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Inspector General
United States Department of Defense

Natick Contracting Division's Management of Noncompetitive Awards Was Generally Justified

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Acronyms and Abbreviations

FAR	Federal Acquisition Regulation
FPDS-NG	Federal Procurement Data System – Next Generation
J&A	Justification and Approval
NCD	Natick Contracting Division

INSPECTOR GENERAL
DEPARTMENT OF DEFENSE
4800 MARK CENTER DRIVE
ALEXANDRIA, VIRGINIA 22350-1500

April 10, 2012

MEMORANDUM FOR UNDER SECRETARY OF DEFENSE FOR ACQUISITION, TECHNOLOGY, AND LOGISTICS
AUDITOR GENERAL, DEPARTMENT OF THE ARMY

SUBJECT: Natick Contracting Division's Management of Noncompetitive Awards Was Generally Justified (Report No. DODIG-2012-073)

We are providing this report for your information and use. The U.S. Army Contracting Command - Aberdeen Proving Ground, Natick Contracting Division, contracting personnel adequately justified contracts as sole source for 21 of the 22 noncompetitive contracts we reviewed. However, contracting personnel did not provide adequate justification for the noncompetitive award of one contract. We considered management comments on a draft of the report in preparing the final report.

Comments on the draft of this report conformed to the requirements of DoD Directive 7650.3 and left no unresolved issues. Therefore, we do not require any additional comments.

We appreciate the courtesies extended to the staff. Please direct questions to me at (703) 604-9077 (DSN 664-9077).

Jacqueline L. Wicecarver
Assistant Inspector General
Acquisition and Contract Management

Results in Brief: Natick Contracting Division's Management of Noncompetitive Awards Was Generally Justified

What We Did

Our objective was to determine whether DoD noncompetitive contract awards were properly justified as sole source. This is the second in a series of reports on DoD contracts awarded without competition and includes contracts issued by the U.S. Army Contracting Command - Aberdeen Proving Ground, Natick Contracting Division (NCD). We reviewed 22 contracts, valued at about $31.6 million, that NCD contracting personnel awarded in FY 2009 and FY 2010.

What We Found

NCD contracting personnel adequately justified contracts as sole source for 21 of the 22 noncompetitive contracts. However, contracting personnel did not provide adequate justification for the noncompetitive award of one contract, valued at about $265,000. This occurred because contracting personnel did not conduct market research or adequately discuss in the justification and approval (J&A) why market research was not conducted and did not obtain approval of the J&A before awarding the noncompetitive contract.

In addition, NCD contracting personnel did not include one or both of the statements required in 10 of the 22 contracts to ensure that interested sources were aware of actions they can take if interested in competing for noncompetitive contracts because NCD contracting personnel did not follow applicable guidance.

As a result, NCD contracting personnel may have been able to award the noncompetitive contract using full and open competition and award the contract at a lower price if additional market research was conducted and multiple sources were available to meet the Government's needs. Also, because NCD contracting personnel did not include the statements required by Federal Acquisition Regulation (FAR) 5.207, interested sources may not have been aware of actions they could have taken to compete for the awards.

However, NCD contracting personnel generally documented compliance with content requirements in FAR 6.303-2, obtained approval from the proper official as required by FAR 6.304 for the 22 J&As, and had an approved J&A before awarding 21 noncompetitive contracts as required by FAR 6.303.

What We Recommend

We recommend that the Executive Director, U.S. Army Contracting Command - Aberdeen Proving Ground:

- review the performance of the contracting officer who awarded the noncompetitive contract without legal approval to determine whether administrative action is warranted,
- emphasize the importance of obtaining the appropriate approvals and properly justifying future noncompetitive contracts, and
- provide contracting personnel training or a memorandum on including the statements required by FAR 5.207 in the synopsis of contract actions made under FAR 6.302.

Management Comments and Our Response

Army Contracting Command-Redstone Arsenal, responding through the Executive Director, Army Contracting Command-Aberdeen Proving Ground, agreed with all three of our recommendations. We consider the Director's comments to be responsive. No further comments are required.

Recommendations Table

Management	Recommendations Requiring Comment	No Additional Comment Required
Executive Director, U.S. Army Contracting Command - Aberdeen Proving Ground		1, 2, 3

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Introduction

Objective

Our objective was to determine whether DoD noncompetitive contract awards were properly justified as sole source at U.S. Army Contracting Command - Aberdeen Proving Ground, Natick Contracting Division (NCD) in Natick, Massachusetts. This report is the second report on DoD contracts awarded without competition. See Appendix A for the scope and methodology and prior coverage related to the objective.

Background

Full and open competition is the preferred method for Federal agencies to award contracts. Section 2304, title 10, United States Code, "Contracts: Competition Requirements," and section 253, title 41, United States Code, "Competition in Contracting Act of 1984," require contracting officers to promote and provide for full and open competition when soliciting offers and awarding contracts. Promoting competition in Federal contracting presents the opportunity for significant cost savings. In addition, competitive contracts can help improve contractor performance, prevent fraud, and promote accountability for results.

Contracting officers may use procedures other than full and open competition under certain circumstances; however, each contract awarded without providing for full and open competition must conform to policies and procedures in the Federal Acquisition Regulation (FAR) Subpart 6.3, "Other Than Full and Open Competition." FAR Subpart 5.2, "Synopses of Proposed Contract Actions," establishes policy to ensure agencies make notices of proposed contract actions available to enhance competition. FAR Part 10, Market Research," provides policies and procedures for conducting market research to arrive at the most suitable approach for acquiring, distributing, and supporting supplies and services. See Appendix B for additional information on FAR subpart 6.3, FAR subpart 5.2, and FAR part 10.

U.S. Army Contracting Command - Aberdeen Proving Ground, NCD

According to the NCD Web site, the U.S. Army Contracting Command - Aberdeen Proving Ground, NCD, is a division within the Army Contracting Command, U.S. Army Materiel Command, and is a full-service contracting organization that manages integrated acquisitions from basic research through production. The Web site states that NCD's mission is to provide superior products and technologies that protect, sustain, and improve the quality of life for the warfighter; maintain a Total Army Quality acquisition program that selects the best sources and ensures the best value for the Government; and provide similar functions for other services and customers. NCD contracts for major soldier support items and services ranging from uniforms to traumatic brain injury research.

NCD contracting personnel awarded 469 C and D type contracts[1] with an obligated value[2] of $724,856,778 during FY 2009 and FY 2010. We queried the Federal Procurement Data System-Next Generation (FPDS-NG) and identified 91 C and D type contracts that NCD contracting personnel awarded in FY 2009 and FY 2010 as noncompetitive contracts. We selected a nonstatistical sample of 36 noncompetitive contracts totaling about $49 million to review. We excluded 14 contracts from our sample of 36 contracts because:

- 6 contracts were justified as noncompetitive under FAR 6.302-6, "National Security," and we did not review contracts awarded under this exception,
- 3 contracts used the authority cited at FAR Subpart 13.5, "Test Program for Certain Commercial Items,"
- 2 contracts were competed,
- 1 contract was miscoded and should have been Small Business Innovative Research Program,
- 1 contract file NCD contracting personnel could not locate, and
- 1 contract was valued below the threshold requiring market research and justification documentation.

After we excluded the 14 contracts, we reviewed 22 contracts with an obligated value of about $29.9 million (the combined base award, excluding options, was valued at about $31.6 million). See Appendix C for additional details on the noncompetitive contracts we reviewed.

Review of Internal Controls

DoD Instruction 5010.40, "Managers' Internal Control Program (MICP) Procedures," July 29, 2010, requires DoD organizations to implement a comprehensive system of internal controls that provides reasonable assurance that programs are operating as intended and to evaluate the effectiveness of the controls. NCD's internal controls over its processes for issuing the noncompetitive contract awards we reviewed were effective as they applied to the audit objective.

[1] Defense Federal Acquisition Regulation Supplement 204.7003, "Basic PII Number," defines C type contracts as "Contracts of all types except indefinite delivery contracts, sales contracts, and contracts placed with or through other Government departments or agencies or against contracts placed by such departments or agencies outside the DoD," and D type contracts as "Indefinite delivery contracts."
[2] Data obtained in FPDS-NG is reported on an individual action basis (that is, a single modification). As a result, we combined all actions identified for a given contract to determine the number of contracts awarded during FY 2009 and FY 2010 and their respective obligated amounts.

Finding. NCD's Contract Awards Were Generally Justified as Sole Source

NCD contracting personnel adequately justified contracts as sole source for 21 of the 22 noncompetitive contracts; however, contracting personnel did not provide adequate justification for the noncompetitive award of 1 contract. Specifically, for the noncompetitive contract, valued at about $265,000, contracting personnel did not conduct market research or adequately discuss in the justification and approval (J&A) why market research was not conducted and did not obtain approval of the J&A before awarding the noncompetitive contract.

