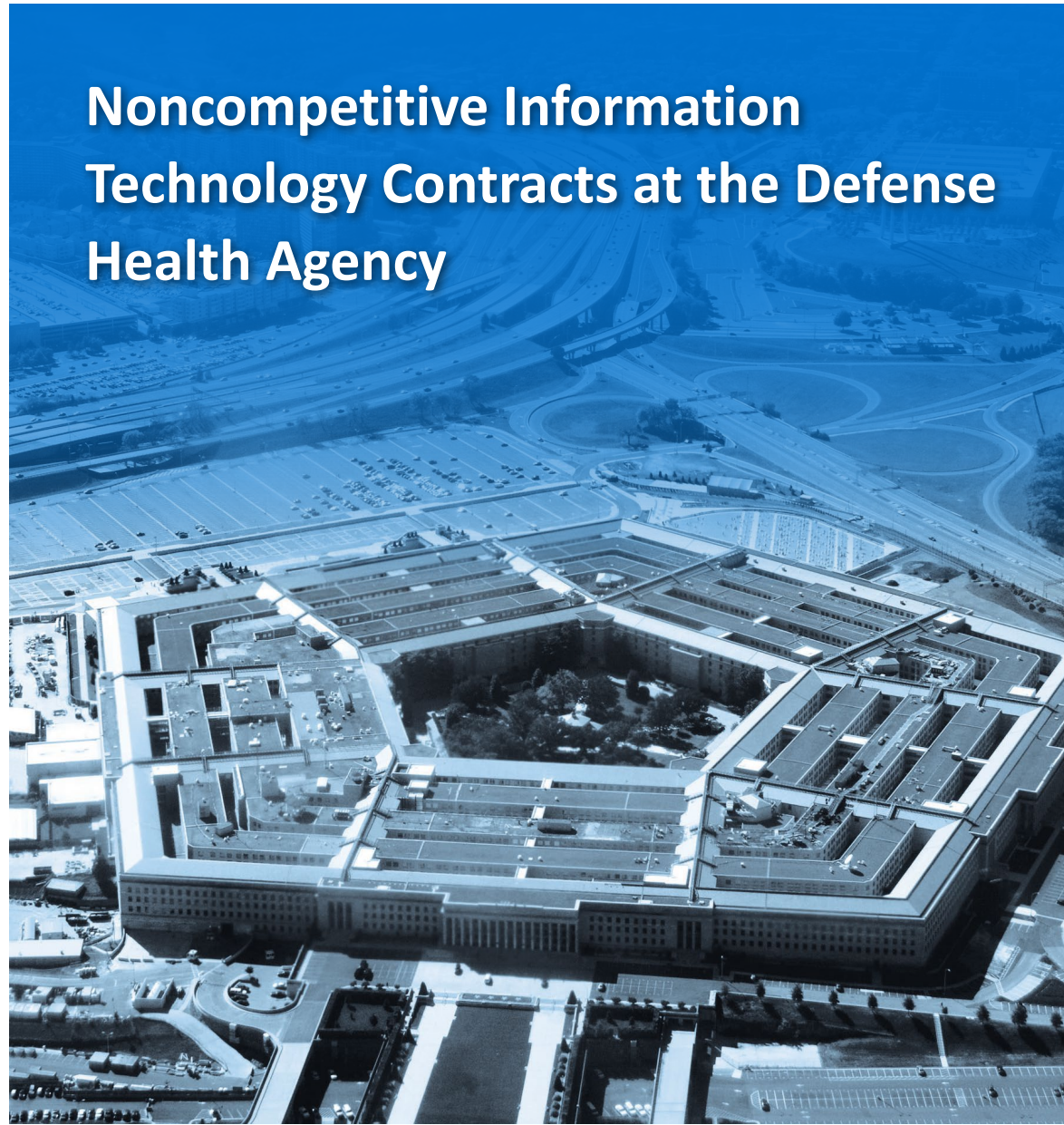




INSPECTOR GENERAL

U.S. Department of Defense

APRIL 13, 2018



Noncompetitive Information Technology Contracts at the Defense Health Agency

INTEGRITY ★ EFFICIENCY ★ ACCOUNTABILITY ★ EXCELLENCE

INTEGRITY ★ EFFICIENCY ★ ACCOUNTABILITY ★ EXCELLENCE

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Results in Brief

Noncompetitive Information Technology Contracts at the Defense Health Agency

April 13, 2018

Objective

We determined whether the Defense Health Agency (DHA) properly awarded noncompetitive Information Technology (IT) contracts.

Background

Full and open competition is the preferred method for Federal agencies to award contracts. However, the United States Code includes certain exceptions for awarding contracts without full and open competition. For example, Federal agencies may award contracts without full and open competition to a small business participating in a program sponsored by the Small Business Administration (SBA), such as the 8(a) Program for small, disadvantaged businesses.

We reviewed all 27 noncompetitive IT contracts, valued at \$329.6 million, awarded by the DHA Contracting Office–Health Information Technology (CO-HIT) at Joint Base San Antonio–Fort Sam Houston, San Antonio, Texas between October 1, 2015 and July 27, 2017.

Finding

DHA CO-HIT contracting personnel properly awarded 23 noncompetitive IT contracts, valued at \$87.2 million, of the 27 contracts reviewed. For 16 contracts, valued at \$81.3 million, DHA CO-HIT contracting personnel properly awarded the contracts as sole-source under the 8(a) Program and coordinated with the SBA. Additionally, DHA CO-HIT contracting personnel properly awarded seven contracts,

Finding (cont'd)

valued at \$5.9 million, using another Federal Acquisition Regulation (FAR) authority, which permitted contracting without providing for full and open competition. However, the DHA CO-HIT contracting personnel did not properly award four contracts, valued at \$242.3 million, of the 27 contracts reviewed.

For one contract, valued at \$237.9 million, the DHA CO-HIT contracting officer did not appropriately apply the sole-source authority cited, include all of the minimum FAR content requirements in the justification, or properly award a bridge contract.¹ This occurred because the DHA used multiple contracting offices before awarding the contract. Furthermore, the DHA knew about the requirement for 2 years; however, it did not adequately communicate the requirement before the previous task order expired. This led the awarding contracting officer to overlook market research that identified other potential capable sources. In addition, the contracting officer stated that he had other priorities that prevented him from determining a fair and reasonable price. The DHA also had minimal guidance on bridge contracts.

For three other contracts, valued at \$4.4 million, DHA CO-HIT contracting personnel did not meet one of the FAR criteria for the authority cited by not determining a fair and reasonable price or appropriately advertising award opportunities. DHA CO-HIT contracting personnel stated that this occurred because they had competing priorities from multiple procurements and they overlooked performing all applicable requirements.

As a result, DHA contracting officials should have awarded the contract valued at \$237.9 million, using full and open competition. In addition, for all four contracts, the DoD may have paid a lower price for the IT services received or increased future competition, if the DHA CO-HIT contracting personnel had performed their due diligence in determining fair and reasonable prices and appropriately advertised award opportunities.

¹ A bridge contract is a new, short term (less than 1 year) contract awarded on a sole-source basis to an incumbent contractor to avoid a lapse in service.



Results in Brief

Noncompetitive Information Technology Contracts at the Defense Health Agency

Recommendations

We recommend that the Head of the Contracting Activity, Defense Health Agency review the contract actions taken for the one contract, valued at \$237.9 million, and determine whether the contract should be terminated and awarded using full and open competition; issue guidance on the use of bridge contracts; and develop procedures for defining minimum timeframes for procurements.

Management Comments and Our Response

The Acting Component Acquisition Executive (J-4), Defense Health Agency, agreed with our recommendations. The Head of the Contracting Activity reviewed the contract action to sustain Secure Messaging Software as a Service and determined not to terminate and re-announce the contract for competition. The Head of the Contracting Activity plans to publish a Procurement Directive to provide policy guidance on the use of bridge contracts. The Head of the Contracting Activity will also perform a review that considers whether to develop refined procedures that ensure adequate time to properly evaluate and award contracts.

The recommendations are resolved but remain open. The recommendations will be closed when we verify the actions are fully implemented and review the support for the planned or already conducted actions. Additionally, the Acting Component Acquisition Executive commented on the internal control weaknesses we identified and described DHA internal control processes related to the internal control weaknesses we identified. Although some key internal control processes were in place, we concluded that some controls were not always implemented, and some additional controls were required to address problems identified.

Please see the Recommendations Table on the next page.

Recommendations Table

Management	Recommendations Unresolved	Recommendations Resolved	Recommendations Closed
Head of the Contracting Activity, Defense Health Agency	None	1.a, 1.b, 1.c	None

The following categories are used to describe agency management's comments to individual recommendations:

- **Unresolved** – Management has not agreed to implement the recommendation or has not proposed actions that will address the recommendation.
- **Resolved** – Management agreed to implement the recommendation or has proposed actions that will address the underlying finding that generated the recommendation.
- **Closed** – OIG verified that the agreed upon corrective actions were implemented.





