also no implementing regulations. The panel further noted that the lack of implementing regulations has resulted in inconsistent application, and without further guidance, the procurement strategy will continue to be applied inconsistently. Although the panel published its report in January 2007, we are currently unaware of any legislative action taken to provide further guidance for setting aside task orders under multiple-award IDIQ contracts. Therefore, we recommended that the Director of Defense Procurement and Acquisition Policy and Strategic Sourcing request that the Defense Acquisition Regulation Council, in coordination with the Federal Acquisition Regulation Council, assess whether the FAR needs to be updated to provide explicit guidance on the allowability of small business set-asides for task orders on multiple-award IDIQ contracts.

Conclusion

Of the 133 task orders we reviewed valued at \$469.3 million, the Navy did not adequately compete 39 task orders. The SeaPort-e program manager should enforce the SeaPort-e ConOps guidance to ensure that contractors have adequate time to develop and submit competitive bids for task orders and enforce the FAR to ensure that adequate market research is performed. In addition, because the use of small business set-asides for task orders on multiple-award IDIQ contracts is not clearly defined in the FAR, guidance on small business set-asides needs to be rewritten and explicitly defined. We estimate that 29.3 percent (324) of the 1,106 task orders from which we drew our sample were not awarded based on adequate competition; for more details see Appendix D. Therefore the SeaPort-e program manager cannot be certain DoD received the best value in the services being acquired.

Management Comments on the Finding and Our Response

Naval Sea Systems Command Comments

The NAVSEA Director of Contracts, responding for the SeaPort-e program manager, stated that, although they agreed with the spirit of our recommendations, such as effective competition and proper set-asides, they respectfully disagreed with our findings that SeaPort-e task orders were not awarded based on adequate competition and are being improperly set aside for small businesses.

The Director stated that the SeaPort-e portal is a tool used by the ordering activities to solicit, award, and administer task orders under multiple-award IDIQ contracts. The SeaPort-e program office is responsible for ensuring that the portal is operational,

awarding the multiple-award contracts, negotiating any enhancements to the portal, and coordinating issues or concerns from the Governance Council. The Governance Council is made up of representatives from each of the ordering activities authorized to use SeaPort-e. According to the Director, the Governance Council developed the business rules by which SeaPort-e operates and continues to vet proposed changes and enhancements to SeaPort-e.

The NAVSEA Director of Contracts stated that the SeaPort-e ordering activities do not report to the SeaPort-e program manager. Each ordering activity is an autonomous assessable unit, responsible to its parent command for compliance with all procurement regulations, including those that govern SeaPort-e. Similarly, the Director stated that individuals that process SeaPort-e actions at the various ordering activities do not work for the SeaPort-e program manager but are employees of their activity.

Our Response

We did not find evidence that the contracting officer had a reasonable expectation of 2 or more offers from small businesses on the 14 task orders identified. Specifically, these 14 task order files did not have documentation supporting adequate competition or market research to justify the set-aside.

Minutes from the biweekly meeting of the Governance Council from October 2007 through April 2008 showed that only Navy and Marine Corps ordering activities participated; non-Navy ordering activities had no representation. Therefore, it is not clear how the Director of Contracts can ensure that all ordering activities participate in vetting proposed changes or enhancements to SeaPort-e.

In light of the NAVSEA Director of Contracts' comments and subsequent meetings we had with Navy representatives, we agree that the SeaPort-e program manager manages the SeaPort-e portal. The SeaPort-e program manager does not, however, have the implied authority to direct change to all SeaPort-e ordering activities. As the Director stated, that authority resides with each parent command. Because SeaPort-e ordering activities are decentralized, the Deputy Assistant Secretary of the Navy (Acquisition and Logistics Management) (DASN [A&LM]) should validate that all contracting officers using SeaPort-e consistently comply with all Federal and DoD acquisition regulations.

Recommendations, Management Comments, and Our Response

Revised and Redirected Recommendations

The NAVSEA Director of Contracts commented that the SeaPort-e program manager does not have the authority to implement the draft recommendations across all SeaPort-e ordering activities. Therefore, we have revised and redirected all recommendations to the DASN (A&LM), except Recommendation A.1.

Nonetheless, we include below comments on the draft recommendations from the NAVSEA Director of Contracts and the DASN (A&LM) Chief of Staff/Policy.

A.1. We recommend that the Director of Defense Procurement and Acquisition Policy and Strategic Sourcing request that the Defense Acquisition Regulations Council, in coordination with the Federal Acquisition Regulations Council, determine whether the Federal Acquisition Regulation needs to be updated to provide explicit guidance on the allowability of small business set-asides for task orders on indefinite-delivery, indefinite-quantity contracts.

Defense Procurement and Acquisition Policy and Strategic Sourcing Comments

The Director, Defense Procurement and Acquisition Policy and Strategic Sourcing agreed. The Defense Acquisition Regulations Council, in coordination with the Federal Acquisition Regulations Council and appropriate legal counsel, will determine whether the FAR needs to be updated to provide explicit guidance on the allowability of small business set-asides for task orders on multiple-award IDIQ contracts.

Our Response

The Director agreed and no further comments are required.

Naval Sea Systems Command Comments

Although not required to comment, the NAVSEA Director of Contracts agreed that the Director, Defense Procurement and Acquisition Policy and Strategic Sourcing should request clarification from the Defense Acquisition Regulations and the Federal Acquisition Regulations Councils to determine whether an update to the FAR is required to allow small business set-asides for task orders under multiple-award IDIQ contracts.

Deputy Assistant Secretary of the Navy (Acquisition and Logistics Management) Comments

Although not required to comment, the Chief of Staff/Policy, DASN (A&LM) endorsed the NAVSEA Director of Contracts' comments. The Chief of Staff/Policy stated that his organization will assist the Director of Defense Procurement and Acquisition Policy and Strategic Sourcing with the review and any necessary updates to the regulation. The Chief of Staff/Policy stated that the DASN (A&LM) participates with the Director of Defense Procurement and Acquisition Policy and Strategic Sourcing, representatives from the Defense Acquisition University, and the other Services on committees to assess the effectiveness of Navy guidance and training for executing performance-based acquisitions and recommend improvements the Navy will pursue.

A.2. We recommend that the Deputy Assistant Secretary of the Navy (Acquisition and Logistics Management):

a. Issue a memorandum that requires all contracting officers using SeaPort Enhanced to document in the SeaPort Enhanced portal that adequate competition,

as defined in Federal Acquisition Regulation 19.502-2(b), was achieved when setting a task order aside for small businesses, and designate an office or group to verify at least semiannually that contracting officers using SeaPort Enhanced are following Federal Acquisition Regulation 19.502-2(b).

Naval Sea Systems Command Comments

The NAVSEA Director of Contracts disagreed. The Director stated that a small business set-aside determination is based on the reasonable expectation of two offers and is not improper simply because only one offer is received. The SeaPort-e ConOps provides instructions for the Deputy for Small Business at each ordering activity to review small business requirements in the portal. Some activities perform the presolicitation review outside the portal and document the written determination either in the portal or in hardcopy.

The Director stated that the SeaPort-e program manager will notify all ordering activities by e-mail of the requirement for the Deputy for Small Business to review all requirements and include written documentation of their review in the portal. The ConOps will also be updated to include instructions for uploading documentation completed outside the portal. Finally, in May 2009 the portal software will be updated to require the Deputy for Small Business to review each task order before issuing it.

Finally, the Director stated that NAVSEA headquarters will review this requirement to verify that contracting officers are following FAR 19.502-2(b) as part of the Procurement Performance Management Assessment Program (PPMAP) reviews for all of NAVSEA. The SeaPort-e program office will recommend similar action be taken by the parent commands for each SeaPort-e ordering activity. This will be communicated through the Governance Council's biweekly meeting.

Our Response

We did not intend to imply that a set-aside is improper simply because only one offer was received. We considered a set-aside improper if the contracting officer did not maintain adequate evidence of market research in the task order file and the task order received only one small business bid. The files for the 14 task orders we determined to be improperly set aside contained no evidence that the contracting officer performed adequate market research to justify setting the task order aside, or that more than one offer was received.

Navy representatives stated that the SeaPort-e program manager does not have the authority to enforce compliance by all SeaPort-e ordering activities. Therefore, the DASN (A&LM) should require the small business deputies at each ordering activity to document their review in the portal, and he should notify them that the portal software will be updated. We request that the DASN (A&LM) comment on the final report by June 8, 2009. His comments should include a plan of action and milestones to implement each part of the revised recommendation.

b. Implement the SeaPort Enhanced Concept of Operations as requirements rather than guidelines; and designate an office or group to perform quarterly reviews of task orders to verify that all SeaPort Enhanced contracting officers consistently comply with requirements, and develop consequences for contracting officers who do not.

Naval Sea Systems Command Comments

The NAVSEA Director of Contracts disagreed. The Director stated that the ConOps provides guidelines rather than firm requirements for proposal response times based on the estimated dollar value and period of performance of a task order. The guidelines are not intended to limit a contracting officer's discretion. The Director stated that the SeaPort-e program office is trying to decrease procurement time while enhancing competition. The Director stated that there are ways other than strictly adhering to proposal response times to enhance competition. These include the use of advance planning notices, industry days, draft solicitations or draft statements of work, and standardized work packages. The Director said the SeaPort-e program office would ask the Governance Council for recommendations on increasing competition during the February 2009 meeting, with recommendations due by March 2009.