In addition, NCD contracting personnel did not include one or both of the statements required in 10 of the 22 contracts to ensure that interested sources are aware of actions they can take if interested in competing for noncompetitive contracts because they did not follow applicable guidance.

As a result, NCD contracting personnel may have been able to award the noncompetitive contract using full and open competition at a lower price if additional market research was conducted and multiple sources were available to meet the Government's needs. Also, because NCD contracting personnel did not follow applicable guidance in FAR 5.207, "Preparation and Transmittal of Synopses," interested sources may not have been aware of actions they could have taken to compete for the awards.

However, NCD contracting personnel generally documented compliance with content requirements in FAR 6.303-2, "Content," and obtained approval from the proper official as required by FAR 6.304, "Approval of the Justification," for the 22 J&As. In addition, NCD contracting personnel had an approved J&A before awarding 21 noncompetitive contracts as required by FAR 6.303, "Justifications."[3]

NCD Adequately Supported 21 Sole-Source Determinations

NCD contracting personnel adequately supported the use of other than full and open competition in the contract file for 21 contracts. NCD contracting personnel did not always document all the required elements of FAR 6.303-2 in the J&As; however, personnel provided enough information in the J&As to justify permitting other than full and open competition. NCD contracting personnel obtained approval from the proper official for all 22 J&As and 21 J&As were approved before contract award. FAR 6.302, "Circumstances Permitting Other Than Full and Open Competition," lists the seven exceptions permitting contracting without full and open competition. A contracting

[3] Three of the noncompetitive contracts were awarded under FAR 6.302-2, "Unusual and Compelling Urgency." Approval of the J&A before contract award is not required for noncompetitive contracts awarded under FAR 6.302-2; however, the three awarded by NCD contracting personnel had an approved J&A before the contract award.

officer must not begin negotiations for or award a sole-source contract without providing full and open competition unless the contracting officer justifies the use of such action in writing, certifies the accuracy and completeness of the justification, and obtains approval of the justification.

NCD contracting personnel appropriately documented the market research conducted or provided adequate justification in the contract file when market research was not conducted for 20 of the 22 contracts. Of the 22 contracts, 1 contract lacked documentation; however, this did not result in an inadequate sole-source determination. NCD contracting personnel performed market research techniques identified in FAR Part 10, "Market Research," such as conducting internet and database inquiries and contacting individuals in the industry for 16 of the 20 contract awards that had adequate support documented in the contract file. NCD contracting personnel did not conduct market research for 5 of the 22 contracts; however, contracting personnel provided adequate documentation in the contract file to support 4 of the 5 determinations.

Of the 22 noncompetitive contracts we reviewed, NCD contracting personnel did not adequately justify 1 contract, W911QY-10-C-0154, as sole-source. The noncompetitive contract was not justified because NCD contracting personnel did not conduct market research or adequately discuss in the J&A why market research was not conducted and did not obtain approval of the J&A before awarding the noncompetitive contract.

NCD Contracting Personnel Generally Met J&A Content Requirements

NCD contracting personnel generally documented compliance with content requirements in the 22 J&As. FAR 6.303-2 identifies the minimum information that must be included in a J&A. FAR 6.303-2 requires information such as a description of the supplies or services required to meet the agency's needs, the estimated value, and the statutory authority permitting other than full and open competition. NCD contracting personnel included all the required elements as outlined in FAR 6.303-2 in the J&As for 11 of the 22 J&As. Although NCD contracting personnel did not document all the required elements of FAR 6.303-2 in 11 of the J&As, NCD contracting personnel provided enough information in 10 of the 11 J&As to justify executing the contracts without full and open competition. See Table 1 for the specific contracts that did not meet all J&A content requirements.

Table 1. J&As Missing FAR Content Requirements

Contract	J&A Addresses Requirements of FAR Subpart 5.2, "Publicizing Contract Actions," or the Exception	Market Research Requirements Not Fully Addressed
W911QY-09-C-0138	No	
W911QY-10-C-0165	No	
W911QY-10-C-0101	No	
W911QY-09-C-0098	No	
W911QY-10-C-0231	No	
W911QY-10-C-0154	No	Description or results not included
W911QY-09-C-0076		Description not included
W911QY-10-C-0194		Description not included
W911QY-09-C-0007		Description not included
W911QY-09-C-0020		Description not included
W911QY-09-C-0008		Description not included

NCD Contracting Personnel Generally Met J&A Content Requirements With Minor Documentation Omissions

NCD contracting personnel generally met all of the FAR 6.303-2 content requirements. NCD contracting personnel did not meet all of the content requirements for six contracts due to minor documentation omissions. NCD contracting personnel did not cite, as required by FAR 6.303-2, the specific exception to publicizing the proposed contract action in the J&A for one of the six contracts. FAR 6.303-2(b)(6) requires the J&A to include which exception under FAR 5.202, "Exceptions," applies when a contract notice is not publicized. The J&A for contract W911QY-10-C-0165 did not cite an exception from FAR 5.202; however, the J&A cited FAR 6.302-2, as the reason for awarding the contract using other than full and open competition. FAR 5.202(a)(2) is the exception that permits a proposed contract action under the authority of FAR 6.302-2 to be awarded without issuance of a synopsis. We consider this to be a documentation omission because the support is present in the J&A for the exception to posting a synopsis even though the specific FAR 5.202 exception was not stated.

NCD contracting personnel did not state, as required by FAR 6.303-2(b)(6), whether a notice was or will be publicized as required by FAR Subpart 5.2, "Synopses of Proposed Contract Actions," in the J&A for five of the six contracts. Four of the five J&As cited FAR 6.302-1, "Only One Responsible Source and No Other Supplies or Services Will Satisfy Agency Requirements." The fifth J&A cited FAR 6.302-3, "Industrial Mobilization; Engineering, Developmental, or Research Capability; or Expert Services," as the reason for awarding the contract using other than full and open competition and did not meet the criteria for an exception under FAR 5.202. NCD contracting personnel provided evidence in the contract files that synopses for each of the five contracts were

publicized, as required by FAR subpart 5.2. We consider this to be a documentation omission because the support is present in the contract file that the five contract actions were publicized as required by FAR subpart 5.2 even though it is not stated in the J&A.

Each of these six instances resulted from documentation omissions and did not result in inadequate noncompetitive awards; therefore, we do not consider these problems to be systemic and are not making a recommendation to address these problems. We are also not making a recommendation to address the J&A content deficiencies as the J&A template should decrease the number of J&A content omissions. See the discussion on the J&A template. Also, see Appendix D for additional information on justifications and J&A content and approvals.

NCD Contracting Personnel Generally Met J&A Market Research Content Requirements

NCD contracting personnel adequately documented market research in 16 J&As as required by FAR 6.303-2. NCD contracting personnel partially documented market research in the J&A as required by FAR 6.303-2 for 5 of the 22 J&As. NCD contracting personnel included other information for five of the six contract files that adequately described the market research conducted and the subsequent results or adequately explained why market research was not conducted. FAR 6.303-2 requires that the J&A include a description and the results of the market research conducted or, if market research was not conducted, a reason it was not conducted. Because NCD contracting personnel provided additional support elsewhere in the contract file to support the market research for five of the six contracts, we do not consider the problem to be systemic and are not making a recommendation to address the missing FAR 6.303-2 requirements. See Appendix E for additional information on the market research NCD personnel conducted.

Natick Issued a J&A Template to Decrease J&A Problems

In April 2011, NCD contracting personnel developed a J&A template to improve uniformity as well as an electronic contract file template to help standardize electronic contract files which should help to decrease the number of J&A deficiencies. The NCD contracting personnel developed a standardized template for all contracting personnel to use during the preparation of their J&A approval documentation. The template helps to ensure that the required information is being included in the J&A. The template is an Adobe portable document format file that includes fields where the contracting personnel can input the required information as well as electronic signature boxes for contracting personnel to sign the J&A electronically. NCD contracting personnel can click on a circle beside each form field that will bring up information on what should be included in that section. The template includes preloaded information required by FAR 6.303-2 that is common to all NCD's J&As such as the name of the agency and contracting activity and a statement that the document is a "Justification for other than full and open competition." In addition, NCD contracting personnel developed the electronic contract template to provide a standardized guidance and storage medium for contract files to be managed electronically. We are not making a recommendation to address the J&A content deficiencies as the J&A template should decrease the number of J&A content omissions.

NCD Contracting Personnel Generally Applied the Sole-Source Authority Cited

NCD contracting personnel generally applied the cited authority permitting other than full and open competition in 21 of 22 J&As. NCD contracting personnel awarded:

- 17 contracts citing the authority of FAR 6.302-1, "Only One Responsible Source and No Other Supplies or Services Will Satisfy Agency Requirements,"
- 3 contracts citing the authority of FAR 6.302-2, "Unusual and Compelling Urgency," and
- 2 contracts citing the authority of FAR 6.302-3, "Industrial mobilization; engineering, developmental, or research capability; or expert services."