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

April 13, 2018

MEMORANDUM FOR UNDER SECRETARY OF DEFENSE FOR ACQUISITION,
TECHNOLOGY AND LOGISTICS
DIRECTOR, DEFENSE HEALTH AGENCY

SUBJECT: Noncompetitive Information Technology Contracts at the
Defense Health Agency (Report No. DODIG-2018-105)

We are providing this report for your information and use. We conducted this audit in accordance with generally accepted government auditing standards.

We considered management comments on a draft of this report when preparing the final report. Comments from the Acting Component Acquisition Executive (J-4), Defense Health Agency conformed to the requirements of DoD Instruction 7650.03; therefore, we do not require additional comments. We appreciate the courtesies extended to the staff. Please direct questions to me at (703) 604-9312 (DSN 664-9312).

A handwritten signature in black ink, reading "Theresa S. Hull", is positioned above the printed name.

Theresa S. Hull
Assistant Inspector General
Acquisition, Contracting, and Sustainment

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Introduction

Objective

We determined whether the Defense Health Agency (DHA) properly awarded noncompetitive Information Technology (IT) contracts. See Appendix A for the scope and methodology and prior coverage related to the objective.

Background

Guidance

Full and open competition is the preferred method for Federal agencies to award contracts because it helps spur innovation, improve quality and performance, and lower costs for the supplies and services they acquire. The United States Code requires contracting officers, with certain exceptions, to promote and provide for full and open competition when soliciting offers and awarding contracts.² The United States Code also includes certain exceptions that authorize contracting without full and open competition.

Each contract awarded without providing for full and open competition must comply with the Federal Acquisition Regulation (FAR). FAR Part 6, “Competition Requirements,” sets the policies and procedures and identifies the statutory authorities for contracting without full and open competition.³ FAR part 6 also incorporates contracting with the Small Business Administration (The 8(a) Program).⁴ The 8(a) Program sets aside requirements for accepted small business participants, to which contracts may be awarded on either a sole-source or competitive basis. FAR Subpart 13.5, “Simplified Procedures for Certain Commercial Items,” identifies special requirements for acquisitions conducted under simplified acquisition procedures that are exempt from the requirements in FAR part 6.⁵

Additionally, FAR Part 10, “Market Research,” sets policies and procedures for conducting market research to arrive at the most suitable approach to acquiring, distributing, and supporting services. Finally, FAR Subpart 5.2, “Synopsis of Proposed Contract Actions,” sets policies and procedures for posting notices of proposed contract actions through the Government-wide Point of Entry, available via the Internet on the Federal Business Opportunities (FBO) website.⁶

² Section 2304, title 10, United States Code, 2015.

³ FAR Part 6, “Competition Requirements,” and Subpart 6.3, “Other Than Full and Open Competition.”

⁴ FAR Part 19, “Small Business Programs,” and Subpart 19.8, “Contracting with the Small Business Administration (The 8(a) Program).”

⁵ FAR Part 13, “Simplified Acquisition Procedures,” and Subpart 13.5, “Simplified Procedures for Certain Commercial Items.”

⁶ FAR Part 5, “Publicizing Contract Actions,” and Subpart 5.2, “Synopsis of Proposed Contract Actions.” The FBO website is <https://www.fbo.gov>.

Defense Health Agency

The DHA was established in 2013 to serve as a combat support agency that enables the Army, Navy, and Air Force medical services to provide a medically ready force to Combatant Commands. The DHA supports the delivery of integrated, affordable, and high-quality health services to 9.4 million Military Health System (MHS) beneficiaries.

The Component Acquisition Executive (J-4) is responsible for oversight and approval of all acquisition matters for the DHA, including ones for their Program Executive Officers, and their directorates and offices. The J-4 oversees functions for supplies, equipment, services, IT systems, and infrastructure. Additionally, the J-4 includes the Acquisition Process Support and Head Contracting Activity and Contracting Operations.

The Directorate of Procurement supports the MHS by awarding and administering multiregional TRICARE health services contracts, as well as contracts for other medical and dental support and IT. The Directorate of Procurement also serves as an advisor to DHA leadership.

The DHA Component Acquisition Executive, Head of the Contracting Activity, and Competition Advocate are located at the DHA headquarters in Falls Church, Virginia. The J-4's six contracting offices are located in Aurora, Colorado; San Antonio, Texas; and Arlington, Crystal City, Falls Church, and Rosslyn, Virginia.

DHA Noncompetitive IT Contracts Reviewed

We reviewed all 27 noncompetitive IT contracts, valued at \$329.6 million, awarded by the DHA's Contracting Office–Health Information Technology (CO-HIT) at Joint Base San Antonio–Fort Sam Houston, San Antonio, Texas between October 1, 2015, and July 27, 2017. These contracts were awarded without competition for IT-related products and services, including annual software maintenance service plans for brand name software licenses previously procured, cyber security, data backup, data conversion, programming, and IT support equipment for Military Treatment Facilities worldwide.

We identified that 16 of the 27 contracts, valued at \$81.3 million, were sole-source awards under the 8(a) Program, as required by statute in accordance with the FAR.⁷ The remaining 11 contracts, valued at \$248.2 million, were awarded using another sole-source authority or simplified acquisition procedures in accordance

⁷ FAR 6.302-5(b)(4).

with the FAR.⁸ For a list of the 16 noncompetitive IT contracts that were awarded by statute, see Appendix B. For a list of the 11 noncompetitive IT contracts that required a justification, see Appendix C.

For the 16 sole-source awards under the 8(a) Program, we reviewed contract files for documentation to support coordination with the Small Business Administration (SBA), such as an SBA acceptance letter, and a completed DD Form 2579, Small Business Coordination Record, to determine if the contracting officers complied with the Partnership Agreement (PA) between the SBA and the DoD.

For the other 11 noncompetitive contracts, we evaluated justifications and approvals (J&A), price reasonableness determinations, acquisition strategy plans, and other key decision-making documents to determine if the contracting personnel appropriately applied the sole-source authority cited and met all the criteria established for the authority cited. For all 27 contracts reviewed, we also evaluated records of market research for compliance with FAR part 10.

Review of Internal Controls

DoD Instruction 5010.40 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.⁹ We identified internal control weaknesses that DHA CO-HIT contracting personnel did not properly justify the use of other than full and open competition. We also identified weaknesses related to determinations of fair and reasonable prices by DHA CO-HIT contracting personnel, and the procedures for posting notices to publicize contract opportunities and award information. We will provide a copy of the report to the senior official responsible for internal controls in the DHA.

⁸ FAR 6.302-1, "Only One Responsible Source and No Other Supplies or Services Will Satisfy Agency Requirements," and FAR Subpart 13.5, "Simplified Procedures for Certain Commercial Items," respectively.

⁹ DoD Instruction 5010.40, "Managers' Internal Control Program Procedures," May 30, 2013.

Finding

DHA CO-HIT Properly Awarded Most Noncompetitive Information Technology Contracts; However, Improvements Are Needed

DHA CO-HIT contracting personnel properly awarded 23 noncompetitive IT contracts, valued at \$87.2 million. The 23 contracts were awarded in accordance with FAR other than full and open competition requirements and simplified acquisition procedures, as applicable.¹⁰ In total, we reviewed 27 contracts, valued at \$329.6 million.

For 23 contracts, contracting personnel properly awarded:

- 16 contracts, valued at \$81.3 million, as sole-source under the 8(a) Program and coordinated with the SBA;¹¹ and
- 7 contracts, valued at \$5.9 million, that required written justifications.

In addition, contracting personnel conducted and documented market research in accordance with FAR part 10 or adequately justified when market research was not conducted for all 27 contracts. However, the DHA CO-HIT contracting personnel did not properly award 4 of the 27 contracts, valued at \$242.3 million.

For one contract, valued at \$237.9 million, the contracting officer did not:

- appropriately apply the sole-source authority cited,
- include all of the minimum FAR content requirements in the justification for the follow-on contract, or
- properly award a bridge contract.

These problems occurred because the DHA knew about the requirement for 2 years before awarding the contract; however, the multiple DHA contracting offices involved in the contract award did not adequately communicate the requirement before the previous task order expired. This caused the awarding contracting officer at DHA CO-HIT to overlook market research that identified other potential

¹⁰ FAR Part 6, "Competition Requirements," Subpart 6.3, "Other Than Full and Open Competition," and FAR Part 13, "Simplified Acquisition Procedures," Subpart 13.5, "Simplified Procedures for Certain Commercial Items."