Our Response

The Director of Contracts comments focused on proposal response times, the ConOps as guidelines, and Governance Council recommendations. According to the Director of Contracts, the SeaPort-e program office strives to decrease procurement time while enhancing competition. Although the examples he provided to enhance competition are noteworthy, there is still no office or group that can ensure consistent implementation across the SeaPort-e program.

The ConOps cannot be effective if it is viewed only as guidelines. Additionally, no centralized office or organization is responsible to ensure that the ConOps requirements are consistently met. Below are a few examples of changes the Navy proposed to the ConOps in response to our recommendations.

- The small business deputies will review all competition requirements and upload documentation to the portal before issuing the task order.
- Waivers obtained in accordance with DFARS 237.170-2 for task orders that are not performance based must be uploaded to the portal.
- Documentation of COR appointments made in accordance with DFARS 201.602 will be uploaded to the portal.

Finally, since the SeaPort-e program office does not have authority over the decentralized ordering activities, it will ask the Governance Council for recommendations on methods to enhance competition while decreasing overall procurement timelines. Yet because non-Navy ordering activities did not have representation at Governance Council meetings from October 2007 to April 2008, it is unclear whether these non-Navy ordering activities will be notified of changes to guidelines or requirements. The SeaPort-e program manager's authority is reduced to notifying all ordering activities by e-mail of

requirements and updates to the ConOps, asking the Governance Council for recommendations on how to enhance competition, and recommending that parent commands of each ordering activity review performance-based service acquisition. Finally, we do not believe the ConOps is the appropriate instrument to ensure consistent implementation since the ConOps is seen by SeaPort-e ordering activities as a set of guidelines.

Therefore, we request that the DASN (A&LM) comment on the final report by June 8, 2009. His comments should include a plan of action and milestones to implement each part of the revised recommendation to ensure consistent and well-informed decision making by all SeaPort-e ordering activities.

Finding B. Quality Assurance Requirements

From our sample of 133 task orders valued at \$2.1 billion, 118 valued at \$1.4 billion did not meet quality assurance requirements. The SeaPort-e program office did not review that task orders were written to be performance based, had acceptable QASPs, and had CORs⁵ designated. The occurred because the SeaPort-e program office used a decentralized ordering process and did not perform periodic reviews to ensure that contracting officers were complying with FAR, DFARS, and SeaPort-e guidance. Additionally, the contracting officers and SeaPort-e users found it difficult to develop specific quality assurance requirements because they did not fully understand the performance-based service acquisition process and the SeaPort-e task order scopes were too broad. Based on the sample results, we estimate that 89 percent or 981 of the 1,106 task orders did not meet quality assurance requirements; for more details see Appendix D. Therefore, the program office cannot ensure that SeaPort-e task orders provide DoD with the best overall services.

Performance-Based Acquisition

Criteria for Performance-Based Acquisition

The FAR and SeaPort-e guidance establish requirements for acquiring services and products from contractors. FAR 16.505(a)(3) states that performance-based acquisition methods must be used to the maximum extent practicable if the contract or order is for services. FAR 37.601, “General,” states that contracts for performance-based services should include a performance work statement, measurable performance standards (for example, quality, timeliness, and quantity), the method of assessing contractor performance against the standards, and performance incentives when appropriate.

FAR 37.602, “Performance work statement,” states that the performance work statement shall enable the assessment of work performance against measurable performance standards. Measurable standards and incentives are also encouraged so contractors can develop innovative approaches in a competitive environment.

The SeaPort-e ConOps also states that contracts are encouraged to be performance based. The SeaPort-e acquisition strategy states that a performance-based environment will allow the Navy to procure professional support services at a fair and reasonable price to meet DoD objectives. Therefore, the use of performance-based contracting for SeaPort-e task orders will promote competition.

Results of Our Review

Of 133 task orders we reviewed, 24 complied with FAR requirements for performance-based acquisition. These task orders included performance requirements

⁵SeaPort-e refers to CORs as task order managers. However, to be consistent with language in the FAR, we use the term COR throughout this report.

tables in the performance work statement, in the statement of work, or as an attachment to the task order. These task orders included details on the tasks, performance objectives, performance standards, acceptable quality levels, and surveillance methods. All 24 specifically addressed the requirements of the task order. However, 109 of 133 task orders in our sample did not include the performance-based elements outlined in the FAR and SeaPort-e guidance.

Specifically, the 109 SeaPort-e task orders did not specify measurable standards by which to evaluate the contractor's performance. For example, 47 of the 109 task orders did not mention performance-based requirements in the task order or performance work statement. Additionally, these task orders did not contain any measurable performance standards or method of assessing contractor performance as required by FAR 37.601.

Other task orders included nonmeasurable performance standards. Of the remaining task orders that did not include performance-based requirements, 37 stated that the task order was performance based; mentioned timeliness, quality, and cost as factors for evaluating performance; or identified objectives and deliverables for the tasks. However, none of these items had measurable standards mandated by FAR 37.601 that could be used to evaluate performance. The remaining 25 of the 109 task orders included some measurable standards. However, these measures were included in a performance standards or deliverables table not coordinated specifically with the task order requirements, as required by FAR 37.601. These tables show that the individuals writing the task orders tried to write them as performance based, but the writers used standard language that was not specific to an individual task order.

Task Order Scope

Contracting officers did not write detailed performance requirements for SeaPort-e task orders because the scopes of the task orders were too large. The overall scope of the SeaPort-e contract includes 22 functional areas that range from engineering services to clerical work. In many cases, the scopes of individual task orders include several of the 22 functional areas. For example, one task order included 9 of the 22 support services. Meaningful measurement standards needed for nine separate support services cannot be appropriately addressed in one task order.

The contracting officers structured these task orders with large scopes as IDIQ contracts, even though the ConOps strictly prohibits doing so. In addition, we found that the task orders did not follow the typical IDIQ structure outlined in FAR Subpart 16.5, "Indefinite-Delivery Contracts," in which the contract requirements are known, but the specific quantities are yet to be determined. Rather, the contracting officers wrote the task orders' scopes large enough to cover those services and later issued technical instructions that outlined the specifications of the services to the contractor. In essence, the task orders functioned as IDIQ contracts, and the technical instructions served as the task orders. This structure hinders the ability to assign meaningful performance metrics and quality standards required by FAR 16.505(a)(3).

Although the task orders mentioned above demonstrate that individuals writing them have a basic understanding of performance-based contracting, the SeaPort-e program office should review the writing process to ensure that contracting officers are following FAR and SeaPort-e guidance. This includes ensuring that individuals are being trained in how to write performance-based task orders, reducing the broad scopes of the task orders, and providing specific requirements and performance standards in the task orders to fully implement performance-based contracting.

Ordering Process

The SeaPort-e program office has a decentralized ordering process. This allows all SeaPort-e ordering offices to develop and award performance-based task orders using their own methods. The SeaPort-e acquisition strategy notes the primary risks of the SeaPort-e Program are a lack of fair opportunity to be considered and a lack of oversight. The SeaPort-e acquisition strategy established the SeaPort-e Governance Board, chaired by the SeaPort-e program office with participation by the four Navy SYSCOMs, to mitigate the risk of a lack of oversight. However, the program office did not have a method of ensuring that FAR, DFARS, and SeaPort-e standards for performance-based requirements, QASPs, and CORs were included in the SeaPort-e task orders.

Quality Assurance Surveillance Plans

Criteria for QASPs

FAR 37.604, “Quality Assurance Surveillance Plans,” states that QASPs can be developed by the Government or can be required to be included as part of the contractor’s proposal.

FAR Subpart 46.4, “Government Contract Quality Assurance,” states that QASPs should be prepared in coordination with the performance work statement. FAR 46.401(a)(1-2) states that QASPs should identify all the work in the task order requiring surveillance and the method of surveillance. The surveillance can be performed at any time or location deemed necessary to ensure that services conform to contract requirements.

FAR 46.103, “Contracting Office Responsibilities,” states that the activity responsible for technical requirements shall provide the contracting office with any specifications for inspection, testing, and other contract quality requirements essential to ensure the integrity of the supplies or services, including prescribing contract quality requirements or, for service contracts, a QASP.

Results of Our Review

We identified only 19 of 133 task orders that had acceptable QASPs. Two QASPs, in our opinion, could serve as examples for the program office to add to the SeaPort-e ConOps. One of the QASPs outlines the process used to monitor and evaluate contractor performance. It includes background; how surveillance will be done; how the contractor evaluation will be scored; when the evaluations will be reviewed; how deficiencies will be addressed; and a breakdown of each requirement of the task order, including the performance standard, measurement method, and evaluation criteria. The second QASP

is one the site plans to use as a template for all future QASPs. In addition to the elements outlined in the first example, this QASP includes instructions on how to prepare the QASP.

However, 114 of 133 task orders either did not have a QASP or had an inadequate QASP, according to FAR requirements. The problems with the QASPs appear to stem from a lack of training and oversight of SeaPort-e users.

Training and Oversight

Individuals responsible for issuing SeaPort-e task orders do not fully understand the performance-based service acquisition process. Task orders are not written as performance based, and they do not include QASPs. Individuals responsible for SeaPort-e task orders at multiple sites stated that they have not implemented FAR and SeaPort-e requirements. Therefore, oversight and training of all SeaPort-e users would help establish an understanding of the performance-based service acquisition process and ensure that FAR and SeaPort-e requirements are being implemented.