For 16 of the 17 contracts that cited the authority of FAR 6.302-1, contracting personnel provided adequate rationale in the J&A as to why only one contractor could provide the required product or service and why only that product or service could meet the Government's requirements. Although NCD contracting personnel cited FAR 6.302-1 authority for 1 of the 17 contracts, we do not consider the authority to be appropriately applied because the contracting officer did not properly justify the award as sole source and additional sources may have been capable of meeting the Government's requirements.

For each of the three contracts that cited the authority of FAR 6.302-2, NCD contracting personnel provided adequate rationale in the J&A that supported the unusual and compelling urgency of the acquisition. For contract W911QY-09-C-0020, the J&A explained that Flame Resistant Army Combat Uniforms were needed to meet immediate requirements for deploying soldiers into "Areas of Operation" due to the increased threat to soldiers from improvised explosive devices during the past 24 months. FAR 6.302-2(c) and (d) impose further limitations on contract awards citing this authority. For each of the three contracts, NCD contracting personnel provided adequate rationale in the J&A that supported why only one contractor and one product or service could have met the Government's requirements. Contracting personnel are required by FAR 6.302-2(c) to request offers from as many potential sources as practicable. For contract W911QY-09-C-0020, the contracting officer explained in the J&A that the contractor is only one of two firms capable of meeting this urgent requirement in terms of delivery schedule and quality. NCD contracting personnel planned to award the second contractor a one-time, firm-fixed-price contract to get the 80,000 Flame Resistant Army Combat Uniforms needed. Contracting personnel are required by FAR 6.302-2(d) to limit the period of performance of the contract.

NCD contracting personnel awarded two contracts that cited the authority of FAR 6.302-3. For each of the two contracts, NCD contracting personnel provided adequate rationale in the J&A that supported using FAR 6.302-3. For contract W911QY-09-C-0098, the J&A explained that a contract was needed in support of the U.S. Army Research Institute of Environmental Medicine. FAR 6.302-3(a) allows the use of this authority to establish or maintain an essential research capability to be provided by a federally funded research and development center. The J&A states that FY 2009 Defense Health Program Research Development Test and Evaluation funds will be used to fund

the contract. FAR 6.302-3(b) goes on to state the authority may be appropriate to establish or maintain an essential capability for theoretical analyses and in any field of science or technology. The J&A states that the contractor will analyze the relationship between physical activity and the occurrence of stress fracture in elite male soldiers.

NCD Contracting Personnel Obtained Approval From the Appropriate Officials for Noncompetitive Contract Awards

NCD contracting personnel obtained approval from the appropriate official on the 22 J&As. FAR 6.304 defines proper approval authority at various thresholds for the estimated dollar value of the contract. Between FY 2009 and FY 2010, the FAR authorized the procuring contracting officer to provide the final approval for proposed contract actions up to $550,000 and for the competition advocate of the procuring activity to provide the final approval for proposed contract actions more than $550,000 but not exceeding $11.5 million. The contracting officer approved the 10 J&As that had an estimated value of $550,000 or less. The competition advocate approved the 12 J&As valued at more than $550,000 but not exceeding $11.5 million. We did not review any contracts in our sample with J&A values that required approval higher than the competition advocate.

For 1 of the 22 J&As, the contracting officer, who was the appropriate approving official, approved the J&A; however, the contracting officer approved the J&A after the contract award. FAR 6.303 permits the contracting officer to prepare the J&A and have it approved within a reasonable time after the contract award for contracts awarded under FAR 6.302-2; however, this contract was awarded under FAR 6.302-1. According to the NCD contracting officer, the Office of Chief Legal Counsel misplaced the J&A and a new J&A was prepared and approved. An attorney advisor from the Office of Chief Legal Counsel stated he refused to sign the J&A because he was dissatisfied with the market research conducted. Because the contracting officer and the attorney advisor provided differing accounts of the approval process, questions remain concerning whether the contracting officer took appropriate action to award the contract as noncompetitive. According to the competition advocate at NCD, a contracting officer can proceed with a contract award, although not encouraged to do so, even if the Office of Chief Legal Counsel does not review and sign the J&A. See Appendix C for additional information on justifications and J&A content and approvals.

NCD Generally Documented the Market Research Efforts and the Results

NCD contracting personnel appropriately documented the market research conducted or provided adequate justification in the contract file when market research was not conducted for 20 of the 22 contracts reviewed. Contracting personnel included documentation to show compliance with FAR part 10 in the contract file to support 20 of the 22 sole-source determinations. FAR part 10 states that agencies should document the results of market research in a manner appropriate to the size and complexity of the acquisition. FAR 10.002, "Procedures," states the extent of market research will vary, depending on such factors as urgency, estimated dollar value, complexity, and past experience. NCD contracting personnel performed market research techniques identified

in FAR part 10 for 16 of the 20 contract awards that had adequate support documented in the contract file. For example, NCD contracting personnel conducted internet and database inquiries or contacted knowledgeable individuals in industry for the 16 noncompetitive awards that had award values ranging from $119,059 to about $8 million. NCD contracting personnel documented the techniques performed and the subsequent results in each of the 16 contract files.

NCD contracting personnel did not conduct market research in 5 of the 22 instances; however, contracting personnel provided adequate documentation in the contract file to support 4 of the 5 determinations. For example, NCD contracting personnel did not conduct market research for contract W911QY-09-D-0008 because the contractor manufactures the items to be serviced and has not made the propriety data available to other companies; therefore, no other manufacturer exists. NCD contracting personnel did not include documentation to show compliance with FAR part 10 in the contract file to support 1 of the 22 sole-source determinations, specifically contract W911QY-10-C-0147.

For contract W911QY-10-C-0147, NCD contracting personnel included a discussion of the market research conducted in the J&A, but the discussion did not identify the companies they contacted to determine that only one contractor could meet the Government's requirements. NCD contracting personnel did not include any additional information on market research in the contract file. Although NCD contracting personnel did not document compliance with FAR part 10 in the contract file for contract W911QY-10-C-0147, the exception cited for other than full and open competition was supported. NCD contracting personnel awarded the acquisition citing the exception of "only one responsible source and no other supplies or services will satisfy agency requirements." The cited exception was appropriate because the acquisition was for annual testing of base-wide fire alarms and semiannual testing of Barracks fire alarm devices and annual testing of all security alarms. Only the proposed contractor has a proprietary testing format for the type of fire alarm system at Natick Soldier Systems Center. This instance resulted from documentation omissions and did not result in inadequate sole-source determinations; therefore, we do not consider the problem to be material and are not making a recommendation. See Appendix E for additional information on the market research NCD contracting personnel conducted.

NCD Contracting Personnel Awarded One Noncompetitive Contract Without Proper Justification

NCD contracting personnel did not adequately justify the noncompetitive contract award for 1 of the 22 noncompetitive contracts. NCD contracting personnel did not obtain approval of the J&A before awarding the noncompetitive contract. In addition, NCD contracting personnel did not conduct market research or adequately discuss why market research was not conducted in the J&A for this noncompetitive contract.

Contract W911QY-10-C-0154

NCD contracting personnel awarded contract W911QY-10-C-0154 before having a signed and approved J&A. According to FAR 6.303, contracting officers must not commence negotiations for noncompetitive contracts without justifying the actions in writing, certifying the accuracy and completeness of the justification, and obtaining appropriate approval for the justification. Additionally, FAR 6.303 permits the contracting officer to prepare the J&A and have it approved within a reasonable time after contract award for contracts awarded under FAR 6.302-2, "Unusual and Compelling Urgency." However, FAR 6.302-1, "Only One Responsible Source and No Other Supplies or Services Will Satisfy Agency Requirements," was the reason for the authority cited, which required the support of an approved J&A before awarding the contract.

An NCD contracting officer and an attorney advisor from the Office of Chief Legal Counsel provided conflicting reasons why the J&A was approved after the contract was awarded. According to the NCD contracting officer, the J&A was created and approved after the contract award because the Office of Chief Legal Counsel at Natick misplaced the J&A during the legal proficiency review and the NCD contracting officer prepared and signed a new J&A. However, according to the attorney advisor he was dissatisfied with the market research conducted and refused to sign the J&A. According to the attorney advisor after contracting personnel synopsized the contract action, he learned of two additional organizations who could provide the services. The Office of Chief Legal Counsel and contracting personnel held numerous meetings discussing the J&A and the attorney advisor informed the contracting officer that he was dissatisfied with the efforts put forth to conduct market research and he believed the contract should have been competed. However, the contract was still awarded as a noncompetitive contract using the FAR 6.302-1 authority even though there were two other known sources. The Executive Director, U.S. Army Contracting Command - Aberdeen Proving Ground, should determine whether the contracting officer responsible for the contract took appropriate action in accordance with FAR 6.303-1 before awarding the noncompetitive contract and determine if administrative actions are warranted. In addition, they should emphasize the importance of appropriately and properly obtaining approvals and justifications for noncompetitive contracts.