¹¹ FAR 6.302-5, "Authorized or Required by Statute," allows for contracting officers to award contracts using procedures other than full and open competition when a statute expressly authorizes the acquisition be made through another agency or from a specified source. Sole-source awards under the 8(a) Program are authorized in FAR 6.302-5(b)(4).

capable sources. In addition, the contracting officer stated that he had other priorities that prevented him from determining a fair and reasonable price. The DHA also had minimal guidance on bridge contracts.¹²

In addition, for three other contracts, valued at \$4.4 million, contracting personnel did not meet one of the FAR criteria for the authority cited. Specifically, contracting personnel did not:

- provide support for the determination of a fair and reasonable price for one contract, valued at \$3 million; or
- post notices to publicize the contract opportunities and award information required by FAR subpart 5.2 for two contracts, valued at \$1.4 million.

DHA CO-HIT contracting personnel stated that this occurred because they had competing priorities from multiple procurements and they overlooked performing these requirements.

As a result, DHA contracting officials should have awarded the contract valued at \$237.9 million, using full and open competition. Moreover, for all four contracts, the DoD may have paid a lower price for the IT services received or increased future competition, if the DHA CO-HIT contracting personnel had performed their due diligence in determining fair and reasonable prices and appropriately advertised award opportunities.

Contracts Required by Statute Were Properly Awarded

DHA CO-HIT contracting personnel properly awarded 16 of the 27 contracts, valued at \$81.3 million, using one of the valid statutory requirements outlined in the FAR.¹³ For these 16 contracts, the DHA CO-HIT contracting personnel properly coordinated with the SBA for contracts awarded under the 8(a) Program and maintained documentation of small business coordination.

Section 8(a) of the Small Business Act established the 8(a) Business Development Program, commonly referred to as the “8(a) Program,” as a business assistance program for small disadvantaged businesses.¹⁴ As stated on the Office of Small Business Programs page of DHA’s public website, “The program is an essential instrument for helping socially and economically disadvantaged entrepreneurs to gain a foothold in government contracting.” DHA CO-HIT contracting personnel awarded contracts under the 8(a) Program when the market research they conducted for these 16 contracts identified eligible 8(a) participants.

¹² As defined by the GAO, in the absence for a formal definition in the FAR, a bridge contract is a new, short-term (less than 1 year) contract awarded on a sole-source basis to an incumbent contractor to avoid a lapse in service by a delay in awarding a follow-on contract.

¹³ FAR 6.302-5, “Authorized or Required by Statute.”

¹⁴ Section 637, title 15, United States Code, 2015.

The DHA CO-HIT contracting personnel properly coordinated with the SBA for all 16 contracts. Sole-source awards under the 8(a) Program do not require a written justification when their values are less than or equal to \$22 million; however, they do require coordination with the SBA.¹⁵ The Partnership Agreement (PA) between the SBA and DoD provides DoD contracting activities with a greater amount of involvement and responsibility in awarding 8(a) contracts. The PA also streamlines and adds flexibility to the 8(a) Program, creating greater opportunity for DoD activities to select and award 8(a) contracts. DHA CO-HIT contracting personnel properly followed the PA when awarding the 16 8(a) contracts reviewed. For example, for 14 of the 16 contracts, DHA CO-HIT contracting officers' actions were supported by an SBA acceptance letter. For the remaining two contracts, the contracting officers waited at least 5 working days before awarding the contracts after the SBA did not respond with an acceptance or a rejection letter in accordance with the PA.

In addition, DHA CO-HIT contracting personnel appropriately documented all 16 contracts awarded under the 8(a) Program on a DD Form 2579 in accordance with the Defense Federal Acquisition Regulation Supplement (DFARS).¹⁶

Seven Contracts That Required Justification Were Properly Awarded

DHA CO-HIT contracting personnel properly awarded seven contracts, valued at \$5.9 million, that required a written justification.¹⁷ For these seven contracts, the contracting personnel:

- appropriately applied the sole-source authority cited;
- documented the required content elements in the justification;
- obtained approval of the justification from the proper official before contract award; and
- posted notices to publicize the contract opportunities and award information, as required by the applicable Federal regulations.

¹⁵ FAR 6.302-5(b)(4) and FAR subpart 19.8.

¹⁶ DFARS Part 219, "Small Business Programs," and Subpart 219.2, "Policies."

¹⁷ FAR 6.303, "Justifications," requires contracting officers to justify contract actions that do not provide for full and open competition in writing.

Sole-Source Authority Cited Was Appropriately Applied

DHA CO-HIT contracting personnel appropriately applied a FAR authority permitting contracting without providing for full and open competition for seven contracts valued at \$5.9 million. Specifically, the contracting personnel awarded:

- five of the seven contracts in accordance with the FAR, citing only one responsible source; and
- two of the seven contracts in accordance with FAR simplified acquisition procedures.¹⁸

For the five contracts citing only one responsible source, DHA CO-HIT contracting officers provided adequate rationale in the J&As to explain why only one contractor could provide the IT products or services required and why only those IT products or services could meet the customers' requirements. For example, a contracting officer justified continuing maintenance and support for software provided by a sole manufacturer and developer by describing the substantial duplication of cost the Government would incur to develop software. For the two contracts citing simplified acquisition procedures, the contracting officers provided adequate rationale in the J&As to justify that the required IT products or services were commercial items and the total cost of the acquisition would be greater than the simplified acquisition threshold but less than \$13 million.¹⁹

Justification Content Complied With Requirements

DHA CO-HIT contracting personnel complied with the FAR content requirements when documenting justifications for seven contracts valued at \$5.9 million. The FAR identifies the minimum information that must be included in a J&A.²⁰ The FAR also requires sufficient facts and rationale to justify the use of the specific authority cited, including but not limited to:

- a description of the supplies or services required to meet the agency's needs,
- a demonstration that the proposed contractor's unique qualifications or the nature of the acquisition requires use of the authority cited, and
- a determination by the contracting officer that the anticipated cost to the Government will be fair and reasonable.

¹⁸ FAR 6.302-1, "Only One Responsible Source and No Other Supplies or Services Will Satisfy Agency Requirements," and Subpart 13.5, "Simplified Procedures for Certain Commercial Items," respectively.

¹⁹ FAR Part 2, "Definitions of Word and Terms," Subpart 2.1, "Definitions," defines the simplified acquisition threshold as \$150,000. FAR 13.500(c) authorizes simplified acquisition procedures for acquisitions that do not exceed \$13 million when the acquisitions are for commercial items.

²⁰ FAR 6.302-1 and FAR subpart 13.5 both state contracting officers must prepare sole-source justifications using the format outlined in FAR 6.303-2.

DHA CO-HIT contracting personnel included all of the minimum content requirements in the J&As for seven contracts as required by the FAR. For example, for these seven contracts, DHA CO-HIT contracting officers certified that the anticipated price was fair and reasonable in the J&A and provided support for how they made their determinations.²¹ We accepted forms titled “Price Reasonableness Determination: Documentation of Best Value,” or a variation thereof, in which the contracting officers documented their performance of one or more of the following price analysis techniques:

- comparison of the proposed price with prices found reasonable on previous purchases,
- comparison to an Independent Government Cost Estimate (IGCE), and
- comparison of GSA prices for similar items.

Approval Obtained from Proper Officials Before Contract Award

DHA CO-HIT contracting personnel obtained approval of the justifications from the proper official before awarding the seven contracts valued at \$5.9 million. The FAR states that the justification for other than full and open competition shall be approved in writing.²² The FAR defines the proper approval authority at various dollar thresholds for proposed DoD contracts as the:

- contracting officer for contracts up to \$700,000;
- competition advocate for the procuring activity for contracts over \$700,000 but less than \$13.5 million;
- head of the procuring activity, who is a general or flag officer in the armed forces or above a GS-15, for contracts over \$13.5 million but less than \$93 million; or
- senior procurement executive of the agency for contracts over \$93 million.²³

For five of the seven contracts, the DHA CO-HIT contracting officers properly approved the justifications. The DHA Competition Advocate properly approved the justifications for the other two contracts.

²¹ FAR Part 15, “Contracting by Negotiation,” Subpart 15.4, “Contract Pricing,” requires contracting officers to perform price analyses to ensure they are purchasing supplies and services from responsible sources at fair and reasonable prices.

²² FAR Part 6.304, “Approval of the Justification,” states that the justification for other than full and open competition shall be approved in writing. FAR Part 13.501, “Special Documentation Requirements,” has the same requirement for acquisitions awarded using simplified acquisition procedures.

²³ FAR 6.304(a)(1)-(4) and FAR 13.501(a)(2)(i)-(iv).

Notices Posted Appropriately for Proposed Contract Actions

DHA CO-HIT contracting personnel posted notices on the FBO website in accordance with the FAR or, if not posted, provided a valid explanation for seven contracts valued at \$5.9 million.²⁴ If a FAR exemption does not apply, the FAR also requires contracting officers to post a notice on the FBO website for proposed contracts expected to exceed \$25,000. The primary purposes of the notice are to improve small business access to acquisition information and enhance competition by identifying contracting and subcontracting opportunities.