Contracting officers stated they were not required by their office to develop a QASP. Seven sites issued task orders whose statements of work contained information labeled as or similar to that of a QASP. However, the information was boilerplate used for that site's task orders. For example, the information was about meetings, reports, and a review of deliverables that would serve as the Government's form of surveillance. However, the information was not tied to the task order requirements or included with the performance work statement. One of the seven sites considered the Award Term Plan, which is included as part of the SeaPort-e IDIQ contract, to be equivalent to a QASP for all of that location's task orders. This practice demonstrates that, although some locations have a basic understanding of a QASP, additional training and program office oversight could ensure that FAR requirements are met.

SYSCOM Processes and Guidance

The NAVSEA sites in Newport, Rhode Island, and Panama City, Florida, had individuals who assisted with the development of quality assurance standards for task orders. These individuals reviewed the task orders before solicitation to ensure performance-based requirements and QASPs were included. Other sites that have developed internal guidance on these quality assurance areas include NAVSUP in Philadelphia, Pennsylvania, and SPAWAR Headquarters in San Diego, California. The SeaPort-e program office should consider developing and disseminating similar internal guidance to all SeaPort-e users to ensure that contracting officers establish acceptable QASPs.

Designation of Contracting Officer's Representative

Criteria for Designating a COR

DFARS 201.602, "Contracting Officers," states that contracting officers may designate qualified personnel as their authorized representatives to assist in the technical monitoring or administration of a contract. A COR must be a Government employee; must be qualified by training and experience; and cannot make any changes that affect

the price, quality, quantity, delivery, or other terms and conditions of a contract. The designation of a COR must be in writing, indicate the extent and period of the COR's authority, state that the authority cannot be further delegated, and advise that the COR may be personally liable for unauthorized acts.

Results of Our Review

Of the 133 task orders, 35 did not have CORs designated in accordance with DFARS requirements. Task orders prepared at one location did not appoint CORs because officials there said CORs were a requirement of FAR Part 15, "Contracting by Negotiation," and not a requirement of FAR Subpart 16.5, which discusses IDIQ contracts. As a result of this interpretation, the officials did not require contracting officers to designate CORs. Another site did not designate CORs for the older task orders we reviewed. A contract specialist at that site stated designating a COR was not standard practice when the site started using SeaPort-e contracts, but is now done for all task orders. Some CORs we talked to stated they do not actively supervise the contractor's work. The SeaPort-e program office should provide oversight to ensure DFARS requirements are being implemented.

Summary

Quality assurance, which includes performance-based requirements, QASPs, and COR designations, was not in place in our sample for 118 task orders valued at \$1.4 billion. The SeaPort-e program manager did not ensure that task orders were written to be performance based, had acceptable QASPs, or designated a COR. The broad scopes of the task orders being created made it difficult to include measurable and specific quality assurance requirements. Those responsible for writing SeaPort-e task orders, and the related performance work statements and QASPs, did not fully understand the performance-based service acquisition process. Also, the SeaPort-e program manager created a decentralized ordering process in SeaPort-e and did not periodically review task orders to ensure that contracting officers complied with Federal and DoD guidance. We estimate that 89 percent (981) of the 1,106 task orders from which we drew our sample did not meet quality assurance requirements; for more details see Appendix D. Therefore, the program office cannot ensure that SeaPort-e task orders provide DoD with the best overall services.

Management Comments on the Finding and Our Response

Naval Sea Systems Command Comments

The NAVSEA Director of Contracts, responding for the SeaPort-e program manager, stated that, although they agreed with the spirit of our recommendations, such as writing performance-based task orders and designating CORs, they respectfully disagreed with our findings that task orders did not have CORs designated.

The Director stated that the SeaPort-e ordering activities do not report to the SeaPort-e program manager. Each ordering activity is an autonomous assessable unit, responsible

to its parent command for compliance with all procurement regulations, including those that govern SeaPort-e. The Director stated that individuals who process SeaPort-e actions at the various ordering activities do not work for the SeaPort-e program manager but are employees of their activity.

Our Response

Across all SYSCOMs, 35 of the 133 task orders reviewed did not have CORs designated; for more details see Tables C-1 and C-3 in Appendix C. Additionally, we estimate that 89 percent of the 1,106 task orders from which we drew our sample did not meet all quality assurance requirements.

Because no office or group oversees the SeaPort-e program, it is not clear how implementing any of the solutions the Navy suggested in the comments will ensure contracting officers consistently comply with all applicable procurement regulations.

Recommendations, Management Comments, and Our Response

Revised and Redirected Recommendations

As a result of comments from the NAVSEA Director of Contracts and the decentralized nature of the SeaPort-e program, we have revised, combined, and redirected the following recommendations to the DASN (A&LM). Recommendation B.1. covers draft Recommendations B.1.a., B.1.c., and B.1.d. Recommendation B.2. covers draft Recommendation B.1.b., and Recommendation B.3. covers draft Recommendation B.1.e.

Below we include comments on the draft recommendations from the NAVSEA Director of Contracts and the DASN (A&LM) Chief of Staff/Policy.

B. We recommend that the Deputy Assistant Secretary of the Navy (Acquisition and Logistics Management):

1. Implement the SeaPort Enhanced Concept of Operations as requirements rather than guidelines, and designate an office or group to verify that contracting officers using SeaPort Enhanced receive training on writing performance-based task orders, issue performance-based task orders, and develop acceptable quality assurance surveillance plans.

Naval Sea Systems Command Comments

In response to draft Recommendations B.1.a., B.1.c., and B.1.d. (now included in Recommendation B.1.), the NAVSEA Director of Contracts disagreed. He stated that the draft recommendations should have been addressed to the DASN (A&LM).

The Director agreed that contracting officers at SeaPort-e ordering activities should have training on writing performance-based task orders. Therefore, he said that by April 2009, the SeaPort-e program office would add to the ConOps (1) a listing of training resources

identified by the Defense Acquisition University, (2) the Performance-Based Service Acquisition Guidebook as an exhibit, and (3) the SeaPort-e QASPs we identified as acceptable examples. In addition, NAVSEA is contracting for the development of performance-based service acquisition training courseware, which will be made available to the SeaPort-e ordering activities in June 2009. Finally, the SeaPort-e program office procured a performance-based work statements module available through the portal, and content of templates for each of the 22 functional areas is being developed in coordination with the Governance Council. This effort may be completed by December 2009. The Director also stated that the ConOps will be updated to specify that waivers obtained in accordance with DFARS 237.170-2 for task orders that are not performance based must be uploaded to the portal.

Finally, the Director stated that NAVSEA headquarters will review performance-based service acquisition as part of the PPMAP reviews for all of NAVSEA. The SeaPort-e program office will recommend that similar action be taken by the parent commands for each SeaPort-e ordering activity. This recommendation will be communicated through the Governance Council's biweekly meeting.

Deputy Assistant Secretary of the Navy (Acquisition and Logistics Management) Comments

In response to draft Recommendations B.1.a., B.1.c., and B.1.d. (now included in Recommendation B.1.), the Chief of Staff/Policy, DASN (A&LM) endorsed the Director's comments. The Chief of Staff/Policy stated that his organization will forward this report to the SeaPort-e ordering activities and will emphasize appropriate training for contracting personnel, compliance with regulations and guidance for orders issued under the SeaPort-e multiple-award contracts, and development of appropriate QASPs. The Chief of Staff/Policy's forwarding memorandum, to be issued by April 30, 2009, will also emphasize use of the improved SeaPort-e portal tools as they become available.

Our Response

After discussions with the Navy we agree with the Director that the SeaPort-e program manager does not have the authority over the SeaPort-e ordering activities to direct training or verify that SeaPort-e ordering activities are complying with Federal and Defense acquisition regulations. Therefore, given the SeaPort-e program manager's lack of authority and the NAVSEA Director of Contracts' statement that the ConOps are merely guidelines, it is not clear how updating the ConOps or recommending reviews similar to the PPMAP at other parent commands will ensure consistency or compliance.

We request that the DASN (A&LM) provide a plan of action and milestones to implement each part of the revised recommendation by June 8, 2009.

2. Enforce the SeaPort Enhanced Concept of Operations to restrict the scope of each task order to known requirements, and develop consequences for contracting officers who award task orders for requirements that are not defined.

Naval Sea Systems Command Comments

The NAVSEA Director of Contracts disagreed. He stated that task orders that include multiple functional areas are not necessarily written as IDIQ contracts and that the use of technical instructions is not necessarily indicative of undefined requirements.

The Director stated that many of his proposed solutions—such as updating the ConOps, developing training and templates, and including a review of performance-based service acquisition as part of the PPMAP—will improve the writing of performance-based work statements and lead to more meaningful performance standards. The SeaPort-e program office will reiterate to ordering activities through their Governance Council representatives the ConOps guidance regarding task order requirements during the February 2009 Governance Council meeting.

Our Response

Since the SeaPort-e program manager does not have the authority to require changes across all SeaPort-e ordering activities, it is not clear how reiterating the ConOps will improve consistency and compliance. Although the NAVSEA Director of Contracts stated that the PPMAP would review performance-based service acquisition for NAVSEA, there is no assurance that other ordering activities, including the non-Navy ordering activities not represented at the Governance Council meetings, will undertake a similar review. Therefore, to ensure consistency and establish accountability, the DASN (A&LM) should establish requirements across all SeaPort-e ordering activities and name an office or group to enforce compliance. We request that the DASN (A&LM) provide a plan of action and milestones by June 8, 2009, to implement each part of the revised recommendation.