NCD contracting personnel awarded contract W911QY-10-C-0154 without conducting market research or adequately discussing in the J&A why market research was not conducted, as required by FAR 6.303-2. FAR 6.303-2 requires each J&A to contain a description and the results of the market research conducted or, if market research was not conducted, a reason why it was not conducted. The contracting officer's description of the market research conducted in the J&A stated, "None, due to the reasons in item #4 (above) Authority Cited." The authority cited by the contracting officer, FAR 6.302-1, "Only One Responsible Source No Other Supplies or Services Will Satisfy Agency Requirements," is not an adequate reason for not conducing market research. According to the contracting officer, market research was not conducted because contract W911QY-10-C-0154 was a follow-on contract and awarding a new contract would cause a duplication of efforts and resources. However, through discussions with an attorney advisor from the Office of Chief Legal Counsel at Natick, the attorney advisor explained

he was dissatisfied with the efforts put forth to conduct market research after learning of two additional contractors who could provide the services.

NCD Contracting Personnel Did Not Comply With FAR 5.207 for 10 Noncompetitive Contracts

NCD contracting personnel did not follow applicable guidance by not including 1 or both of the statements required by FAR 5.207 in the synopsis for 10 of the 22 noncompetitive contracts and they could not locate 1 synopsis, possibly excluding sources that may be interested in the noncompetitive contract. FAR 5.207(c)(14),[4] requires the synopsis of noncompetitive contract actions to identify the intended source and a statement of the reason justifying the lack of competition. FAR 5.207(c)(15)(ii), requires the synopsis of noncompetitive contract actions using FAR 6.302-1 as the authority cited to include a statement that "all responsible sources may submit a capability statement, proposal, or quotation, which shall be considered by the agency." Proposed contract actions made under FAR 6.302-2 thru 6.302-7, FAR 5.207(c)(15)(i), requires the synopsis to include a statement that "all responsible sources may submit a bid, proposal, or quotation which shall be considered by the agency." The file for contract W911QY-10-C-0194 did not include a copy of the synopsis. NCD contracting personnel could not locate a copy of the synopsis; therefore, we could not verify compliance with FAR 5.207. NCD contracting personnel should include the statements required by FAR 5.207 in the synopsis of contract actions made under FAR 6.302 to ensure that interested sources are aware of actions they can take if interested in competing for the contract. Table 2 identifies the 10 noncompetitive contracts that did not include the statement or statements required by FAR 5.207(c)(14) and/or FAR 5.207(c)(15).

[4] Effective May 31, 2011, the requirements at FAR 5.207(c)(14), FAR 5.207(c)(15)(i), and FAR 5.207(c)(15)(ii) were moved to FAR 5.207(c)(15), FAR 5.207(c)(16)(i), and FAR 5.207(c)(16)(ii), respectively.

Table 2. Contracts Not Compliant With FAR 5.207(c)(14) and/or FAR 5.207(c)(15)

Contract	Synopsis did not include the statement required by FAR 5.207(c)(14)	Synopsis did not include the statement required by FAR 5.207(c)(15)
W911QY-10-C-0147		√
W911QY-09-C-0007		√
W911QY-10-C-0010		√
W911QY-10-C-0117	√	
W911QY-10-C-0142		√
W911QY-10-C-0143		√
W911QY-09-C-0138		√
W911QY-10-C-0154	√	√
W911QY-10-C-0229	√	
W911QY-09-D-0008		√

Conclusion

NCD contracting personnel adequately justified contracts as sole source for 21 of the 22 noncompetitive contracts we reviewed; however, contracting personnel did not provide adequate justification for the noncompetitive award of 1 contract valued at about $265,000. NCD contracting personnel did not obtain approval of the J&A before awarding one of the noncompetitive contracts. In addition, NCD contracting personnel did not conduct market research or adequately discuss why market research was not conducted in the J&A for this noncompetitive contract.

NCD contracting personnel generally documented compliance with content requirements in FAR 6.303-2 and obtained approval from the proper official as required by FAR 6.304 for the 22 J&As. In addition, NCD contracting personnel had an approved J&A before awarding 21 noncompetitive contracts as required by FAR 6.303. NCD contracting personnel did not include 1 or both of the statements required by FAR 5.207 in the synopsis for 10 of the 22 noncompetitive contracts and could not locate 1 synopsis. NCD contracting personnel developed a J&A template to improve uniformity and help decrease the number of J&A problems as well as an electronic contract file template to help standardize electronic contract files.

Recommendations, Management Comments, and Our Response

We recommend that the Executive Director, U.S. Army Contracting Command - Aberdeen Proving Ground:

1. Review the performance of the contracting officer who awarded the noncompetitive contract, W911QY-10-C-0154, without legal approval to determine whether administrative action is warranted.

U.S. Army Contracting Command - Redstone Arsenal Comments

Army Contracting Command-Redstone Arsenal, responding through the Executive Director, Army Contracting Command-Aberdeen Proving Ground, agreed. He stated that the Chief, Natick Contracting Division, acknowledged that the documentation in the contract file was insufficient to depict actions taken by the contracting officer and that a signed J&A was not in the file at the time of award. He also stated that no later than March 30, 2012, the Chief, Natick Contracting Division, will institute a branch supervisor to review future contract actions initiated by the contracting officer prior to contract award until the supervisor is confident that documentation and review/approval signatures are obtained and evidenced in all files.

Our Response

The Director's comments were responsive, and the actions met the intent of the recommendation. No further comments are required.

2. Emphasize the importance of obtaining the appropriate approvals and properly justifying future noncompetitive contracts.

U.S. Army Contracting Command - Redstone Arsenal Comments

Army Contracting Command-Redstone Arsenal, responding through the Executive Director, Army Contracting Command-Aberdeen Proving Ground, agreed. He further stated that no later than March 30, 2012, the Chief, Natick Contracting Division, will develop and distribute a memorandum to Natick Contracting Division contracting personnel emphasizing the importance of obtaining appropriate approvals of justification for future noncompetitive actions.

Our Response

The Director's comments were responsive, and the actions met the intent of the recommendation. No further comments are required.

3. Provide contracting personnel training or issue a memorandum on including the statements required by Federal Acquisition Regulation 5.207, "Preparation and Transmittal of Synopses," in the synopsis of contract actions made under Federal Acquisition Regulation 6.302, "Circumstances Permitting Other Than Full and Open Competition."

U.S. Army Contracting Command - Redstone Arsenal Comments

Army Contracting Command-Redstone Arsenal, responding through the Executive Director, Army Contracting Command-Aberdeen Proving Ground, agreed. He stated that no later than March 30, 2012, the Chief, Natick Contracting Division, will develop and distribute a memorandum to all Natick Contracting Division contracting personnel emphasizing the importance of statements required by FAR 5.207 in the synopsis for actions made under FAR 6.302. He also stated that the Chief, Natick Contracting Division, will be conducting a review of this draft report with all Natick Contracting Division Branch Chiefs to discuss the results and strategize for future compliance.

Our Response

The Director's comments were responsive, and the actions met the intent of the recommendation. No further comments are required.

Appendix A. Scope and Methodology

We conducted this performance audit from May 2011 through February 2012 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 objective. We believe that the evidence obtained provides a reasonable basis for our findings and conclusions based on our audit objective.

Our scope was limited to noncompetitive contract awards during FY 2009 and FY 2010 to determine whether DoD noncompetitive contract awards were properly and adequately justified as sole source. We excluded contracts that were awarded for national security purposes, foreign military sales, classified contracts, or contracts that were improperly coded in the FPDS-NG as noncompetitive.

In July 2011, DoD Office of Inspector General management decided the audit teams would issue site reports under individual subprojects from the initial project. In October 2011, we reannounced the revised audit approach of issuing separate audit reports for each audit site as well as the revised audit objective to determine whether DoD noncompetitive contract awards were properly justified as sole source.

Universe and Sample Information

We used the FPDS-NG to identify noncompetitive contract actions issued by Military Services and DoD agencies during FY 2009 and FY 2010. The queries were limited to actions issued on contracts that were awarded during FY 2009 and FY 2010 and coded as a "noncompetitive delivery order" or "not competed" in FPDS-NG. The queries also excluded contract actions that received more than one offer as identified in FPDS-NG. We then selected the four DoD Components with the highest dollar value of awards, specifically the Army, Navy, Air Force, and the Defense Logistics Agency to identify specific audit locations.

We focused our site selection on three sites for the Department of the Army that awarded 20 or more C and D type noncompetitive contracts and obligated approximately $200 million or more during FY 2009 and FY 2010. Our site selection excluded sites that were visited during the recent Government Accountability Office and Army Audit Agency reviews on noncompetitive contract awards. In addition, we reviewed reports issued by the Department of Defense Office of Inspector General, Acquisition and Contract Management Directorate, from October 2008 to April 2011 that covered acquisition and contracting issues and excluded sites that have been visited on numerous occasions.