DHA CO-HIT contracting officers provided documentation to show they appropriately posted notices to the FBO website for five of the seven contracts. For the other two contracts, the contracting officers provided waivers, signed by the DHA Head of the Contracting Activity, that adequately exempted them from posting notices on the FBO website. Under Secretary of Defense for Acquisition, Technology and Logistics, memorandum, "Actions to Improve Department of Defense Competition," August 21, 2014, states:

In certain limited circumstances, it may be inappropriate or unnecessary to use an RFI [Request for Information] or SS [Sources Sought] notice as a market research method for a particular acquisition; therefore, waivers to this requirement are permitted. The waiver authority is the Head of the Contracting Activity, or designee. The authority may not be delegated lower than a general/flag officer or SES [Senior Executive Service].

For example, for contract HT0015-16-P-0002, valued at \$166,136, the DHA CO-HIT contracting officer stated that he requested the waiver because the required software was only available from one specific contractor and any efforts to obtain competition, including posting to the FBO website, would have been unsuccessful. The contracting officer for contract HT0015-17-C-0002, valued at \$1.1 million, also requested the waiver. He stated that the waiver was necessary for this short-term bridge contract because the procurement was time sensitive. Furthermore, he stated that posting a Request for Information or Sources Sought notice on the FBO website would not have been in the best interest of the Government because it would have delayed the award to the only source capable of providing the interim services.

²⁴ FAR Subpart 5.2, "Synopsis of Proposed Contract Actions," and FAR 5.202, "Exceptions," respectively.

Market Research Was Appropriately Conducted and Documented

DHA CO-HIT contracting personnel appropriately conducted and documented market research in accordance with FAR part 10 or adequately justified when market research was not conducted for all 27 contracts reviewed, valued at \$329.6 million. FAR part 10 requires agencies to conduct and document market research appropriate to the size and complexity of the acquisition. The FAR also requires agencies to use the results of market research to determine if sources capable of satisfying the agency's requirements exist and if commercial items are available to meet the agency's requirements. We determined the DHA CO-HIT contracting personnel used current and relevant market research to award the contracts.²⁵

DHA CO-HIT contract files included evidence of market research conducted for 26 of the 27 contracts reviewed. The DHA CO-HIT contracting personnel relied on market research techniques performed and documented in a market research report (MRR) by the program office. Additionally, DHA CO-HIT contracting personnel performed their own market research techniques and documented them in a separate MRR or acquisition strategy plan. During interviews, DHA CO-HIT contracting officers explained that the contracting office relied on the program offices, or customers, for the preliminary market research because the customers are more familiar with the products and services they need. If the market research provided with the procurement package is lacking sufficient information, then the contract specialists "fill in the gaps" in coordination with the program office, as needed, based on the circumstances, and completes an MRR, if applicable.

For 26 contracts, DHA CO-HIT contract specialists and DHA program office personnel performed and documented the results of one or more of the following market research techniques provided for in the FAR:²⁶

- conducted internet and database searches on sites such as the SBA's Dynamic Small Business, General Services Administration's (GSA) Government-wide Acquisition Contract, AbilityOne, and National Aeronautics and Space Administration Solutions for Enterprise-Wide Procurement;
- contacted knowledgeable individuals in the Government and industry; and
- reviewed past procurements.

²⁵ Market research is considered current when the contracting officer uses market research conducted within 18 months before contract award, as outlined in FAR 10.002(b)(1).

²⁶ FAR 10.002, "Procedures," states the market research conducted may include any or all of the eight techniques listed in FAR 10.002(b)(2).

For one contract reviewed, HT0015-17-C-0002, DHA CO-HIT contracting personnel determined market research was not required based on the circumstances. We agreed with that determination. The DHA CO-HIT contracting officer explained that he attempted to award a consolidated contract for this three-tier requirement. However, the SBA stopped him because it would have an adverse impact on an individual small business. As a result, the contracting personnel needed more time to prepare a new requirement. Therefore, in the short term, the original source, a veteran-owned small business, was the only source available for this follow-on contract to avoid a break in service.

Four Noncompetitive IT Contracts Not Properly Awarded

DHA CO-HIT contracting personnel did not properly award 4 of the 27 contracts, valued at \$242.3 million. For one contract, valued at \$237.9 million, the DHA CO-HIT contracting officer did not appropriately apply the sole-source authority cited, meet the criteria for the authority cited, or properly award a bridge contract. The contracting personnel also did not meet one of the FAR criteria for the authorities cited for three additional contracts, valued at \$4.4 million.

One Contract Should Have Been Awarded Using Full and Open Competition

DHA CO-HIT contracting personnel should have awarded one contract, valued at \$237.9 million, using full and open competition. The contracting personnel did not appropriately apply the sole-source authority cited or meet one of the criteria for the authority cited. Specifically, in the J&A and contract file, the contracting personnel did not:

- demonstrate the contractor's unique qualifications to provide the IT services required,
- demonstrate the nature of the acquisition required use of the authority cited, and
- provide sufficient evidence to support the contracting officer's determination of a fair and reasonable price.

Additionally, the contracting personnel did not properly use a bridge contract. The DoD may have received better IT services, paid a lower price for the IT services received, or both if the DHA CO-HIT contracting personnel had used full and open competition and performed their due diligence in determining a fair and reasonable price.

Understanding the Requirement

For contract HT0015-16-C-0001, valued at \$237.9 million, the DHA CO-HIT contracting officer used other than full and open competition to continue providing Secure Messaging (SM) Software as a Service (SaaS) subscriptions for MHS medical providers at all existing Military Treatment Facilities and associated military health care providers. The contract also provided related account management services, SM training resources, non-standard report preparation, and cybersecurity requirements. The SM was a secure link that allowed MHS medical providers to login and have access to the pharmacy, set up appointments, and communicate with patients before and after appointments. According to the contracting officer, the SM SaaS subscriptions will be rolled up into the Defense Healthcare Management System Modernization subsystem, which will then be rolled up into MHS GENESIS, a master enterprise capability.²⁷

Understanding the History

The DHA CO-HIT contracting officer awarded the contract to bridge the gap between an expiring task order on a competitive GSA contract and the Defense Healthcare Management System Modernization SM deployment. The follow-on contract was awarded to the contractor that performed the same services as a subcontractor on the competitive GSA contract through task orders. The former subcontractor was awarded the contract even though the contracting officer's representative for the task order had concerns with the then subcontractor's performance and, in May 2013, sent the prime contractor a noncompliance notice. The DHA CO-HIT contracting officer stated that the contract was awarded to the contractor because a lieutenant general decided to move away from the GSA contract and procure the requirement directly from the subcontractor on the previous task order. However, the DHA CO-HIT contracting officer did not provide sufficient, appropriate evidence to support awarding a sole-source contract to replace a previous task order on a competitive GSA contract.

²⁷ According to Health.mil, the official website of the Military Health System, MHS GENESIS integrates inpatient and outpatient solutions that will connect medical and dental information across the continuum of care. When fully developed, MHS GENESIS will provide a single health record for service members, veterans, and their families.

Sole-Source Authority Cited for Contract HT0015-16-C-0001 Was Not Appropriately Applied

The DHA CO-HIT contracting officer did not appropriately apply the sole-source authority cited for the contract, valued at \$237.9 million.

The contracting officer cited only one responsible source in the J&A for this follow-on contract, but did not demonstrate that the contractor's unique qualifications; or the nature of the acquisition required use of the authority cited in accordance with the FAR.²⁸ According to the DHA CO-HIT contracting officer, the DHA used another DHA contracting office 2 years before contract award to conduct market research; however, he was not aware of the requirement until October 2015, six months before the previous task order expired. Therefore, before the task order expired, the DHA officials did not adequately communicate the requirement during the 2 years they knew about it. This led the awarding contracting officer to overlook market research that identified other potential capable sources.

The contracting officer cited only one responsible source in the J&A for this follow-on contract, but did not demonstrate that the contractor's unique qualifications; or the nature of the acquisition required use of the authority cited in accordance with the FAR.

The FAR states that when services required by a DoD agency are available "from only one or a limited number of responsible sources, and no other type of services will satisfy agency requirements, full and open competition need not be provided for."²⁹ For the DoD, the FAR also specifies that:

services may be deemed to be available only from the original source in the case of follow-on contracts for the continued provision of highly specialized services when it is likely that award to any other source would result in substantial duplication of cost to the Government that is not expected to be recovered through competition or unacceptable delays in fulfilling the agency's requirements.

Although the contracting officer cited only one responsible source in the J&A, he did not demonstrate the contractor's unique qualifications. Even though not required by the FAR, the contracting officer cited both substantial duplication of costs not expected to be recovered through competition and unacceptable delays in fulfilling the agency's requirements in the J&A. However, any costs to switch to another contractor may have been recovered through competition because the transition costs would be part of the contract. For example, the contract had a

²⁸ FAR 6.302-1, "Only One Responsible Source and No Other Supplies or Services Will Satisfy Agency Requirements," and FAR 6.303-2, "Content," respectively.