3. Designate an office or group to verify at least semiannually that contracting officers using SeaPort Enhanced are designating contracting officer's representatives in accordance with Defense Federal Acquisition Regulation Supplement 201.602.

Naval Sea Systems Command Comments

The NAVSEA Director of Contracts disagreed. He stated the recommendation should have been addressed to the DASN (A&LM).

The Director stated that the SeaPort-e portal software will not allow a task order to be awarded without a task order manager being designated. The ConOps states that when a task order manager performs any of the functions traditionally performed by a COR, appointment of the task order manager must comply with the procedures of the task order manager's requiring activity for appointing CORs, including training, certification, and maintaining appointment letters. The ConOps will be updated to require that COR appointments be made in accordance with DFARS 201.602, and that the written appointment be uploaded to the portal.

In addition, NAVSEA headquarters will incorporate a review of this requirement as part of the PPMAP reviews for all NAVSEA activities. The SeaPort-e program office will

recommend that similar action be taken by the parent commands for each ordering activity. This recommendation will be communicated through the Governance Council's biweekly meeting.

Deputy Assistant Secretary of the Navy (Acquisition and Logistics Management) Comments

The Chief of Staff/Policy, DASN (A&LM) endorsed the Director's comments. The Chief of Staff/Policy stated that his organization will forward this report to the SeaPort-e ordering activities and will emphasize proper appointments of those fulfilling COR functions. The Chief of Staff/Policy will issue a forwarding memorandum by April 30, 2009, which will also emphasize use of the improved SeaPort-e portal tools as they become available.

Our Response

The SeaPort-e program office lacks authority to effect change simply by updating the ConOps. Additionally, the DASN (A&LM)'s proposed action of forwarding this final report to the SeaPort-e ordering activities does not ensure that all SeaPort-e ordering activities will comply with DFARS 201.602. Therefore, we request that the DASN (A&LM) comment on the final report by June 8, 2009. His comments should include a plan of action and milestones to implement each part of the revised recommendation.

Appendix A. Scope and Methodology

We conducted this performance audit from November 2007 through November 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 conducted interviews and gathered documentation covering the period from 2004 to 2007 to gain an understanding of the management oversight, use of small business set-asides, information assurance, and funding¹ of the SeaPort-e program. Specifically we interviewed the SeaPort-e program manager, the Deputy for Small Business, and other personnel from the SeaPort-e program office at NAVSEA in Washington, D.C. We also interviewed contracting personnel at the Naval Surface Warfare Center in Dahlgren, Virginia, where the SeaPort-e contract was awarded and is administered. In addition, we interviewed the Deputy for Small Business at each SYSCOM on the subject of small business set-asides, and we interviewed the business financial manager at each SYSCOM on the subject of funding the SeaPort-e program.

We reviewed a total of 133 task orders at the following locations:

- Naval Sea Systems Command Headquarters, Washington, D.C. (8 task orders)
- Naval Surface Warfare Center, Crane, Indiana (6 task orders)
- Naval Surface Warfare Center, Dahlgren, Virginia (7 task orders)
- Naval Surface Warfare Center, Indian Head, Maryland (8 task orders)
- Naval Surface Warfare Center, Panama City, Florida (20 task orders)
- Naval Surface Warfare Center, Philadelphia, Pennsylvania (5 task orders)
- Naval Surface Warfare Center, West Bethesda, Maryland (12 task orders)
- Naval Undersea Warfare Center, Newport, Rhode Island (21 task orders)
- Naval Air Systems Command Headquarters, Patuxent River, Maryland (17 task orders)
- Naval Facilities Engineering Command Headquarters, Washington, D.C. (2 task orders)
- Naval Medical Logistics Command, Frederick, Maryland (1 task order)
- Fleet Industrial Supply Center, Philadelphia, Pennsylvania (5 task orders)
- Fleet Industrial Supply Center, San Diego, California (2 task orders)
- Fleet Industrial Supply Center, Seal Beach, California (3 task orders)
- Space and Naval Warfare Systems Command Headquarters, San Diego, California (12 task orders)
- Space and Naval Warfare Systems Command Systems Center, San Diego, California (3 task orders)
- U.S. Marine Corps Regional Contracting Office, Quantico, Virginia (1 task order)

¹ Funding is discussed in Appendix B.

During site visits we gathered task order documentation and interviewed contracting personnel regarding competition, quality assurance, information assurance, task order fees, and task order administration. Within each focus area, we developed and answered 12 uniform YES or NO questions in completing our task order review, and then formulated a single YES or NO response based on the individual answers. We decided that an overall answer of YES would occur only when the answers to all of the individual questions within a focus area were YES. Similarly, we weighted the individual questions so that a NO answer for any one of the individual questions would result in an overall answer of NO for that section.

Competition (Finding A)

1. Were contractors provided a fair opportunity to compete for task orders?
2. For set-aside task orders, were the task orders set aside properly?
3. Is the contracting officer following the FAR fair opportunity requirement by NOT first issuing a small-dollar-value task order and then using follow-on, sole-source task orders for greater dollar values based on the follow-on exception to the fair opportunity process?

Quality Assurance (Finding B)

4. Was the task order written to be performance based?
5. Was a quality assurance surveillance plan developed for the task order?
6. Did the contracting officer designate a contracting officer's representative for the task order?

Information Assurance

7. Were pertinent information assurance requirements identified in the task order?

Task Order Fees

8. Did the contracting officer properly establish fees for cost-plus-fixed-fee and cost-plus-award-fee task orders?

Task Order Administration

9. Were the task orders within the scope of the basic contract?
10. Were the requirements adequately identified in the task order?
11. Did the contracting officer ensure that inherently governmental functions were performed only by Government employees?
12. Were all subcontractors authorized to perform work on SeaPort-e task orders?

Use of Computer-Processed Data

We used computer-processed data from the Electronic Document Access system. The Electronic Document Access system² is a Web-based system that provides secure online access, storage, and retrieval of contracts and contract modifications to authorized users throughout DoD. Using this system, we gathered all task orders and task order

²The system is available at <http://eda.ogden.disa.mil>.

modifications for the 133 task orders in our sample. To verify that we gathered the correct information, we reviewed the contract files during each site visit.

We also used computer-processed data from the SeaPort Task Order Management System, also referred to as the SeaPort-e portal. The SeaPort-e portal provides a standardized means of issuing solicitations to approved contractors as well as a platform for awarding and managing task orders. We did not test the reliability of the SeaPort-e portal. However, we corroborated the information during site visits and through the use of additional information provided by the SeaPort-e program office or the contracting office.

For each task order we reviewed, we collected data related to competition and small business participation. Specifically, we gathered:

- a task order routing history, which calculated the number of business days the task order's solicitation was available to the contractor;
- a bid event history showing which contractors were issued a solicitation; and
- a small business record showing whether the task order was set aside and the contracting officer's rationale for the decision.

Overall, we considered the computer-processed data we used to evaluate the SeaPort-e task orders to be sufficient. Through direct reviews of the contract files during site visits and the use of additional information from the program office, we were able to corroborate the information and mitigate the risk of invalid or unreliable data.

Use of Technical Assistance

The DoD Office of Inspector General's Quantitative Methods and Analysis Division assisted with the audit by developing the statistical sample of task orders to be reviewed. Appendix D provides information about the work performed by the Quantitative Methods and Analysis Division.

Prior Coverage

During the last 5 years, GAO and the DoD Inspector General (IG) have issued six reports discussing performance-based service acquisition and quality assurance in IDIQ service contracts. Unrestricted GAO reports can be accessed over the Internet at <http://www.gao.gov>. Unrestricted DoD IG reports can be accessed at <http://www.dodig.mil/audit/reports>.

GAO

GAO Report No. GAO-07-20, "Tailored Approach Needed to Improve Service Acquisition Outcomes," November 2006

GAO Report No. GAO-05-274, "Opportunities to Improve Surveillance on Department of Defense Service Contracts," March 2005

DoD IG

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

DoD IG Report No. D-2008-007, “Task Orders on the Air Force Network-Centric Solutions Contract,” October 25, 2007

DoD IG Report No. D-2007-079, “Performance-Based Service Contract for Environmental Services at the Navy Public Works Center, San Diego, California,” April 3, 2007

DoD IG Report No. D-2006-010, “Contract Surveillance for Service Contracts,” October 28, 2005

Appendix B. Other Matters of Interest

During the audit we noted other matters of interest concerning SeaPort-e contract award and administration. Specifically, we gathered information about program funding and guaranteed minimum awards.

Program Funding

In October 2004, all of the SYSCOM commanders signed a memorandum of agreement in which they committed to provide resources as required to execute the SeaPort-e Program. According to the SeaPort-e program manager, NAVAIR, NAVSUP, and SPAWAR are charged \$500,000 per year, and NAVSEA contributes \$800,000 per year to cover the \$2.3 million recurring costs of SeaPort-e. The SeaPort-e program manager stated that NAVSUP has recently refused to pay its portion of the recurring costs. He explained that NAVSUP officials do not think they should be charged the same amount as NAVAIR and SPAWAR because NAVSUP uses SeaPort-e less, and because other users of SeaPort-e, NAVFAC and the Marine Corps specifically, were using SeaPort-e contracts without signing a memorandum of agreement or being charged any portion of the recurring costs.