The initial data obtained from FPDS-NG resulted in a universe of 91 applicable contracts for Research Laboratory Command, Natick. We requested 36 of the 91 contracts to review during the site visit to NCD. We selected the sample of 36 contracts to include a variety of different dollar amounts, products, services, contract types, and authorities listed for other than full an open competition. We chose our sample by using many

different factors and varieties to create a diverse sample; however, we did not review contracts in our selection of 36 that were awarded for national security purposes, foreign military sales, classified contracts, or contracts that were improperly coded in the FPDS-NG as noncompetitive. In addition, we did not review contracts that were not truly noncompetitive such as contracts that were competitive one bids or those contracts set aside to develop small businesses.

Six contracts were excluded from our sample because they were national security contracts and three contracts were excluded from our sample because they used the authority cited at FAR Subpart 13.5, "Test Program for Certain Commercial Items." In addition, two contracts were excluded from our sample because they were miscoded as noncompetitive in FPDS-NG and were competed before award, one contract was excluded because it was miscoded in FPDS-NG and should have been coded as a Small Business Innovative Research Program, and one contract file could not be located by contracting personnel. Finally, one contract was excluded because it used simplified acquisition procedures. Based on these exclusions, we reviewed 22 of the 36 contracts requested. See Appendix C for additional details on the noncompetitive contracts we reviewed.

Review of Documentation and Interviews

We evaluated documentation against applicable criteria including:

- FAR Part 5, "Publicizing Contract Actions,"
- FAR Subpart 6.3, "Other Than Full and Open Competition,"
- FAR Part 10, "Market Research,"
- Defense Federal Acquisition Regulation Supplement 204.7003, "Basic PII number," and
- Army Federal Acquisition Regulation Supplement Part 5110, "Market Research."

We interviewed contracting personnel at NCD, Natick, Massachusetts, to discuss noncompetitive contract awards and to obtain information regarding the noncompetitive contract files identified in our sample, specifically about the J&A and market research. We also interviewed the competition advocate at NCD, Natick, Massachusetts, to gain an understanding of the competition advocate's responsibilities and role in noncompetitive contract awards.

In addition, we interviewed an attorney advisor from the Office of Chief Legal Counsel, Natick, Massachusetts, through teleconference to obtain additional information about a J&A for one of the contracts reviewed in our sample.

Use of Computer-Processed Data

We relied on computer-processed data from the FPDS-NG to establish the initial universe for this audit by identifying noncompetitive contract actions issued by Military Services and DoD agencies. We also used the data from the FPDS-NG to help determine the contracting organizations to visit and to perform the nonstatistical sample selection. In addition, we used the Electronic Document Access database to obtain contract

documentation, such as the contract and modifications to the contract before our site visit to the NCD. To assess the accuracy of the computer-processed data, we verified the FPDS-NG and Electronic Document Access data against official records at the contracting activity. We determined that data obtained through the Electronic Document Access database were sufficiently reliable to accomplish our audit objective when compared with contract records. We determined that there were three miscodes within the data reviewed from FPDS-NG when compared with contract records; however, we used the FPDS-NG only to identify the universe, to help determine the contracting organizations to visit, and to identify our nonstatistical sample.

Use of Technical Assistance

We held discussions with personnel from the Department of Defense Office of Inspector General's Quantitative Methods and Analysis Division. We determined that we would use FPDS-NG data to select a nonstatistical sample of contracting activities and then use FPDS-NG data to select a nonstatistical sample of noncompetitive contracts to review. During our site visit, we worked with NCD contracting personnel to verify that the selected contracts met the scope limitations of our review and to identify additional contracts that did not meet the selection criteria. Our nonstatistical sample was limited to specific contracts, and our results should not be projected across other NCD-issued or Army-issued contracts.

Prior Coverage

During the last 5 years, the Government Accountability Office, DoD IG, and the Department Army have issued four reports discussing noncompetitive contract awards. Unrestricted DOD Office of Inspector General reports can be accessed over the Internet at http://www.dodig.mil. Unrestricted Government Accountability Office reports can be accessed over the Internet at http://www.gao.gov. Unrestricted Army reports can be accessed from .mil and gao.gov domains over the Internet at https://www.aaa.army.mil/.

Government Accountability Office

Government Accountability Office Report No. GAO-12-263, "Improved Policies and Tools Could Help Increase Competition on DOD's National Security Exception Procurements," January 13, 2012

Government Accountability Office Report No. GAO-10-833, "Opportunities Exist to Increase Competition and Assess Reasons When Only One Offer Is Received," July 26, 2010

DoD IG

DoD Office of Inspector General Report No. DODIG-2012-042, "Naval Air Systems Command Lakehurst Contracts Awarded Without Competition Were Properly Justified," January 20, 2012

Army

Army Audit Agency Report No. A-2011-0002-ALC, "Extent of Competition in Army Contracting," October 12, 2010

Appendix B. Federal Acquisition Regulation Criteria

FAR Subpart 6.3, "Other Than Full and Open Competition"

FAR subpart 6.3 prescribes the policies and procedures for contracting without full and open competition. Contracting without full and open competition is a violation of statue, such as Section 2304, title 10, United States Code, unless permitted by an exception provided in FAR 6.302, "Circumstances Permitting Other Than Full and Open Competition." FAR 6.302 lists seven exceptions for contracting without full and open competition:

- FAR 6.302-1, "Only One Responsible Source and No Other Supplies or Services Will Satisfy Agency Requirements,"
- FAR 6.302-2, "Unusual and Compelling Urgency,"
- FAR 6.302-3, "Industrial Mobilization; Engineering, Developmental, or Research Capability; or Expert Services,"
- FAR 6.302-4, "International Agreement,"
- FAR 6.302-5, "Authorized or Required by Statute,"
- FAR 6.302-6, "National Security," and
- FAR 6.302-7, "Public Interest."

A contracting officer must not begin negotiations for or award a noncompetitive contract without providing full and open competition unless the contracting officer justifies the use of such action in writing, certifies the accuracy and completeness of the justification, and obtains approval of the justification. FAR 6.303-2, "Content," requires each justification to contain sufficient facts and rationale to justify the use of the authority cited. At a minimum, each justification must contain the following.

- The name of the agency and contracting activity and identification of the document as a "Justification for other than full and open competition."
- A description of the action being approved.
- A description of the supplies or services required to meet the agency's needs including the estimated value.
- The statutory authority permitting other than full and open competition.
- A demonstration that the contractor's unique qualifications or the nature of the acquisition requires the use of the authority cited.
- A description of the efforts made to ensure offers are submitted from as many sources as practicable.
- The contracting officer's determination that the cost to the Government will be fair and reasonable.
- A description and the results of the market research conducted or, if market research was not conducted, a reason it was not conducted.
- Any other facts supporting the use of other than full and open competition.

- A listing or sources that expressed written interest in the acquisition.
- A statement of the actions the agency may take to overcome any barriers to competition before a subsequent acquisition.
- The contracting officer's certification that the justification is accurate and complete to the best of his or her knowledge and belief.

FAR 6.304, "Approval of the Justification," identifies the person responsible for approving the J&A based on the value of the proposed contract.* The contracting officer approves the J&A for a proposed contract not exceeding $550,000. The competition advocate approves the J&A for a proposed contract of more than $550,000 but not exceeding $11.5 million. A general or flag officer if a member of the military, or a civilian in a position above GS-15 under the general schedule approves the J&A for a proposed contract more than $11.5 million but not exceeding $78.5 million. The senior procurement executive of the agency approves the J&A for a proposed contract over $78.5 million.

FAR Subpart 5.2, "Synopses of Proposed Contract Actions"

FAR 5.201, "General," requires agencies to provide a synopsis of proposed contract actions for the acquisition of supplies and services. The contracting officer must submit the synopsis to the Governmentwide Point of Entry that can be accessed on the Internet at https://www.fedbizopps.gov. FAR 5.203, "Publicizing and Response Time," requires the synopsis to be published for at least 15 days before the issuance of a solicitation or proposed contract action; however, the contracting officer may establish a shorter period of time for commercial items. Each synopsis submitted to the Governmentwide Point of Entry must include certain data elements as applicable, such as the date of the synopsis, the closing response date, a proposed solicitation number, a description, and the point of contact or contracting officer. In addition, FAR 5.202, "Exceptions," lists circumstances when the contracting officer does not need to submit a synopsis. Examples of instances when the contracting officer does not need to submit a synopsis include the following.

- The proposed contract action is made under FAR 6.302-2, and the Government would be seriously injured if the agency complied with time periods specified by FAR 5.203.
- The proposed contract action is made under FAR 6.302-3 or FAR 6.302-5 with regard to brand name commercial items authorized for resale.
- The proposed contract action is made under FAR 6.302-3 with regard to the services of an expert to support the Government in a litigation or dispute.