²⁹ FAR 6.302-1(a)(2).

transition out period between the current contractor and the new contractor in the performance work statement. Additionally, based on the market research conducted over a more than 2-year period before contract award, the DHA personnel identified other vendors to potentially perform the SM requirement, but DHA contracting personnel considered them not capable because the vendors did not meet the security requirements. However, the awarded contractor did not meet the security requirements either. Therefore, those other vendors may have been capable because the security requirement certification was no longer required and the awarded contract did not have a security certification at any level. Consequently, the awarded contractor did not have the security requirement certification or any unique qualifications and the services were not highly specialized.

In addition, the contracting officer did not show that the acquisition required him to use the authority cited. The contracting officer stated in the J&A and discussed in a meeting with the audit team that DHA personnel conducted market research at least 2 years before the previous task order expired. Therefore, DHA officials knew of the SM requirement and the need to award a new contract for the requirement at least 2 years before the previous task order expired. DHA contracting personnel estimated it would take at least 1 year for a new vendor to complete the change management requirement; therefore, DHA contracting personnel had enough time to evaluate other interested vendors and potentially award the contract to another vendor. For years, under the previous task order, the SM SaaS subscriptions were considered cloud computing services that required a security requirement certification.³⁰ It was not until March 2016, after an onsite assessment, that the DoD Chief Information Office determined the requirement was an External IT service that did not require the same security requirement certification.

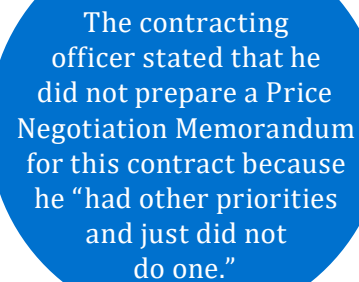
Moreover, instead of waiting until the same month the previous task order expired to make that determination, the DHA also had sufficient time to determine the requirement changed from a cloud computing requirement to External IT services. The acquisition did not require the sole-source authority cited. As a result, the DHA CO-HIT contracting personnel had the opportunity to consider and use full and open competition. We recommend that the Head of the Contracting Activity, Defense Health Agency review the contract actions taken by contracting offices responsible for all preaward actions for contract HT0015-16-C-0001, and if responsible officials did not appropriately apply the sole-source authority cited, determine whether the contract should be terminated and reannounced to award using full and open competition.

³⁰ The awarded contractor did not have the security requirement certification. DoD guidance on the acquisition and use of commercial cloud computing services provides for a DoD Information Networks Waiver Process when the cloud computing services being acquired do not meet the DoD cyber security requirements. DHA personnel considered obtaining a waiver but one was never granted.

Sufficient Evidence Not Provided to Support Fair and Reasonable Price Determination in the Justification

The DHA CO-HIT contracting officer also did not provide sufficient evidence to support his determination of a fair and reasonable price in the justification for the contract as required by the FAR.³¹ The contracting officer stated that he was busy working on incoming contract actions for other requirements and those requirements became priority.

The contracting officer did not prepare a Price Negotiation Memorandum for the contract. The FAR states that the contracting officer must document in the contract file the principal elements of the negotiation agreement.³² The FAR also states that documentation, such as a Price Negotiation Memorandum, must include documentation of fair and reasonable pricing. The contracting officer stated that he did not prepare a Price Negotiation Memorandum for this contract because he “had other priorities and just did not do one.”



The contracting officer stated that he did not prepare a Price Negotiation Memorandum for this contract because he “had other priorities and just did not do one.”

In addition, the DHA CO-HIT contracting officer had no basis for his fair and reasonable price determination in the J&A. Even though there was an IGCE in the contract file, the contract value was more than double the dollar amount in the IGCE. The awarded contract value was \$237.9 million and the IGCE amount was \$68.4 million. As a result, the DoD may have paid a lower price for the IT services received if the DHA CO-HIT contracting personnel performed their due diligence in determining a fair and reasonable price.

Use of a Bridge Contract Was Not Proper

DHA CO-HIT contracting personnel did not properly use a bridge contract for the contract. DHA CO-HIT contracting personnel awarded this contract to bridge the gap between an expiring task order and a follow-on contract. The awarded contractor on the contract was the subcontractor performing the work on the previous task order. Even though the FAR does not define the term, “bridge contract,” the Government Accountability Office (GAO) established a definition.³³ According to the report, the GAO defined a bridge contract as a new, short-term contract awarded on a sole-source basis to an incumbent contractor to avoid a lapse in service by a delay in awarding a follow-on contract. In addition

³¹ FAR 6.303-2, “Content.”

³² FAR 15.406-3(a).

³³ GAO-16-15, “Sole-Source Contracting: Defining and Tracking Bridge Contracts Would Help Agencies Manage Their Use,” October 2015.

to the GAO report, the Navy defined short term as less than or equal to 1 year in an OPNAV Instruction.³⁴ However, the period of performance for the contract was a 1-year base period and four 1-year option periods. Therefore, DHA CO-HIT contracting personnel did not properly use a bridge contract because the contract was not short term, as the performance period was for 5 years, including option years.

The DHA had minimal guidance on bridge contracts because it only had one recently signed J-4 Procurement Directive for noncompetitive contracts that briefly discussed them.³⁵ Specifically, the J-4 Procurement Directive requires personnel to provide to the approving authority a copy of the previous J&A. That way, the previous J&A can assist the approving authority in determining whether planned actions to remove any barriers to competition cited in the previous J&A were completed before awarding a bridge contract. We recommend that the Head of the Contracting Activity, Defense Health Agency issue guidance on the use of bridge contracts to include establishing a definition of a bridge contract, justifying its use, approval procedures, and tracking and reporting procedures.

FAR Criteria for Three Other Contracts Not Met

DHA CO-HIT contracting personnel did not meet one of the FAR criteria for the sole-source authority cited for three other contracts, valued at \$4.4 million.³⁶ For these three contracts, the contracting officers appropriately applied the sole-source authority cited and obtained approval from the proper official before contract award. However, for one contract, valued at \$3 million, the contracting officer did not provide support for his determination of a fair and reasonable price as required by the FAR. For the remaining two contracts, valued at \$1.4 million, the contracting personnel did not post notices to the FBO website to publicize the contract opportunities and award information as required by FAR subpart 5.2. We recommend that the Head of the Contracting Activity, Defense Health Agency develop procedures that define minimum timeframes for procurement to allow for proper evaluation and award of contracts, and issue the guidance to all Defense Health Agency contracting offices and program executive offices to prevent occurrences of improper awards due to time constraints and unprioritized requirements.

³⁴ OPNAV Instruction 4200.7, "Office of the Chief of Naval Operations Services Contract Requirements Management," July 11, 2012 states that bridge contracts shall normally be limited to 6 months but, with an approved waiver, can extend to a maximum of 12 months.

³⁵ DHA J-4 Procurement Directive 06-01, Rev 005, "Other Than Full and Open Competition/Sole-Source Justification and Approval/Limited Sources Justification," November 9, 2017. The revised directive was effective after we performed our review; therefore, it was not in place before contract award.

³⁶ HT0015-16-C-0014, HT0015-16-P-0007, and HT0015-17-C-0005.

Sufficient Evidence Not Provided to Support Fair and Reasonable Price Determination for One Contract

The DHA CO-HIT contracting officer for contract HT0015-16-C-0014, valued at \$3 million, did not provide support for his determination that the anticipated price was fair and reasonable. The FAR states, as one of the minimum content requirements, that the justification for other than full and open competition must include a determination by the contracting officer that the anticipated cost to the Government will be fair and reasonable.³⁷ The J&A included the contracting officer's signature acknowledging that he determined the associated cost to the Government was fair and reasonable as required by the FAR. Additionally, his statement included that he made his determination based on an analysis of previous contracts for same or similar software licenses and maintenance and review of the IGCE. However, the contracting officer's contract file did not include any evidence or analysis to support his determination.

The FAR states that the Government may use various price analysis techniques and procedures to ensure a fair and reasonable price.³⁸ Examples of such techniques include, but are not limited to the following comparisons:

- proposed prices to historical prices paid for the same or similar items,
- proposed prices with IGCEs, and
- proposed prices with prices obtained through market research for the same or similar items.

The DHA CO-HIT contracting officer stated that contracting personnel did not prepare a price reasonableness document for this contract because "the press for end of year requirements to be completed and obligated overcame normal documentation protocols." Additionally, the contracting officer stated "the cognizant contract specialist had an abundant workload and did not get to it in time contemporaneous to the award." Without a price negotiation memorandum or other evidence of an adequate price analysis, we were unable to determine whether a price analysis was performed for this noncompetitive contract. As a result, the DHA may have paid more than was fair or reasonable for this limited source software.

³⁷ FAR 6.303-2(b)(7).

³⁸ FAR 15.404-1(b)(2).