If the SeaPort-e program office allocated costs based on use,^{*} NAVSEA would be responsible for approximately 51 percent of the recurring costs, or about \$1,164,260. SPAWAR would be responsible for approximately 19 percent (\$435,160), NAVAIR for approximately 16 percent (\$378,120), and NAVSUP for approximately 9 percent (\$197,340). NAVFAC and the Marine Corps would be responsible for approximately 4 percent (\$89,240) and 2 percent (\$35,880), respectively, of the recurring costs. Table B-1 summarizes these results.

Table B-1. SeaPort-e Cost Recovery for FY 2007

Command	Expected Contribution	Use (percent)	Adjusted Contribution	Over or (Under) Charge
NAVSEA	\$800,000	50.62	\$1,164,260	(\$364,260)
SPAWAR	\$500,000	18.92	\$435,160	\$64,840
NAVAIR	\$500,000	16.44	\$378,120	\$121,880
NAVSUP	\$500,000	8.58	\$197,340	\$302,660
NAVFAC	\$0 [†]	3.88	\$89,240	(\$89,240)
USMC	\$0	1.56	\$35,880	(\$35,880)
Total	\$2,300,000	100.00	\$2,300,000	\$0

[†]Officials at NAVFAC Headquarters stated that the SeaPort-e program manager asked them to contribute \$100,000 at the end of FY 2007, and they planned to contribute \$250,000 in FY 2008.

^{*} For the purposes of this report, usage is defined as the weighted average percentage of task orders awarded and total potential value of task orders at award for FY 2007.

The SeaPort-e program manager stated that he did not want to switch to a use-based or transaction-based system of recovering SeaPort-e costs because the SYSCOMs prefer to budget for a predictable amount each year. The SeaPort-e program office also stated that it is difficult to decide how to quantify use: by transactions, dollars, or assistance (calls to technical support, for example).

However, SPAWAR officials developed a system of dividing their portion of SeaPort-e recurring costs that the SeaPort-e program office could use to allocate costs more fairly than under the current method. A SPAWAR procurement contracting officer stated that the SeaPort-e program office sends an e-mail stating that \$500,000 is due. The procurement contracting officer then divides the fee among the SPAWAR users of SeaPort-e based on their past year's use of the system. This method of allocation would be simple to calculate no matter how the SeaPort-e program office decided to define use, and would distribute the recurring costs more fairly. This fair distribution of recurring costs might then encourage prompt and full payment by all SeaPort-e users. The SeaPort-e program office might also consider having all users of SeaPort-e sign a memorandum of agreement in which they agree to pay a portion of the recurring costs in proportion to their use of the contract in order to encourage payment.

Guaranteed Minimum Amount

According to FAR 16.504(a) "Indefinite-delivery contracts," in an IDIQ contract such as SeaPort-e, the Government is required to order a minimum amount of services from each contractor, and this minimum quantity must be more than a nominal amount. The reason for this requirement, according to FAR 16.504(a)(2), is to ensure the contract is binding; however, the specified minimum should not be greater than an amount the Government is fairly certain to order.

The initial 152 SeaPort-e contracts had a guaranteed minimum buy from the Government of \$10,000. However, once SeaPort-e program officials made the decision to have rolling admissions, which grant additional contractors a SeaPort-e contract, the guaranteed minimum for all future contractors was set at \$2,501.

Table B-2 identifies the guaranteed minimum amounts that have not been paid to date, the percentage of contractors that have not been awarded a task order, and the percentage of contractors that have not placed a bid on a task order. Data in Table B-2 came from the SeaPort-e program office.

Table B-2. Guarantees Outstanding, by Rolling Admission Period

Year	Guaranteed Minimum Outstanding	Percent of contractors not awarded a task order¹	Percent of contractors with no task order bids²
2004	\$500,000	32.9	11.2
2005	\$810,324	66.3	26.6
2006	\$540,216	87.1	51.6
2007	\$942,877	96.7	69.2
Total	\$2,793,417	75.6	42.6

¹ Calculated by dividing contract holders not awarded a task order by total contract holders.

² Calculated by dividing contract holders that have not bid on a task order by total contract holders.

As shown in the table, 42.6 percent of the 1,279 contractors have never placed a bid on a task order. Approximately 975 contractors, or 75.6 percent of all SeaPort-e contractors, have not been awarded a SeaPort-e task order, resulting in minimum obligations outstanding for contracts awarded from 2004 through 2007 of approximately \$2.8 million. Furthermore, of the initial 152 contractors, which have had 4 years to bid on a task order, 11 percent have not placed a bid, and 33 percent have not been awarded a task order. The SeaPort-e contracting office suspended rolling admissions for 2009 because all of the current contracts must be renewed at that time; however, program officials stated that rolling admissions are expected to resume in 2010. Although the total amount of guarantees outstanding for 2004-2007 may not be a material amount given the large value of SeaPort-e as a whole, if rolling admissions continue, eventually the price being paid to fund minimum guarantees may outweigh (or may already outweigh) the benefit of having additional contractors on the SeaPort-e contract. Thus, the SeaPort-e program office should assess whether future rolling admissions will provide a return on investment. The Navy also needs to evaluate whether the rolling admissions process satisfies FAR 16.504(c)(1)(ii)(A) to avoid situations in which awardees specialize exclusively in one or a few areas of the statement of work since SeaPort-e has 22 broad scope areas. Generally, contractors under multiple-award IDIQ contracts should be capable of filling all requirements identified in the statement of work.

Management Comments on the Appendix and Our Response

Naval Sea Systems Command Comments

The NAVSEA Director of Contracts stated that our recommended method of allocating SeaPort-e costs among users does not address the program management resource function; cost of additional portal modules; or the funding required for the guaranteed minimum amounts, which are paid for predominantly by NAVSEA.

Our Response

Though the NAVSEA Director of Contracts did not accept our analysis, he did not provide an alternative for more evenly sharing costs among SeaPort-e users. The SeaPort-e program manager should allocate SeaPort-e program costs based on contract use, rather than charging a flat fee. Allocating costs based on use would result in better use of the SeaPort-e users' money and encourage prompt and full payment to the SeaPort-e program office.

Appendix C. Results of Our Review of 133 Task Orders

The following tables show the results of our review of 133 SeaPort-e task orders. Table C-1 shows a summary of the results for our five focus areas: competition, quality assurance, information assurance, task order fees, and task order administration. Tables C-2 through C-6 show more detailed results for each ordering office we visited. An overall YES answer for a focus area means the answer to all of the questions under that focus area was YES.

Table C-1. Summary of Results

Checklist Questions	Yes	No	Other
Competition (Finding A)	94	39	0
Fair Opportunity	103	30	0
No Sole-Source Follow-On	133	0	0
Set Aside Properly	41	14	78 ¹
Quality Assurance (Finding B)	15	118	0
Performance Based	24	109	0
Quality Assurance Surveillance Plan	19	114	0
COR Designated	98	35	0
Information Assurance	18	7	108²
Task Order Fees	115	5	13³
Task Order Administration	133	0	0
Within Scope	133	0	0
Requirements Identified	133	0	0
No Inherently Governmental Functions	133	0	0
Subcontractors Authorized	87	0	46 ⁴

¹Of the 133 task orders, 78 were not set aside for small business.

²Of the 133 task orders, 108 did not include information technology services. Information assurance guidance applies only to task orders for information technology services.

³Of the 133 task orders, 13 were firm-fixed-price orders. The remaining task orders were cost-type orders with either fixed or award fees.

⁴Contractors for 46 of the 133 task orders reviewed did not employ subcontractors.

Table C-2. Task Orders That Followed Competition Requirements

Site Visited	Task Orders Reviewed	Fair Opportunity ¹	No Sole Source ²	Set Aside Properly ³	All Competition Requirements Followed
Marine Corps (Quantico, VA)	1	0	1	1	0 of 1
NAVAIR Headquarters (Patuxent River, MD)	17	13	17	7	12 of 17
NAVFAC Headquarters (Washington, DC)	2	1	2	1	1 of 2
NAVSEA Headquarters (Washington, DC)	8	5	8	2	5 of 8
NAVSEA (West Bethesda, MD)	12	7	12	1	6 of 12
NAVSEA (Crane, IN)	6	6	6	3	6 of 6
NAVSEA (Dahlgren, VA)	7	6	7	N/A	6 of 7
NAVSEA (Indian Head, MD)	8	6	8	6	6 of 8
NAVSEA (Newport, RI)	21	20	21	6	15 of 21
NAVSEA (Panama City, FL)	20	15	20	3	14 of 20
NAVSEA (Philadelphia, PA)	5	5	5	1	5 of 5
NAVSUP (Frederick, MD)	1	1	1	N/A	1 of 1
NAVSUP FISC* (Philadelphia, PA)	5	3	5	4	3 of 5
NAVSUP FISC (San Diego, CA)	2	2	2	1	2 of 2
NAVSUP FISC (Seal Beach, CA)	3	3	3	2	2 of 3
SPAWAR Headquarters (San Diego, CA)	12	8	12	3	8 of 12
SPAWAR Systems Center (San Diego, CA)	3	2	3	N/A	2 of 3
Total	133	103	133	41	94 of 133

*Fleet Industrial Supply Center

¹Were contractors provided a fair opportunity to compete for contracts?

²Is the contracting officer following the FAR fair opportunity requirements by NOT first issuing a small-dollar-value contract and then using follow-on, sole-source contracts for greater dollar values based on the follow-on exception to the fair opportunity process?

³For set-aside task orders, were task orders set aside properly?