Contracting officers are required by FAR 5.207, "Preparation and Transmittal of Synopses," to include statements in the synopses of noncompetitive contract actions stating their intent to award a noncompetitive contract and notifying interested sources of actions they can take if interested in the noncompetitive contract. FAR 5.207(c)(14)

* On October 1, 2010, the approval thresholds increased. Our review was limited to noncompetitive contract awards during FY 2009 and FY 2010; therefore, we used the approval thresholds in place during FY 2009 and FY 2010.

requires the synopsis of noncompetitive contract actions to identify the intended source and a statement of the reason justifying the lack of competition. FAR 5.207(c)(15)(ii) requires the synopsis of noncompetitive contract actions using FAR 6.302-1 as the authority cited to include a statement that all responsible sources may submit a capability statement, proposal, or quotation, which shall be considered by the agency. For other proposed contract actions made under FAR 6.302, FAR 5.207(c)(15)(i) requires the synopsis to include a statement that all responsible sources may submit a bid, proposal, or quotation which shall be considered by the agency.

FAR Part 10, "Market Research"

FAR part 10 prescribes policies and procedures for conducting market research to arrive at the most suitable approach for acquiring, distributing, and supporting supplies and services. Agencies are required to conduct market research appropriate to the circumstance before soliciting offers for acquisitions with an estimated value over the simplified acquisition threshold. Agencies are required to use the results of market research to determine if there are appropriate sources or commercial items capable of satisfying the agency's requirements. The extent of market research the agencies conducts varies depending on factors such as urgency, estimated dollar value, complexity, and past experience. The contracting officer may use market research conducted within 18 months before the award of any task or delivery order if the information is still current, accurate, and relevant. Agencies use market research techniques, such as contacting knowledgeable individuals in Government and industry, reviewing results of recent market research, publishing formal requests for information, querying database, participating in on-line communication, obtaining source lists of similar items, and reviewing available product literature. Agencies should document the results of market research in a manner appropriate to the size and complexity of the acquisition.

Appendix C. Noncompetitive Contracts Reviewed

Noncompetitive Contracts Awarded by Natick Contracting Division from FY 2009-FY 2010

	Contract Number	Product or Service	Description	Award Date	Contract Type	Authority Cited	Contract Award Amount
1	W911QY-10-C-0147	Service	Annual testing of base-wide fire alarms	8/3/2010	FFP	FAR 6.302-1	$ 52,000
2	W911QY-09-C-0076	Product	Hampton University Proton Therapy Institute equipment	4/22/2009	FFP	FAR 6.302-1	7,999,258
3	W911QY-09-C-0004	Service	Testing software	12/18/2008	FFP	FAR 6.302-1	2,243,610
4	W911QY-10-C-0010	Service	Study of potential nutritional approaches for protection from neurotrauma injuries to military personnel deployed to conflict areas	12/16/2009	Cost	FAR 6.302-1	500,000
5	W911QY-09-C-0007	Service	Warehousing of and logistical services for the U.S. Army's dissipating pads	11/13/2008	FFP	FAR 6.302-1	815,479
6	W911QY-10-C-0106	Service	Research study for investigation of burn threats at the finger scale using an instrumented manikin and the impact of design of protective gloves for the soldier	3/31/2010	FFP	FAR 6.302-1	164,664
7	W911QY-10-C-0231	Service	Research study to develop an analysis method and report to support hydration status monitoring in the field	9/30/2010	FFP	FAR 6.302-1	119,559
8	W911QY-10-C-0226	Product	Joint Precision Aerial Delivery System 2K decelerator systems	9/28/2010	FFP	FAR 6.302-2	2,981,595

Acronyms and definitions used throughout the Appendix C are defined on the final page of Appendix C.

Appendix C. Noncompetitive Contracts Reviewed (cont'd)

Noncompetitive Contracts Awarded by Natick Contracting Division from FY 2009-FY 2010

	Contract Number	Product or Service	Description	Award Date	Contract Type	Authority Cited	Contract Award Amount
9	W911QY-09-C-0129	Product	Brackets and mounts	8/24/2009	FFP	FAR 6.302-1	$ 203,387
10	W911QY-10-C-0194	Service	Research study to estimate the direct costs to the U.S. Army of injuries occurring during Basic Combat Training	9/23/2010	Cost	FAR 6.302-3	179,763
11	W911QY-10-C-0117	Product	Commercial off-the-shelf collapsible shelter products	4/14/2010	FFP	FAR 6.302-1	326,629
12	W911QY-10-C-0142	Product	Apparel	8/13/2010	FFP	FAR 6.302-1	1,741,215
13	W911QY-10-C-0143	Product	Flame Resistant Army Combat Uniforms	8/20/2010	FFP	FAR 6.302-1	1,635,375
14	W911QY-09-C-0008	Service	Research efforts of the cGMP Somatic Cell Processing Facility, part of the Cell Transplant Center that is ongoing in the Diabetes Research Institute, University of Miami	1/6/2009	FFP	FAR 6.302-1	1,370,740
15	W911QY-09-C-0020	Product	Flame resistant army combat uniform	12/18/2008	FFP	FAR 6.302-2	5,872,400
16	W911QY-09-C-0138	Product	Microscope	8/25/2009	FFP	FAR 6.302-1	459,872
17	W911QY-10-C-0154	Service	Master planning services	8/16/2010	FFP	FAR 6.302-1	265,250
18	W911QY-10-C-0229	Product	To provide a secured facility, within a secured building	9/29/2010	FFP	FAR 6.302-1	101,935

Acronyms and definitions used throughout the Appendix C are defined on the final page of Appendix C.

Appendix C. Noncompetitive Contracts Reviewed (cont'd)

Noncompetitive Contracts Awarded by Natick Contracting Division from FY 2009-FY 2010

	Contract Number	Product or Service	Description	Award Date	Contract Type	Authority Cited	Contract Award Amount
19	W911QY-10-C-0165	Service	Cleaning services for soiled Interceptor Body Armor vests	8/2/2010	FFP	FAR 6.302-2	$ 549,735
20	W911QY-09-D-0008	Service	Logistic services	2/25/2009	FFP	FAR 6.302-1	3,832,980
21	W911QY-10-C-0101	Service	Services to formulate and test 5 jerky-like meats.	6/18/2010	FFP	FAR 6.302-1	70,526
22	W911QY-09-C-0098	Services	Research support services, other direct costs travel, and manpower reporting	9/8/2009	FFP	FAR 6.302-3	118,750
	Total Reviewed						**$31,604,772**

Cost	Cost Reimbursement
FAR 6.302-1	Only One Responsible Source and No Other Supplies or Services Will Satisfy Agency Requirements
FAR 6.302-2	Unusual and Compelling Urgency
FAR 6.302-3	Industrial mobilization; engineering, developmental, or research capability; or expert services
FFP	Firm-Fixed-Price

Appendix D. Adequate Justification and Approvals

Noncompetitive Contracts Awarded by Natick Contracting Division from FY 2009-FY 2010

	Contract Number	Content Requirements Met	Authority Cited Appropriately Met	Justification & Approval Approved by Proper Personnel	Justification & Approval Approved Before Contract Award
1	W911QY-10-C-0147		√	√	√
2	W911QY-09-C-0076		√	√	√
3	W911QY-09-C-0004	√	√	√	√
4	W911QY-10-C-0010		√	√	√
5	W911QY-09-C-0007		√	√	√
6	W911QY-09-C-0106	√	√	√	√
7	W911QY-10-C-0231	√	√	√	√
8	W911QY-10-C-0226	√	√	√	√
9	W911QY-09-C-0129	√	√	√	√
10	W911QY-10-C-0194	√	√	√	√
11	W911QY-10-C-0117		√	√	√
12	W911QY-10-C-0142		√	√	√
13	W911QY-10-C-0143		√	√	√

Appendix D. Adequate Justification and Approvals (cont'd)

Noncompetitive Contracts Awarded by Natick Contracting Division from FY 2009-FY 2010

	Contract Number	Content Requirements Met	Authority Cited Appropriately Met	Justification & Approval Approved by Proper Personnel	Justification & Approval Approved Before Contract Award
14	W911QY-09-C-0008	√	√	√	√
15	W911QY-09-C-0020	√	√	√	√
16	W911QY-09-C-0138		√	√	√
17	W911QY-10-C-0154			√	
18	W911QY-10-C-0229		√	√	√
19	W911QY-10-C-0165	√	√	√	√
20	W911QY-09-D-0008		√	√	√
21	W911QY-10-C-0101	√	√	√	√
22	W911QY-09-C-0098	√	√	√	√

Appendix E. Market Research Conducted

Noncompetitive Contracts Awarded by Natick Contracting Division from FY 2009-FY 2010

	Contract Number	Estimated Value on the J&A	Specific Steps Performed	Results of Market Research or Justification for Not Conducting Market Research	Supporting Documentation	Market Research Considered Adequate
1	W911QY-10-C-0147	$276,075.05	Canvassed local companies capable of providing the type of work, but specific companies contacted were not identified	No companies were available with sufficient experience to perform the unique functions required for this work	Market research document and J&A	Yes[1]
2	W911QY-09-C-0076	$7,999,257.60	No market research conducted	The contractor is the only provider of the gantry and magnet subsystem components that are integral to the Proteus 235 system, and no other manufacturer's components are compatible with the current system.	Memorandum and J&A	Yes[2]
3	W911QY-09-C-0004	$2,243,610.00	Performed an environmental scan of currently available sources in the market, searched the internet, reviewed Government databases, and obtained information on patents held by other contractors	No other sources were found	J&A	Yes

[1] Although the market research conducted was considered adequate, the market research was not adequately documented.
[2] Although market research was not conducted, the rationale provided for not conducting research was considered appropriate.