Notices Not Posted for Two Contracts

DHA CO-HIT contracting personnel did not post notices to publicize the contract opportunities and award information for two contracts, valued at \$1.4 million, as required by the FAR subpart 5.2. Posting notices to the FBO website is one of the criteria established for using various FAR authorities permitting other than full and open competition.³⁹

For contract HT0015-16-P-0007, valued at \$350,000, DHA CO-HIT contracting personnel did not post notice of the requirement before contract award as required by the FAR. The contracting officer stated that contracting personnel did not post a notice because they thought a posting was not required and cited a FAR exemption.⁴⁰ However, this FAR exemption related to a different sole-source authority than the one cited by the contracting officer for contract HT0015-16-P-0007.⁴¹ After we talked to the DHA CO-HIT contracting officer, he agreed that a notice should have been posted. He stated that it was an oversight because the requirement came in late in the fiscal year and the contract had to be awarded before the end of the fiscal year.⁴²

For contract HT0015-17-C-0005, valued at \$1.1 million, DHA CO-HIT contracting personnel did not post a notice as required by FAR subpart 13.5. The FAR states the contracting officer must make publically available the justification required by FAR 6.305, "Availability of the Justification," for non-brand name acquisitions within 14 days after contract award.⁴³ In a memorandum we found in the contract file, the DHA CO-HIT contract specialist stated that a notice was not posted to the FBO website for this contract because of numerous setbacks. The DHA CO-HIT contracting officer later explained that the contract specialist's FBO registration had expired and the Acquisition Support Division did not grant the required approval in time. He also stated the required notice was not posted because other activities overcame its urgency.

As a result, DHA CO-HIT contracting personnel did not appropriately inform other small businesses of the contract awards to increase competition or enhance future competition by identifying contracting opportunities.

³⁹ FAR 6.302-1, "Only One Responsible Source and No Other Supplies or Services Will Satisfy Agency Requirements," and Subpart 13.5, "Simplified Procedures for Certain Commercial Items."

⁴⁰ FAR Part 5.202, "Exemptions," outlines 14 reasons for which a contracting officer is not required to post the notice required by 5.201.

⁴¹ The contracting officer cited the FAR 5.202(a)(2) exemption that relates to the sole-source authority in FAR 6.302-2, "Unusual and Compelling Urgency." However, the contracting officer cited FAR 6.302-1 for contract HT0015-16-P-0007.

⁴² The previous contract expired on September 30, 2016. The DHA CO-HIT contracting officer stated he received the requirement in September 2016. The contracting officer signed contract HT0015-16-P-0007 on September 30, 2016.

⁴³ FAR 13.501(a)(1)(iii).

Conclusion

DHA contracting officials should have awarded the contract, valued at \$237.9 million, using full and open competition. In addition, for all four contracts, the DoD may have paid a lower price for the IT services received or increased future competition, if the DHA CO-HIT contracting personnel had performed their due diligence in determining fair and reasonable prices and appropriately advertised award opportunities.⁴⁴ DHA CO-HIT contracting personnel need to improve justifying the use of other than full and open competition. Competition helps ensure that the DoD receives the best capabilities for the best value. When competition is not used, DHA CO-HIT contracting personnel must properly justify the reasons for awarding a noncompetitive contract. Additionally, DHA CO-HIT contracting personnel need to properly complete and post applicable requirements so that all contractors have the opportunity to learn about potential contract awards.

Recommendation, Management Comments, and Our Response

Recommendation 1

We recommend that the Head of the Contracting Activity, Defense Health Agency:

- a. Review the contract actions taken by contracting offices responsible for all preaward actions for contract HT0015-16-C-0001, and if responsible officials did not appropriately apply the sole-source authority cited, determine whether the contract should be terminated and reannounced to award using full and open competition.**

Defense Health Agency Comments

The Acting Component Acquisition Executive (J-4), Defense Health Agency agreed, stating that the Head of the Contracting Activity reviewed the contract action to sustain Secure Messaging Software as a Service and determined not to terminate and re-announce the contract for competition. The Head of the Contracting Activity concluded that the decision by his predecessor to approve the sole-source justification and approval, represented a reasonable exercise of discretionary judgement.

The Acting Component Acquisition Executive, Defense Health Agency also provided comments on the internal controls weaknesses we identified related to this recommendation, stating that the DHA understands that competition, direct

⁴⁴ HT0015-16-C-0001, HT0015-16-C-0014, HT0015-16-P-0007, and HT0015-17-C-0005.

or indirect, is the most effective motivator for the industry to reduce costs and improve performance. The Acting Component Acquisition Executive provided examples of DHA's internal control processes, as follows.

- DHA Policy Directive (PD) 01-05, Rev 002, "Legal Reviews," amended January 2018, requires legal review of all solicitations and contracts awards valued at more than \$2 million.
- DHA Policy PD 06-01, Rev 005, "Other than Full and Open Competition – Justification and Approval (J&A)," establishes policy for the contacting officer to post a request for information or sources sought notice when using the FAR 6.302-1 authority. The policy further states that an exception to posting a request for information requires a waiver by the Head of the Contracting Activity or designee. The policy also requires Justification and Approval coordination and/or approvals by subject matter experts based on the complexity of the Justification and Approval. DHA Policy PD 10-01, Rev. 000, in concert with PD 06-01, requires the contracting officer, before issuing any request for information, to consult with the Competition Advocate to ensure the request for information is not written in a way that will restrict competition and requires the contracting officer to document the results of the consultation. This DHA policy PD also requires the contracting officer, before issuing any request for information or sources sought notice, to consult with the Defense Health Agency Director, Office of Small Business Programs to identify and incorporate all reasonable actions to increase the likelihood of completion by small business.

Lastly, the Acting Component Acquisition Executive, Defense Health Agency stated that the use of market research control serves to ensure that the DHA is taking full advantage of the benefits of a competitive environment. The Acting Component Acquisition Executive also stated that strengthening and tracking compliance with DHA policy directives, discussed above, provides reasonable assurance that program integrity is in compliance with applicable laws, and that fair and responsible determinations are properly recorded.

Our Responses

Comments from the Acting Component Acquisition Executive, Defense Health Agency addressed all specifics of the recommendation; therefore, the recommendation is resolved but will remain open. We will close the recommendation once we verify the review conducted of the contract actions on contract HT0015-16-C-0001, review the support on the decision not to terminate and re-announce the contract, and determine whether that support was adequate.

We appreciate the DHA Policy Directives that the Acting Component Acquisition Executive, Defense Health Agency provided in his response. We were aware of the DHA Policy PD 06-01, as we footnoted it in Finding A under “Use of A Bridge Contract Was Not Proper,” and listed it in Appendix A as DHA guidance we reviewed. Although some key internal control processes were in place, we concluded that some controls were not always implemented, and some additional controls were required to address problems identified.

- b. Issue guidance to all Defense Health Agency contracting offices on the use of bridge contracts to include establishing a definition of a bridge contract, justifying its use, approval procedures, and tracking and reporting procedures.**

Defense Health Agency Comments

The Acting Component Acquisition Executive, Defense Health Agency agreed, stating that on February 28, 2018, the Head of the Contracting Activity responded to a January 31, 2018, memorandum from the Office of the Under Secretary for Acquisition, Technology and Logistics calling for Departments and Agencies to submit a plan for bridge action reduction. The Head of the Contracting Activity, Defense Health Agency plans to publish, by April 15, 2018, a Procurement Directive to provide policy guidance on the use of bridge contracts.

Our Responses

Comments from the Acting Component Acquisition Executive, Defense Health Agency addressed all specifics of the recommendation; therefore, the recommendation is resolved but will remain open. We will close the recommendation once we verify that that Head of the Contracting Activity published policy and guidance on bridge contracts and verify that it established a definition for a bridge contract, states how to justify its use, and established approval and tracking and reporting procedures.

- c. Develop procedures that define minimum timeframes for procurements to allow for proper evaluation and award of contracts, and issue the guidance to all Defense Health Agency contracting offices and program executive offices to prevent occurrences of improper awards due to time constraints and unprioritized requirements.**

Defense Health Agency Comments

The Acting Component Acquisition Executive, Defense Health Agency agreed, stating that the Head of the Contracting Activity annually issues standard procurement acquisition lead time so that customers know what they can expect to experience for various methods that might be employed. To ensure validity, the

Head of the Contracting Activity performs analysis to identify trends both within and across fiscal years to determine whether the procurement acquisition lead time performance levels are consistent with good business practices. The Head of the Contracting Activity stated that he will perform a review to consider whether to develop refined procedures that ensure adequate time is provided to properly evaluate and award contracts. Refined procedures could also reduce the potential for improper awards because of time constraints and unprioritized requirements.