Table C-3. Task Orders That Followed Quality Assurance Requirements

Site Visited	Task Orders Reviewed	Performance Based ¹	QASP ²	COR Designated ³	All Quality Assurance Requirements Followed
Marine Corps (Quantico, VA)	1	1	1	1	1 of 1
NAVAIR Headquarters (Patuxent River, MD)	17	3	2	17	2 of 17
NAVFAC Headquarters (Washington, DC)	2	1	0	0	0 of 2
NAVSEA Headquarters (Washington, DC)	8	0	0	7	0 of 8
NAVSEA (West Bethesda, MD)	12	2	2	11	2 of 12
NAVSEA (Crane, IN)	6	1	1	6	1 of 6
NAVSEA (Dahlgren, VA)	7	0	0	5	0 of 7
NAVSEA (Indian Head, MD)	8	0	0	3	0 of 8
NAVSEA (Newport, RI)	21	9	6	19	6 of 21
NAVSEA (Panama City, FL)	20	0	1	5	0 of 20
NAVSEA (Philadelphia, PA)	5	3	3	5	3 of 5
NAVSUP (Frederick, MD)	1	0	1	1	0 of 1
NAVSUP FISC* (Philadelphia, PA)	5	0	0	0	0 of 5
NAVSUP FISC (San Diego, CA)	2	0	0	2	0 of 2
NAVSUP FISC (Seal Beach, CA)	3	0	1	3	0 of 3
SPAWAR Headquarters (San Diego, CA)	12	3	0	12	0 of 12
SPAWAR Systems Center (San Diego, CA)	3	1	1	1	0 of 3
Total	133	24	19	98	15 of 133

*Fleet Industrial Supply Center

¹Was the task order written to be performance based?

²Was a quality assurance surveillance plan developed for the task order?

³Did the contracting officer designate a COR for the task order?

Table C-4. Task Orders That Followed Information Assurance Requirements

Site Visited	Task Orders Reviewed	Information Assurance Required	All Information Assurance Requirements Followed
Marine Corps (Quantico, VA)	1	0	N/A
NAVAIR Headquarters (Patuxent River, MD)	17	3	3 of 3
NAVFAC Headquarters (Washington, DC)	2	1	1 of 1
NAVSEA Headquarters (Washington, DC)	8	3	3 of 3
NAVSEA (West Bethesda, MD)	12	0	N/A
NAVSEA (Crane, IN)	6	2	0 of 2
NAVSEA (Dahlgren, VA)	7	4	4 of 4
NAVSEA (Indian Head, MD)	8	3	0 of 3
NAVSEA (Newport, RI)	21	3	2 of 3
NAVSEA (Panama City, FL)	20	2	2 of 2
NAVSEA (Philadelphia, PA)	5	0	N/A
NAVSUP (Frederick, MD)	1	0	N/A
NAVSUP FISC* (Philadelphia, PA)	5	1	0 of 1
NAVSUP FISC (San Diego, CA)	2	0	N/A
NAVSUP FISC (Seal Beach, CA)	3	0	N/A
SPAWAR Headquarters (San Diego, CA)	12	2	2 of 2
SPAWAR Systems Center (San Diego, CA)	3	1	1 of 1
Total	133	25	18 of 25

*Fleet Industrial Supply Center

Table C-5. Task Orders That Properly Established Task Order Fees

Site Visited	Task Orders Reviewed	Fee-Bearing Task Orders	All Fees Properly Established [†]
Marine Corps (Quantico, VA)	1	1	1 of 1
NAVAIR Headquarters (Patuxent River, MD)	17	14	14 of 14
NAVFAC Headquarters (Washington, DC)	2	0	N/A
NAVSEA Headquarters (Washington, DC)	8	8	7 of 8
NAVSEA (West Bethesda, MD)	12	12	12 of 12
NAVSEA (Crane, IN)	6	6	6 of 6
NAVSEA (Dahlgren, VA)	7	7	6 of 7
NAVSEA (Indian Head, MD)	8	7	6 of 7
NAVSEA (Newport, RI)	21	21	20 of 21
NAVSEA (Panama City, FL)	20	20	20 of 20
NAVSEA (Philadelphia, PA)	5	4	4 of 4
NAVSUP (Frederick, MD)	1	0	N/A
NAVSUP FISC* (Philadelphia, PA)	5	1	1 of 1
NAVSUP FISC (San Diego, CA)	2	2	2 of 2
NAVSUP FISC (Seal Beach, CA)	3	3	3 of 3
SPAWAR Headquarters (San Diego, CA)	12	11	10 of 11
SPAWAR Systems Center (San Diego, CA)	3	3	3 of 3
Total	133	120	115 of 120

*Fleet Industrial Supply Center

[†]Did the contracting officer properly establish fees for cost-type task orders, including cost-plus-fixed-fee and cost-plus-award-fee task orders?

Table C-6. Task Orders That Followed Task Order Administration Requirements

Site Visited	Task Orders Reviewed	Within Scope ¹	Requirements Identified ²	Not Inherently Governmental ³	Subcontractors Authorized ⁴	All Task Order Requirements Followed
Marine Corps (Quantico, VA)	1	1	1	1	1	1 of 1
NAVAIR Headquarters (Patuxent River, MD)	17	17	17	17	16	17 of 17
NAVFAC Headquarters (Washington, DC)	2	2	2	2	N/A	2 of 2
NAVSEA Headquarters (Washington, DC)	8	8	8	8	7	8 of 8
NAVSEA (West Bethesda, MD)	12	12	12	12	7	12 of 12
NAVSEA (Crane, IN)	6	6	6	6	6	6 of 6
NAVSEA (Dahlgren, VA)	7	7	7	7	7	7 of 7
NAVSEA (Indian Head, MD)	8	8	8	8	2	8 of 8
NAVSEA (Newport, RI)	21	21	21	21	14	21 of 21
NAVSEA (Panama City, FL)	20	20	20	20	11	20 of 20
NAVSEA (Philadelphia, PA)	5	5	5	5	3	5 of 5
NAVSUP (Frederick, MD)	1	1	1	1	N/A	1 of 1
NAVSUP FISC* (Philadelphia, PA)	5	5	5	5	N/A	5 of 5
NAVSUP FISC (San Diego, CA)	2	2	2	2	1	2 of 2
NAVSUP FISC (Seal Beach, CA)	3	3	3	3	N/A	3 of 3
SPAWAR Headquarters (San Diego, CA)	12	12	12	12	11	12 of 12
SPAWAR Systems Center (San Diego, CA)	3	3	3	3	1	3 of 3
Total	133	133	133	133	87⁵	133 of 133

*Fleet Industrial Supply Center

¹Were the task orders within the scope of the basic contract?

²Were the requirements adequately identified in the task order?

³Did the contracting officer ensure that inherently governmental functions were performed only by Government employees?

⁴Were all subcontractors authorized to perform work on SeaPort-e contracts?

⁵Table C-6 indicates that, of the 133 task orders we reviewed, 87 used authorized subcontractors. The prime contractors for the remaining 46 task orders did not employ subcontractors.

Management Comments on the Appendix and Our Response

Naval Sea Systems Command Comments

The NAVSEA Director of Contracts stated that the ordering activities with audited task orders reviewed the results of our review to verify the accuracy of the data and found discrepancies. The Director offered to provide the list of discrepancies to the auditors.

Our Response

The Director did not elaborate on the discrepancies he referred to in his comments. In February 2009 we asked the SeaPort-e program manager to provide us his data; we still have not received it.

Appendix D. Estimates Based on the Statistical Sample

The DoD Office of Inspector General Quantitative Methods and Analysis Division developed the statistical sample of task orders to be audited. We provided the Quantitative Methods and Analysis Division a universe of 1,285 task orders, which was the number of SeaPort-e task orders awarded as of December 18, 2007. We limited our review to six of the seven geographic areas in which the program operates to accommodate audit resource restrictions yet still provide a statistically relevant sample. The result of this limitation was a universe of 1,106 task orders, and the statistical sample of 133 task orders was randomly selected from this universe.

We requested two statistical estimates for the universe of 1,106 task orders. The two estimates correspond to the focus areas in which we identified significant errors,* competition and quality assurance. We did not request estimates for the remaining three focus areas, information assurance, task order requirements, and task order fees, because the number of errors was minimal. The estimates are based on a collective 95-percent confidence level, which means there is a 5-percent risk that the estimated values of the lower bound and upper bound do not encompass the true population.

As shown in Table D-1, the Quantitative Methods and Analysis Division estimates that between 21.7 percent and 37 percent of the 1,106 task orders had competition errors. The corresponding number of task orders ranges from 240 to 409, with a point estimate of 324. The point estimate provides a single numerical value for the estimate. The table for quality assurance errors can be interpreted in the same way.

Table D-1. Estimates of Task Orders With Competition Errors

Quantity	Lower Bound	Point Estimate	Upper Bound
Rate	0.217	0.293	0.370
Number	240	324	409

Table D-2. Estimates of Task Orders With Quality Assurance Errors

Quantity	Lower Bound	Point Estimate	Upper Bound
Rate	0.833	0.887	0.942
Number	921	981	1,041

* An “error” is defined as not meeting the applicable Federal or DoD requirement.