Appendix E. Market Research Conducted (cont'd)

Noncompetitive Contracts Awarded by Natick Contracting Division from FY 2009-FY 2010

	Contract Number	Estimated Value on the J&A	Specific Steps Performed	Results of Market Research or Justification for Not Conducting Market Research	Supporting Documentation	Market Research Considered Adequate
4	W911QY-10-C-0010	$1,012,776.00	Internet searches within academia and commercial sources. Review of various related databases. Searches were done at two major conferences	None of the sources were able to meet the unique levels of performance or schedule required	J&A	Yes
5	W911QY-09-C-0007	$815,479.00	The contract specialist and project officer conducted market research in concert with one another	No other warehouse facility was found that has the same square footage or the same level of safety appropriate for storing the pads	Acquisition Strategy and J&A	Yes
6	W911QY-09-C-0106	$164,664.00	A sources sought announcement was published and contacted experts with understanding of scientific capabilities available	Two responses were received. One response was not a certified test laboratory and the second received the sole-source award	Market research document and J&A	Yes
7	W911QY-10-C-0231	$119,059.00	Exhaustive search of both scrutinized and non-scrutinized hydration assessment technologies	No other sources with viable technical solutions have expressed an interest in writing	Market Research Document and J&A	Yes

Appendix E. Market Research Conducted (cont'd)

Noncompetitive Contracts Awarded by Natick Contracting Division from FY 2009-FY 2010

	Contract Number	Estimated Value on the J&A	Specific Steps Performed	Results of Market Research or Justification for Not Conducting Market Research	Supporting Documentation	Market Research Considered Adequate
8	W911QY-10-C-0226	$4,130,000.00	A request for information was publicized, and the responses were reviewed with a focus on potential to meet the requirements	No other expendable and/or low-cost decelerator system is commercially available that is capable of satisfying the performance and delivery requirements	J&A	Yes
9	W911QY-09-C-0129	$203,387.25	An internet search of compatible with current operator equipment. Several trade shows were attended to determine if any vendors produce an equivalent system	The contractor was the only vendor that manufactures the Night Vision Goggle accessories	J&A	Yes
10	W911QY-10-C-0194	$274,337.00	Contacted subject matter experts and issued a request for information	No other equally qualified organization has been identified that has the skill-sets needed for this project	J&A and follow up email	Yes
11	W911QY-10-C-0117	$1,900,000.00	A request for information was issued and the results were organized and reviewed by a team with over 90 years of experience and knowledge	12 companies that have products available that could meet the basic requirements	J&A	Yes

Appendix E. Market Research Conducted (cont'd)

Noncompetitive Contracts Awarded by Natick Contracting Division from FY 2009-FY 2010

	Contract Number	Estimated Value on the J&A	Specific Steps Performed	Results of Market Research or Justification for Not Conducting Market Research	Supporting Documentation	Market Research Considered Adequate
12	W911QY-10-C-0142	$1,784,947.50	A request for information was issued to solicit industry for the availability of interested and responsible providers of the Flame Resistant Army Combat Uniform	13 manufacturers interested in producing the Flame Resistant Army Combat Uniform. Only five of these are currently producing the product that can meet the requirement[3]	Market research memorandum and J&A	Yes
13	W911QY-10-C-0143	$1,411,016.25	A request for information was issued to solicit industry for the availability of interested and responsible providers of the Flame Resistant Army Combat Uniform	13 manufacturers interested in producing the Flame Resistant Army Combat. Only five of these are currently producing the product that can meet the requirement[3]	Market research memorandum and J&A	Yes
14	W911QY-09-C-0008	$1,370,740.00	In-depth Internet searches, review of government databases, obtained information on patents held by current contractors, and surveyed the market for products that can meet their requirements	No other sources were found to have the functional capabilities and expertise in the area	Acquisition Strategy and J&A	Yes

[3] The five vendors selected for this action can meet this bridge buy requirement by delivering 18,375 coats and or trousers each per month. No other manufacturer can meet this required schedule as they would have to set up a production line and go through first article testing approval to ensure the garments meets rigid safety requirements as this is a flame resistant, life-saving garment. Natick contracting personnel awarded five sole-source contracts at the maximum production levels.

Appendix E. Market Research Conducted (cont'd)

Noncompetitive Contracts Awarded by Natick Contracting Division from FY 2009-FY 2010

	Contract Number	Estimated Value on the J&A	Specific Steps Performed	Results of Market Research or Justification for Not Conducting Market Research	Supporting Documentation	Market Research Considered Adequate
15	W911QY-09-C-0020	$10,918,400.00	Market research was being conducted on an ongoing basis	To date, no other contractor can meet the immediate requirement	J&A and follow up email	Yes
16	W911QY-09-C-0138	$459,872.53	Review of three main companies and their microscope capabilities	The contractor was determined to be the only system to the meet Government's needs	J&A	Yes
17	W911QY-10-C-0154	$256,250.00	No market research conducted	No market research was performed due to the amount of time, effort and resources it would take for another contractor to come up to speed on knowledge gained on critical planning steps that can only be obtained from having performed the work in Phase I.	Market Research Document and J&A	No
18	W911QY-10-C-0229	$545,893.00	No market research conducted	There was no other acceptable building available for use	J&A	Yes[4]

[4] Although market research was not conducted, the rationale provided for not conducting research was considered appropriate.

Appendix E. Market Research Conducted (cont'd)

Noncompetitive Contracts Awarded by Natick Contracting Division from FY 2009-FY 2010

	Contract Number	Estimated Value on the J&A	Specific Steps Performed	Results of Market Research or Justification for Not Conducting Market Research	Supporting Documentation	Market Research Considered Adequate
19	W911QY-10-C-0165	$550,000.00	An improved study was done in which different cleaning technologies were evaluated. Internet searches were conducted to survey commercial cleaners in the U.S that have computer-controlled wet cleaning capabilities to serve the Army's needs	The contractor was identified as the only viable vendor that could readily fulfill the Army's immediate needs	J&A	Yes
20	W911QY-09-D-0008	$3,128,276.00	No market research conducted	The contractor manufactures the items to be services and hasn't made any proprietary technical data available.	J&A	Yes[5]
21	W911QY-10-C-0101	$1,565,747.26	A market survey was conducted. Internet searches were conducted within foreign academia and commercial sources to find potential candidates	No matches available to meet the requirements	J&A	Yes
22	W911QY-09-C-0098	$237,500.00	No market research conducted	No other contractor would have the intimate knowledge required to analyze and compile the data described in the Statement of Work.	J&A	Yes[5]

[5] Although market research was not conducted, the rationale provided for not conducting research was considered appropriate.

Department of the Army Comments

DEPARTMENT OF THE ARMY
HEADQUARTERS, U.S. ARMY MATERIEL COMMAND
4400 MARTIN ROAD
REDSTONE ARSENAL, AL 35898-5000

REPLY TO ATTENTION OF:

AMCIR

MAR 2 2 2012

MEMORANDUM FOR Department of Defense Inspector General (DoDIG), ATTN: [redacted], Program Director, Room 300, 400 Army Navy Drive, Arlington, VA 22202-4704

SUBJECT: Command Reply to DoDIG Draft Report - Natick Contracting Division's Management of Noncompetitive Awards Was Generally Justified, dated 24 February 2012 (Project No. D2011-D000CG-0228.001)

1. The U.S. Army Materiel Command (AMC) has reviewed the subject draft report and the response from the U.S. Army Contracting Command (ACC). AMC endorses the enclosed ACC response.

2. The AMC point of contact is [redacted] or email: [redacted]

Encl

JOHN B. NERGER
Executive Deputy to the
Commanding General

DEPARTMENT OF THE ARMY
U.S. ARMY CONTRACTING COMMAND
3334A WELLS ROAD
REDSTONE ARSENAL, AL 35898-5000

REPLY TO
ATTENTION OF:

AMSCC-IR

19 March 2012

MEMORANDUM FOR [redacted], Director, Internal Review and Audit Compliance Office, Headquarters, U.S. Army Materiel Command, 4400 Martin Road, Redstone Arsenal, AL 35898

SUBJECT: Natick Contracting Division's Management of Noncompetitive Awards Was Generally Justified (Audit Report D2011-DOOOCG-0228.01) (D1227) (10147)

1. Reference audit report, Office of Inspector General – Department of Defense, 24 February 2012, subject: same as above.