Our Responses

Comments from the Acting Component Acquisition Executive, Defense Health Agency addressed all specifics of the recommendation; therefore, the recommendation is resolved but will remain open. We were aware of the DHA memorandums issued annually by the Head of the Contracting Activity for fiscal year procurement cut off dates. During our audit, DHA CO-HIT contracting officers stated that no one was following the memorandum, as the requiring offices were still sending the packages after the cut off dates or the packages were incomplete. As a result, the fiscal year procurement cut off date memorandums may not be enforcing the importance of the dates that the contracting personnel need to receive timely and complete requirement packages before the established cut off dates outlined by the Head of the Contract Activity. We will close the recommendation once we verify that the Head of the Contracting Activity, Defense Health Agency performed a review that considered whether to develop refined procedures to prevent potential improper awards because of time constraints and unprioritized requirements.

Appendix A

Scope and Methodology

We conducted this performance audit from July 2017 through February 2018 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.

Initially, we announced the audit to determine whether DHA properly awarded and provided oversight of noncompetitive information technology contracts. During the audit, we revised our objective to determine whether DHA properly awarded noncompetitive information technology contracts.

Universe and Sample Information

To address our audit objective, we queried the Federal Procurement Data System–Next Generation to determine the contract universe. We identified that DHA contracting officials noncompetitively awarded 37 contracts, valued at \$360.8 million, to procure IT related products and services between October 1, 2015 and July 27, 2017. Of the 37 contracts, we nonstatistically selected all 27 contracts, valued at \$329.6 million, for review that DHA CO-HIT contracting personnel awarded. When nonstatistically selecting contracting offices to visit, we considered the total number of contracts issued; the related total contract value, including options, at each DHA contracting office; and, the audit resources available.

Review of Documentation and Interviews

To determine whether DHA properly awarded the noncompetitive IT contracts, we reviewed pertinent documentation from September 2013 through October 2017. The pertinent documentation we reviewed included base contract awards and J&As, or SBA acceptance letters and DD Forms 2579, as applicable, as well as records of market research, performance work statements, price negotiation memorandums, acquisition strategy plans, FBO postings, and other key decision-making documents.

We obtained this documentation from Electronic Document Access, DHA CO-HIT's OneNote contract files, and e-mail attachments provided by contracting personnel. We evaluated the documentation we obtained against applicable criteria including:

- FAR Part 2, "Definitions of Words and Terms;"
- FAR Part 5, "Publicizing Contract Actions;"
- FAR Part 6, "Competition Requirements;"

- FAR Part 10, “Market Research;”
- FAR Part 13, “Simplified Acquisition Procedures;”
- FAR Part 15, “Contracting by Negotiation;”
- FAR Part 19, “Small Business Programs;”
- DFARS Part 206, “Competition Requirements;”
- DFARS Part 210, “Market Research;”
- DFARS Part 213, “Simplified Acquisition Procedures;”
- DFARS Part 219, “Small Business Programs;”
- Procedures, Guidance, and Information 206, “Competition Requirements;” and
- Procedures, Guidance, and Information 219, “Small Business Programs.”

We also reviewed guidance in the PA between the SBA and the DoD to obtain an understanding of the responsibilities for each agency. We reviewed other guidance to determine when it may be inappropriate or unnecessary to use a request for information or sources sought notice as market research method.⁴⁵ We also reviewed guidance for information on bridge contracts.⁴⁶

We interviewed the newly appointed DHA Head of the Contracting Activity and the DHA Competition Advocate to determine their roles in approving noncompetitive IT contracts and establishing agency policies and procedures. We interviewed the Chief, DHA CO-HIT and Policy Lead Procurement Analyst, DHA CO-HIT to obtain an agency overview and an understanding of their roles in the contract award practices. We interviewed contracting officers and specialists responsible for the contracts to discuss noncompetitive IT contracts and obtain additional information about the contracts selected for review.

Additionally, we considered the results of a Procurement Management Review performed by a team of Defense Contract Management Agency officials on behalf of the Director, Defense Procurement and Acquisition Policy. The Procurement Management Review team visited the DHA between January 2016 and February 2016. The Director, Defense Procurement and Acquisition Policy issued a report on the team’s review of the DHA in December 2016.

⁴⁵ Under Secretary of Defense for Acquisition, Technology and Logistics, Memorandum, “Actions To Improve Department of Defense Competition,” August 21, 2014.

⁴⁶ DHA J-4 Procurement Directive 06-01, Rev 005, “Other Than Full and Open Competition/Sole-Source Justification and Approval/Limited Sources Justification,” November 9, 2017.

Use of Computer-Processed Data

We did not rely on computer-processed data to support our findings, conclusions, and recommendations.

Use of Technical Assistance

We did not rely on assistance from any internal or external technical experts to develop our findings, conclusions, and recommendations. We consulted with the Quantitative Methods Division at the DoD Office of Inspector General (DoD OIG) about our nonstatistical sample of contracts selected for review.

Prior Coverage

During the last 5 years, the GAO issued two reports discussing noncompetitive contracts and bridge contracts and the DoD OIG issued two reports discussing noncompetitive IT contracts and the DHA. Unrestricted GAO reports can be accessed at <http://www.gao.gov>. Unrestricted DoD OIG reports can be accessed at <http://www.dodig.mil/reports.html/>.

GAO

Report No. GAO-16-15, “Sole Source Contracting: Defining and Tracking Bridge Contracts Would Help Agencies Manage Their Use,” October 2015

The GAO found the agencies reviewed—the Departments of Defense, Health and Human Services, and Justice—had limited or no insight into their use of bridge contracts because bridge contracts were not defined or addressed in the FAR. The GAO also found that bridge contracts varied widely in characteristics such as type of service and length of contract. The GAO recommended that the Office of Federal Procurement Policy take steps to amend the FAR to incorporate a definition of bridge contracts and, in the interim, provide guidance for agencies to track and manage their use.

Report No. GAO-14-304, “Federal Contracting: Noncompetitive Contracts Based on Urgency Need Additional Oversight,” March 2014

The Departments of Defense and State and the U.S. Agency for International Development used the urgency exception permitting Federal agencies to award noncompetitive contracts to a limited extent. However, the reliability of some federal procurement data elements was questionable. The GAO recommended that the DoD, the Department of State, and the U.S. Agency for International Development provide guidance to improve data reliability and oversight for contracts awarded using the urgency exception. The GAO also recommended that the Office of Federal Procurement Policy provide clarifying guidance to ensure consistent implementation of regulations.

DoD OIG

Report No. DODIG-2017-064, “The Defense Health Agency Improperly Paid for Autism-Related Services to Selected Companies in the TRICARE South Region,” March 10, 2017

The audit objective was to determine whether the DoD appropriately paid for autism services in the TRICARE South Region. The DHA improperly paid \$1.9 million to the five companies for applied behavior analysis services performed in calendar year 2015. The auditors recommended that the Director, DHA conduct comprehensive medical reviews of those companies that have specific indicators of improper payments. The auditors also recommended that the Director, DHA review claims from the five companies and provide the results of the review to the DHA Program Integrity Office for appropriate action.

Report No. DODIG-2015-167, “Summary Report: DoD Information Technology Contracts Awarded Without Competition Were Generally Justified,” September 9, 2015

The audit objective was to determine whether DoD IT contracts issued without competition were properly justified. The report was the fifth and final report in a series of audits on IT contracts issued without competition. In general, contracting personnel from the Army, Navy, Marine Corps, Air Force, Defense Logistics Agency Contracting Services Office–Philadelphia, and Defense Information Systems Agency justified the use of other than full and open competition for IT contracts. However, contracting personnel did not properly justify four of the Army contracts, valued at \$83.3 million, and one of the Defense Information Systems Agency contracts, valued at \$151 million. Army and Defense Information Systems Agency contracting personnel could have used full and open competition to save DoD funds.

Appendix B

Noncompetitive IT Contracts Reviewed That Were Awarded By Statute

This appendix lists the 16 noncompetitive IT contracts we reviewed that were properly awarded under the 8(a) Program, as required by statute. DHA CO-HIT contracting personnel awarded these contracts between October 1, 2015 and July 27, 2017.