Under Secretary of Defense (Acquisition, Technology, and Logistics) Comments



ACQUISITION,
TECHNOLOGY
AND LOGISTICS

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

JAN 14 2009

MEMORANDUM FOR ASSISTANT INSPECTOR GENERAL AND DIRECTOR,
DEFENSE FINANCIAL AUDITING SERVICE, DoDIG

THROUGH: DIRECTOR, ACQUISITION RESOURCES AND ANALYSIS

NS
1/14/09

SUBJECT: Response to DoDIG Draft Report on Audit of the SeaPort Enhanced
Program (Project No. D2008-D000AS-0085.000)

As requested, I am providing a response to the recommendation A.1. contained in the subject report.

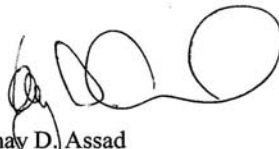
Recommendation A.1.:

We recommend that the Director of Defense Procurement and Acquisition Policy request that the Defense Acquisition Regulations Council, in coordination with the Federal Acquisition Regulations Council, determine whether the Federal Acquisition Regulation needs to be updated to provide explicit guidance on the allowability of small business set-asides for task orders on indefinite-delivery, indefinite-quantity contracts.

Response:

Concur. The Defense Acquisition Regulations Council, in coordination with the Federal Acquisition Regulations Council and appropriate legal counsel, will determine whether the Federal Acquisition Regulation needs to be updated to provide explicit guidance on the allowability of small business set-asides for task orders on IDIQ contracts.

Please contact [REDACTED] if additional information is required.


Shay D. Assad
Director, Defense Procurement



Department of the Navy Comments



DEPARTMENT OF THE NAVY
OFFICE OF THE ASSISTANT SECRETARY
RESEARCH, DEVELOPMENT AND ACQUISITION
1000 NAVY PENTAGON
WASHINGTON DC 20350-1000

17 March 2009

MEMORANDUM FOR DEPUTY ASSISTANT INSPECTOR GENERAL,
ACQUISITION AND CONTRACT MANAGEMENT,
DEPARTMENT OF DEFENSE INSPECTOR GENERAL
ARLINGTON, VIRGINIA

SUBJECT: SeaPort Enhanced Program, Department of Defense Inspector General
Draft Audit Report (Project No. D2008-D000AS-0085.000)

The Department of the Navy (DON) hereby endorses and forwards the attached response to the subject draft report. The attached letter from Commander, Naval Sea Systems Command (NAVSEA), dated 02 March 2009, provides detailed responses regarding the findings and recommendations contained in the subject draft report. We have confirmed that NAVSEA proceeded with actions identified in their response that were scheduled to occur in February 2009.

Additionally, this office will do the following:

Regarding Recommendation A.1 – Through our participation of the Defense Acquisition Regulation (DAR) Council, we will assist the Director of Defense Procurement and Acquisition Policy (DPAP) with review and, if necessary update of the regulation. Additionally, we are actively participating with DPAP, the Defense Acquisition University and the other Services on committees established specifically to: (1) assess the effectiveness of Department guidance and training for executing performance-based acquisitions; and, (2) recommend improvements the Department will pursue.

Regarding the responses to Recommendations B.1.a./c./d./e. – This office will forward the final report to the ordering activities that use SeaPort-e and will emphasize: (1) appropriate training for contracting personnel; (2) compliance with regulation and guidance for orders issued under the SeaPort-e Multiple Award Contracts; (3) development of appropriate Quality Assurance Surveillance plans (QASPs); and, (4) proper appointments of a Contracting Officer Representative (COR) where COR functions are performed. Our forwarding memorandum will also emphasize use of the improved SeaPort-e portal tools as they become available. This memorandum will be issued by April 30, 2009 in order to incorporate feedback and recommendations requested of the SeaPort-e Government Council in February 2009.

The DON appreciates the time and effort of this review and recommends the Navy's response be incorporated into the final DODIG report.

SUBJECT: SeaPort Enhanced Program, Department of Defense Inspector General
Draft Audit Report (Project No. D2008-D000AS-0085.000)

If you have any questions pertaining to this memo or its attachments, please refer them to
[REDACTED]



M. F. Jaggard
Chief of Staff/Policy
Deputy Assistant Secretary of the Navy
(Acquisition and Logistics Management)

Attachments:
As Stated

Copy to:
NAVSEA OIG
NAVIG



DEPARTMENT OF THE NAVY

NAVAL SEA SYSTEMS COMMAND
1333 ISAAC HULL AVE SE
WASHINGTON NAVY YARD DC 20376-0001

IN REPLY TO:

7500
Ser 00N3E/10
2 Mar 09

From: Commander, Naval Sea Systems Command
To: Assistant Secretary of the Navy (RD&A) (DASN ACQ)
Subj: DODIG DRAFT AUDIT REPORT ON SEAPORT ENHANCED PROGRAM
(D2008-D000AS-0085.000)
Ref: (a) DODIG Draft Audit Report D2008-D000AS-0085.000
of 19 Nov 2008
Encl: (1) NAVSEA Response to the DODIG Draft Audit Report

1. NAVSEA completed a review of findings and recommendations for the subject Draft Audit Report as requested by reference (a). Enclosure (1) forwards the NAVSEA response.
2. The NAVSEAINSGEN point of contact for the subject Draft Audit Report is [REDACTED], who can be reached at [REDACTED] or by email at [REDACTED].


K. M. MCCOY

Copy to:
ASN (FM&C) (FMO)
DASN (ASN RD&A) DASN (ACQ)
NAVINSGEN (NIG 41)

**NAVAL SEA SYSTEMS COMMAND
COMMENTS TO THE
DODIG DRAFT REPORT ON
"SEAPORT ENHANCED PROGRAM"
(Project No. D2008-D000AS-0085.000)**

Introduction

The Department of Defense Inspector General (DODIG) performed a review of the award and administration of the Seaport Enhanced (SeaPort-e) program. Their audit objective was to determine whether Seaport-e contracts and Task Orders were consistent with Federal and DoD acquisition and contracting policies. The above subject DoD Draft Audit Report addresses competition and quality assurance issues that were identified during the course of the audit.

Findings:

The DODIG reviewed 133 SeaPort-e Task Orders and found the following:

- Task Orders were not awarded based on adequate competition.
- Use of small business set-asides under the SeaPort-e Multiple Award Contract (MAC) are in violation of Federal Acquisition Regulation (FAR) 16.505(b)(1) Fair Opportunity regulations.
- Task Orders are being improperly set-aside for small businesses.
- Task Orders did not meet quality assurance requirements for Performance-Based Services Acquisition (PBSA).

The Seaport Program Office did not ensure that Task Orders were written to be performance based, had Quality Assurance Surveillance Plans (QASPs), or had Contracting Officer's Representatives (CORs) designated. As a result, the Program Office cannot ensure that SeaPort-e Task Orders provide DoD with the best overall services.

NAVSEA Overall Comment:

The SeaPort Program Office would like to express our appreciation for the thorough review and recommendations made by the DODIG in their audit of the SeaPort portal and Task Orders. While we agree with the spirit of the DODIG recommendations, i.e., effective competition, performance-based task orders wherever practicable, proper set-asides and designation of

Contracting Officer's Representatives (CORs), we respectfully disagree with the DODIG findings that Task Orders were not awarded based on adequate competition, are being improperly set-aside for small businesses, and did not have CORs designated.

The SeaPort portal is a tool used by the ordering activities to solicit, award, and administer Task Orders under the Indefinite Delivery, Indefinite Quantity (IDIQ) MACs. The SeaPort Program Office is responsible for ensuring that the portal is operational, award of the underlying MACs, negotiating any enhancements to the portal, and coordination of issues or concerns from the Governance Council. The Governance Council is comprised of representatives from each of the ordering activities authorized to use SeaPort. The Governance Council is the mechanism that was used to develop the business rules by which SeaPort operates and continues to be the venue by which proposed changes or enhancements are vetted across the user community.

The SeaPort user community does not report to the SeaPort Program Manager. Each ordering activity is an autonomous assessable unit, responsible to their own parent command for compliance with all procurement regulations, including those that govern SeaPort. The individuals that process SeaPort actions at the various ordering activities do not work for the SeaPort Program Manager; they are employees of their activity.

NAVSEA Headquarters (NAVSEA HQ) will expand oversight responsibilities to include periodic reviews as part of our Procurement Performance Management Assessment Program (PPMAP) reviews for NAVSEA HQ and NAVSEA Field Activities. The SeaPort Program Office will recommend similar action to be taken by the parent commands associated with the ordering activities.

Note that our comment concerning recommendation A.1, which is not directly addressed to NAVSEA, is that we agree that the Director, Defense Procurement and Acquisition Policy (DPAP), should request clarification from the Defense Acquisition Regulation (DAR) and Federal Acquisition Regulation (FAR) Councils as to whether or not an update to the FAR is required to allow for small business set-asides for Task Orders under IDIQ MACs.

DODIG Recommendations:

Recommendation A.2. We recommend that the NAVSEA SeaPort Program Manager:

a. Perform periodic reviews, at least semiannually, verifying Contracting Officers using SeaPort are following FAR 19.502-2(b).

Management Response: Non-concur. We non-concur with the recommendation. While we agree that all Contracting Officers should follow FAR 19.502-2(b) when making a determination to conduct a small business set-aside Task Order competition against the SeaPort MACs, we disagree that Task Orders were improperly set-aside. FAR 19.502-2(b) provides that the Contracting Officer shall set aside any acquisition over \$100,000 for small business participation when there is a reasonable expectation that offers will be obtained from at least two responsible small business concerns. The set-aside determination is made based upon the **reasonable expectation** of two offers and is not improper simply because only one offer is received.