2. The Army Contracting Command (ACC) concurs with the enclosed comments from ACC- Aberdeen Proving Ground.

3. The ACC point of contact is [redacted], Director, Internal Review and Compliance Office, [redacted], email: [redacted]

Carol E. Lowman

Encl

CAROL E. LOWMAN
Executive Director

DEPARTMENT OF THE ARMY
U.S. ARMY CONTRACTING COMMAND - ABERDEEN PROVING GROUND
4118 SUSQUEHANNA AVENUE
ABERDEEN PROVING GROUND, MD 21005-3013

REPLY TO ATTENTION OF

CCAP

12 March 2012

MEMORANDUM THRU [redacted], Army Contract Command Internal Review and Audit Compliance Office

[redacted], Program Director, Acquisition and Contract Management, Department of Defense Inspector General

SUBJECT: DoDIG Project No. D2011-D000CG-0228.001, Natick Contracting Division's Management of Noncompetitive Awards Was Generally Justified.

1. Army Contracting Command – Aberdeen Proving Ground (ACC-APG) comments on recommendations within subject draft report are enclosed.

2. Point of contact [redacted], CCAP-OPC, [redacted].

Encl

for Bryon J. Young
Executive Director

ARMY CONTRACTING COMMAND – ABERDEEN PROVING GROUND (ACC-APG)
RESPONSE TO DODIG PROJECT NUMBER D2011-D000CG-0228.001

BACKGROUND

DoD Inspector General (DoDIG) conducted a review of the Natick Contracting Division (NCD) in June 2011 to evaluate the management of noncompetitive actions. The objective of the project was to determine if noncompetitive contract awards were properly justified as sole source. A total of 22 contracts actions awarded between FY2009 and FY 2010 for a value of $29.4 million were reviewed. The report determined 21 of the 22 actions were adequately justified for noncompetitive award. However, one action of 22 did not provide adequate justification for the noncompetitive award, valued at about $265,000. The report stated this occurrence was due to contracting personnel not conducting market research or adequately discussing in the justification and approval (J&A) why market research was not conducted and did not obtain approval of the J&A before awarding the noncompetitive contract.

The report also determined that NCD contracting personnel did not include one or both of the statements required by FAR 5.207 in 10 of the 22 contracts to ensure that interested sources are aware of actions they can take if interested in competing for noncompetitive contracts

DoDIG concluded that NCD contracting personnel generally documented compliance with content requirements in FAR 6.303-2, obtained approval from the proper official as required by FAR 6.304 for the 22 J&As, and had an approved J&A before awarding 21 noncompetitive contracts as required by FAR 6.303.

DRAFT REPORT RECOMMENDATION 1 FOR EXECUTIVE DIRECTOR, ACC-APG

Review the performance of the contracting officer who awarded the noncompetitive contract without legal approval to determine whether administrative action is warranted.

ACC-APG COMMENTS AND ACTION TAKEN

ACC-APG concurs with the recommendation. A review by Natick Contracting Division (NCD) of the contract action and its supporting documentation was conducted to determine if administrative action is warranted. Although there was evidence of J&A documents present prior to award, it was found that the J&A located in the file was signed after contract award by the requiring activity and the contracting officer and that no signature was present by the legal advisor. The Chief, NCD acknowledges that the documentation in the contract file was insufficient to depict actions taken by the contracting officer and that a proper signed J&A was not in the file at the time of award.

The lack of a signed J&A and insufficient supporting pre-award documentation results in the need to counsel the contracting officer with regard to file documentation and the importance of obtaining all appropriate signatures prior to contract award. The Chief, NCD will further institute a branch supervisor review of future contract actions initiated by the contracting officer prior to contract award until such time as the supervisor is confident documentation and review/approval signatures are obtained and evidenced in all files. Counseling of the contracting officer and supervisory review will commence no later than 30 March 2012. This constitutes the administrative action that will be taken against the contracting officer.

DRAFT REPORT RECOMMENDATION 2 FOR EXECUTIVE DIRECTOR, ACC-APG

Emphasize the importance of obtaining the appropriate approvals and properly justifying future noncompetitive contracts.

ACC-APG COMMENTS AND ACTION TAKEN

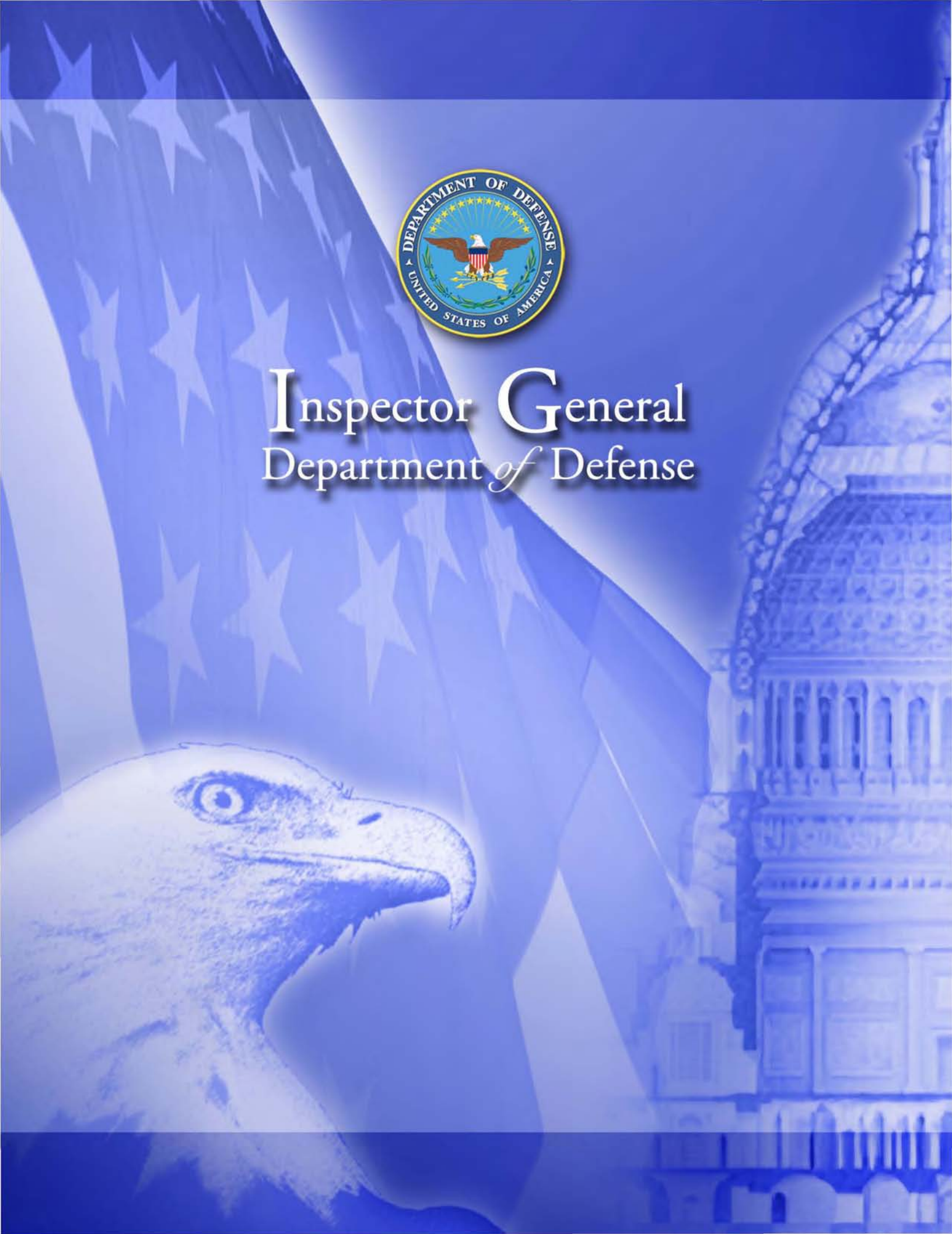
ACC-APG concurs with the recommendation. The Chief, NCD will develop and distribute a memorandum to all NCD contracting personnel emphasizing the importance of obtaining appropriate approvals in regards to justification for future noncompetitive actions. Distribution of this memorandum will occur no later than 30 March2012

DRAFT REPORT RECOMMENDATION 3 FOR EXECUTIVE DIRECTOR, ACC-APG

Provide contracting personnel training or a memorandum on including the statements required by FAR 5.207 in the synopsis of contract actions made under FAR 6.302.

ACC-APG COMMENTS AND ACTION TAKEN

ACC-APG concurs with the recommendation. The Chief, Natick Contracting Division will develop and distribute a memorandum to all NCD contracting personnel emphasizing the importance of statements required by FAR 5.207 in the synopsis for actions made under FAR 6.302. The Chief, NCD will also be conducting a review of the DoDIG draft report with all NCD Branch Chiefs to discuss the results and strategize for future compliance. Distribution of this memorandum and branch chief meeting will occur no later than 30 March 2012.


Inspector General
Department of Defense