The SeaPort Concept of Operations (CONOPS) guide provides instructions for conducting the review of requirements within the portal by the Deputy for Small Business (DSB) at each ordering activity. While the portal provides a mechanism for the DSB to review each requirement within the portal, some ordering activities conduct this pre-solicitation review external to the portal and either document the written determination within the "1102 Files" panel of the portal or in hard copy or paper format external to the portal. In order to ensure that all requirements are reviewed by the DSB and the written determination is documented within the portal, the portal software will be modified to require that the DSB review occur within the portal prior to issuance of a solicitation. In addition, the CONOPS will be updated to include instructions for uploading documentation to the "1102 Files" completed outside the portal. The SeaPort Program Manager will notify all ordering activities via e-mail communication within the portal of this requirement and will update the CONOPS accordingly. The software change to the portal will occur in the next Change Release (CR), presently scheduled for May 2009.

As part of the PPMAP reviews for NAVSEA HQ and NAVSEA Field Activities, NAVSEA HQ will incorporate review of this requirement to verify that Contracting Officers are following

Revised and
Redirected

FAR 19.502-2(b). The SeaPort Program Office will recommend similar action be taken by the parent commands associated with each ordering activity. This will be communicated via the Governance Council during the bi-weekly teleconference.

b. Reiterate and enforce SeaPort-e CONOPS guidance by performing quarterly reviews of Task Orders and developing consequences for Contracting Officers not following the CONOPS regarding time frames for solicitations.

Revised and
Redirected

Management Response: Non-Concur. We non-concur with the recommendation. While we would like to enhance competition in order to provide better value across the board, the DODIG finding that Task Orders were not awarded based on adequate competition is based on the length of time solicitations were open being less than recommended in the SeaPort CONOPS guide. The CONOPS provides guidelines rather than firm requirements for proposal response times based on the estimated dollar value and period of performance of a Task Order. The intent of these guidelines is to not limit a Contracting Officer's discretion.

We do not believe that strict adherence to the suggested proposal response times will necessarily result in increased competition, nor do we agree that a logical conclusion as a result of receiving one bid is that an adequate competition was not conducted. In fact, of the 133 Task Orders reviewed by the DODIG, the average number of bids received, whether a solicitation was open for the time recommended or not, was between 2 and 3, and approximately half received only one bid. There does not appear to be a direct correlation between the length of time a solicitation is open and the number of bids received.

A goal of the SeaPort Program Office is to decrease the overall procurement timeline while enhancing competition. We believe there are other ways to enhance competition such as the use of Advance Planning Notices, Industry Days, draft solicitations and/or draft statements of work, and potentially more standardized work packages. All of these actions provide potential Offerors with information regarding upcoming solicitations in order to facilitate effective competition and potentially reduce proposal response times. The SeaPort Program Office will ask the Governance Council for recommendations in each of these areas during the February 2009 teleconference, with recommendations due by March 2009.

Recommendation B.1. We recommend that the NAVSEA SeaPort

Program Manager:

a. Verify that Contracting Officers and other individuals using SeaPort-e receive training on writing performance-based task orders.

Management Response: Non-concur. We non-concur with the recommendation because it should have been addressed to DASN (A&LM). We agree that Contracting Officers and SeaPort-e users should have training on writing performance-based Task Orders, therefore, the SeaPort Program Office will update the CONOPS to include a listing of sources for such training identified by DAU as well as incorporate the PBSA Guidebook as an Exhibit to the CONOPS. We will also incorporate the example SeaPort QASPs identified by the DODIG Team as good samples. The CONOPS will be updated by April 2009. In addition, NAVSEA Contracts is contracting for the development of PBSA training courseware, including the development of performance-based work statements and QASPs, which will be made available to the SeaPort user community upon its availability. Courseware is currently planned for release June 2009.

b. Enforce the CONOPS to restrict the scope of each Task Order to known requirements, and develop consequences for Contracting Officers who award Task Orders for requirements that are not defined.

Management Response: Non-concur. We non-concur with the recommendation. We disagree that Task Orders which include multiple functional scope areas are necessarily written as IDIQ contracts or that the use of Technical Instructions is indicative of undefined requirements. The SeaPort MACs were structured to allow for multiple functional areas to be included in a single Task Order. While we agree that many Task Orders include scope from several of the 22 functional areas, all SeaPort Task Orders are priced upon award and no undefinitized Task Orders are allowed. Regarding the DODIG comment that meaningful measurement standards cannot be appropriately addressed in one Task Order for multiple functional scope areas, we believe that many of our proposed solutions to Recommendations B.1.a., B.1.c., and B.1.d., will improve the means to writing performance-based work statements and developing more meaningful performance standards. The SeaPort Program Office will reiterate to ordering activities via their Governance Council representatives the CONOPS guidance (2.13 Task Order Requirements) during the February 2009 Governance meeting.

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c. Perform periodic reviews, at least semiannually, verifying that Contracting Officers using SeaPort-e are issuing performance-based Task Orders.

Management Response: Non-concur. We non-concur with the recommendation because it should have been addressed to DASN (A&LM). It is the responsibility of each ordering activity to ensure that Task Orders are performance-based and if not, that the appropriate waiver as required by DFARS 237.170-2 is obtained and uploaded into the "1102 Files" panel within the portal. The CONOPS will be updated to specify that approved waivers must be uploaded to the "1102 Files" within the portal.

The SeaPort Program Office procured development of a Performance-Based Work Statements (PBWS) module within the portal which will be available to all SeaPort users when it is completed. The module or tool is complete; however the content of the PBWS templates must still be developed for each of the 22 functional scope areas of the SeaPort-e MACs. Leveraging the training, the SeaPort Program Office will work with the Governance Council to develop template content. It is expected that this effort may be completed by December 2009.

NAVSEA HQ will incorporate review of PBSA as part of the PPMAP reviews for NAVSEA HQ and NAVSEA Field Activities. The SeaPort Program Office will recommend similar action be taken by the parent commands associated with each ordering activity. This will be communicated via the Governance Council during the bi-weekly teleconference.

d. Develop and disseminate internal guidance on Quality Assurance Surveillance Plans (QASPs) to all SeaPort-e users, and perform periodic reviews, at least semiannually, verifying that Contracting Officers are developing acceptable QASPs.

Management Response: Non-concur. We non-concur with the recommendation because it should have been addressed to DASN (A&LM). It is the responsibility of each ordering activity to ensure that performance-based Task Orders include acceptable QASPs. The SeaPort Program Office will update the CONOPS to include the PBSA Guidebook as an Exhibit to the CONOPS and incorporate the example QASPs identified by the DODIG Team as good samples. The SeaPort Program Office will disseminate this guidance via e-mail communication to the SeaPort user community. The e-mail will indicate that the CONOPS guide is updated to include the PBSA Guidebook and sample QASPs and that it is

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posted in the portal. The CONOPS will be updated by April 2009.

e. Perform periodic reviews, at least semiannually, verifying that Contracting Officers are designating Contracting Officer's Representatives (CORs) in accordance with Defense Federal Acquisition Regulation Supplement (DFARS) 201.602.

Management Response: Non-concur. We non-concur with the recommendation because it should have been addressed to DASN (A&LM). It is the responsibility of each ordering activity to ensure that Contracting Officers are designating CORs iaw DFARS 201.602. The SeaPort portal software will not allow a Task Order to be awarded without a Task Order Manager (TOM) being designated in the portal. A TOM may or may not perform the functions of a COR, some merely perform the function of acceptance of services. We agree that Contracting Officers should designate CORs in accordance with DFARS 201.602 when the TOM will perform any of the functions traditionally performed by a COR. The CONOPS specifies that Contracting Officers shall appoint a TOM for each Task Order and that the TOM must be identified in the portal as well as the Task Order. We will revise the CONOPS to require the TOM be designated in writing in the Task Order.

CONOPS states that when a TOM performs any of the functions traditionally performed by a COR, appointment of the TOM must be in compliance with the procedures in place at the TOM's requiring activity for appointing CORs, (including training, certification, appointment letters, etc.). The CONOPS will be updated to require that COR appointments be made in accordance with DFARS 201.602, and that the written appointment shall be uploaded into the "1102 Files" panel within the portal. It is the responsibility of each ordering activity to ensure that appointments are properly made and uploaded in the portal and that the requirements listed in DFAR 201.602-2 are met and followed by the COR.

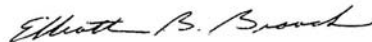
NAVSEA HQ will incorporate review of this requirement as part of the PPMAP reviews for NAVSEA HQ and NAVSEA Field Activities. The SeaPort Program Office will recommend similar action be taken by the parent commands associated with each ordering activity. This will be communicated via the Governance Council during the bi-weekly teleconference.

In response to Appendix B: Other Matters of Interest, the DODIG recommended methodology does not address the Program Management resource functions, additional portal modules, nor the funding required for the guaranteed minimums which are paid for predominantly by NAVSEA.

Revised and
Redirected as
Recommendation
B.3.

In response to Appendix C: Results of DODIG review of 133 Task Orders, the ordering activities with audited Task Orders reviewed the results of the DODIG review to verify accuracy of the data. Discrepancies were found within the data results. Those discrepancies are identified on an Excel Spreadsheet which can be provided electronically to you if this is satisfactory.

If you have any questions with respect to our comments, please contact [REDACTED].



ELLIOTT B. BRANCH

Director of Contracts



Inspector General Department *of* Defense