	Contract Number	Contract Value (with options)	Description of Products or Services Procured	Contract Award Date	Contract Type	Authority Cited
1	HT0015-16-C-0005	\$3,307,639	Facility Operation and Maintenance: Surgery Scheduling System	9/2/2016	FFP	10 U.S.C. § 2304(c)(5) (2015) and FAR 6.302-5(b)(4)
2	HT0015-16-C-0006	\$7,507,085	Other IT and Telecommunications: Public Key Infrastructure Program Office Support	9/29/2016	FFP	10 U.S.C. § 2304(c)(5) (2015) and FAR 6.302-5(b)(4)
3	HT0015-16-C-0008	\$1,000,587	Integrated Hardware/Software/Services Solutions, predominantly services: Cisco Medical System	9/15/2016	FFP	10 U.S.C. § 2304(c)(5) (2015) and FAR 6.302-5(b)(4)
4	HT0015-16-C-0009	\$8,997,023	Data Conversion: Medical-Community of Interest Enclave Transition Support Services	9/30/2016	FFP, Cost	10 U.S.C. § 2304(c)(5) (2015) and FAR 6.302-5(b)(4)
5	HT0015-16-C-0010	\$1,194,876	Information Technology Support Equipment: Wilford Hall Ambulatory Surgical Center	9/30/2016	FFP	10 U.S.C. § 2304(c)(5) (2015) and FAR 6.302-5(b)(4)
6	HT0015-16-C-0011	\$3,340,381	Cyber Security and Data Backup: Solution Delivery Division San Antonio, TX	9/23/2016	FFP, Cost	10 U.S.C. § 2304(c)(5) (2015) and FAR 6.302-5(b)(4)
7	HT0015-16-C-0015	\$2,840,776	IT Strategy and Architecture: BOXI-DDR, Optional Discoverer	9/30/2016	FFP	10 U.S.C. § 2304(c)(5) (2015) and FAR 6.302-5(b)(4)
8	HT0015-17-C-0001	\$1,326,193	System Acquisition Support: Carepoint Healthcare Application Suite III	10/24/2016	FFP, Cost	10 U.S.C. § 2304(c)(5) (2015) and FAR 6.302-5(b)(4)
9	HT0015-17-C-0004	\$13,458,846	Programming: MHS Identity Authentication Services	11/18/2016	FFP, Cost	10 U.S.C. § 2304(c)(5) (2015) and FAR 6.302-5(b)(4)

Acronyms used throughout this Appendix are defined on the final page.

Noncompetitive IT Contracts Reviewed That Were Awarded By Statute (cont'd)

	Contract Number	Contract Value (with options)	Description of Products or Services Procured	Contract Award Date	Contract Type	Authority Cited
10	HT0015-17-C-0007	\$4,952,573	System Acquisition Support: Referral Management System 3.2	3/2/2017	FFP, Cost	10 U.S.C. § 2304(c)(5) (2015) and FAR 6.302-5(b)(4)
11	HT0015-17-C-0008	\$9,888,525	Integrated Hardware/Software/Services Solutions, predominantly services	2/24/2017	FFP, Cost	10 U.S.C. § 2304(c)(5) (2015) and FAR 6.302-5(b)(4)
12	HT0015-17-C-0009	\$3,862,061	System Acquisition Support: Veterinary Service Information Management System	2/28/2017	FFP	10 U.S.C. § 2304(c)(5) (2015) and FAR 6.302-5(b)(4)
13	HT0015-17-C-0010	\$874,985	Programming: Population Health Nurse Informaticist	3/23/2017	FFP	10 U.S.C. § 2304(c)(5) (2015) and FAR 6.302-5(b)(4)
14	HT0015-17-C-0013	\$14,780,832	Data Conversion: Carepoint Healthcare Application Suite III	3/23/2017	FFP, Cost	10 U.S.C. § 2304(c)(5) (2015) and FAR 6.302-5(b)(4)
15	HT0015-17-P-0002	\$156,342	Facility Operation and Maintenance: SFK-SA14 Kit	3/31/2017	FFP	10 U.S.C. § 2304(c)(5) (2015) and FAR 6.302-5(b)(4)
16	HT0015-17-P-0007	\$3,847,102	System Acquisition Support: Enterprise Scheduling Platform & Asset Management Proof of Concept	7/1/2017	FFP	10 U.S.C. § 2304(c)(5) (2015) and FAR 6.302-5(b)(4)
Total		\$81,335,827				

Legend

Cost	Cost Reimbursable
FAR 6.302-5	Authorized or Required by Statute
FFP	Firm Fixed Price
SFK	Secret Internet Protocol Router Network (SIPRNET) Fly Away Kit
U.S.C.	United States Code

Appendix C

Noncompetitive IT Contracts Reviewed That Required Justification

This appendix lists the 11 noncompetitive IT contracts we reviewed that required justification. DHA CO-HIT contracting personnel awarded these contracts between October 1, 2015 and July 27, 2017. We indicated which contracts were not properly awarded.

	Contract Number	Contract Value (with options)	Description of Products or Services Procured	Contract Award Date	Contract Type	Authority Cited	Properly Awarded
1	HT0015-16-C-0001	\$237,926,226	Integrated Hardware/Software/Services Solutions, predominantly services	3/24/2016	FFP, Cost	10 U.S.C. § 2304(c)(1) (2015) and FAR 6.302-1	No
2	HT0015-16-C-0003	\$547,703	Annual Software Maintenance Service Plans: Multinet	5/6/2016	FFP	10 U.S.C. § 2304(c)(1) (2015) and FAR 6.302-1	Yes
3	HT0015-16-C-0007	\$321,340	Annual Software Maintenance Service Plans: Dolphin	9/27/2016	FFP	10 U.S.C. § 2304(c)(1) (2015) and FAR 6.302-1	Yes
4	HT0015-16-C-0014	\$2,992,954	Annual Software Maintenance Service Plans: First Data Bank Software	9/30/2016	FFP	10 U.S.C. § 2304(c)(1) (2015) and FAR 6.302-1	No
5	HT0015-16-P-0002	\$166,136	Integrated Hardware/Software/Services Solutions, predominantly services: Executive Strategy Manager	6/30/2016	FFP, Cost	10 U.S.C. § 2304(c)(1) (2015) and FAR 6.302-1	Yes
6	HT0015-16-P-0007	\$350,000	Annual Software Maintenance Service Plans: FusionFX	10/1/2016	FFP	10 U.S.C. § 2304(c)(1) (2015) and FAR 6.302-1	No
7	HT0015-16-P-0008	\$238,954	Annual Software Maintenance Service Plans: ConsoleWorks	9/29/2016	FFP	41 U.S.C. § 1901 (2015) and FAR subpart 13.5	Yes
8	HT0015-17-C-0002	\$1,135,590	System Acquisition Support: Carepoint Healthcare Application Suite I & II	10/26/2016	FFP, Cost	10 U.S.C. § 2304(c)(1) (2015) and FAR 6.302-1	Yes
9	HT0015-17-C-0005	\$1,085,000	Annual Software Maintenance Service Plans: Health Privacy	12/1/2016	FFP	41 U.S.C. § 1901 (2015) and FAR subpart 13.5	No

Acronyms used throughout this Appendix are defined on the final page.

Noncompetitive IT Contracts Reviewed That Required Justification (cont'd)

	Contract Number	Contract Value (with options)	Description of Products or Services Procured	Contract Award Date	Contract Type	Authority Cited	Properly Awarded
10	HT0015-17-C-0006	\$2,998,547	Annual Software Maintenance Service Plans: ConsoleWorks	12/29/2016	FFP	41 U.S.C. § 1901 (2015) and FAR subpart 13.5	Yes
11	HT0015-17-P-0004	\$477,217	Web-Based Subscription: Point of Care Evidence-Based Summaries Tools	4/1/2017	FFP	10 U.S.C. § 2304(c)(1) (2015) and FAR 6.302-1	Yes
Total		\$248,239,667					

Legend

Cost	Cost Reimbursable
FAR 6.302-1	Only One Responsible Source and No Other Supplies or Service Will Satisfy Agency Requirements
FAR Subpart 13.5	Simplified Procedures for Certain Commercial Items
FFP	Firm Fixed Price
U.S.C.	United States Code

Management Comments

Defense Health Agency Comments



Component
Acquisition Executive
(J-4)

DEFENSE HEALTH AGENCY
7700 ARLINGTON BOULEVARD, SUITE 5101
FALLS CHURCH, VIRGINIA 22042-5101

March 16, 2018

MEMORANDUM FOR DEPARTMENT OF DEFENSE INSPECTOR GENERAL
DEPUTY ASSISTANT INSPECTOR GENERAL,
ACQUISITION, CONTRACTING, AND SUSTAINMENT

Subject: Draft Report on "Noncompetitive Information Technology Contracts at the Defense Health Agency (Project No. D2017 – D000CG-0172.000)

Thank you for the opportunity to review and comment on the subject draft report dated February 14, 2018.

My specific comments to recommendations 1a, 1b, and 1c are attached for your consideration to incorporate into the final report.

A handwritten signature in black ink, reading "John M. Tenaglia", is positioned above the typed name and title.

John M. Tenaglia
Acting Component Acquisition Executive (J-4)
Defense Health Agency

Defense Health Agency Comments (cont'd)

DEPARTMENT OF DEFENSE OFFICE OF THE INSPECTOR GENERAL
DRAFT REPORT DATED FEBRUARY 14, 2018
PROJECT NUMBER D2017-D000CCG-0172.000
“NONCOMPETITIVE INFORMATION TECHNOLOGY CONTRACTS
AT THE DEFENSE HEALTH AGENCY”

DEPARTMENT OF DEFENSE COMMENTS TO THE RECOMMENDATIONS

Recommendation 1a. *Sole-Source Authority Cited for Contract HT0015-16-C-0001 Was Not Appropriately Applied.* We recommend that the Head of the Contracting Activity, Defense Health Agency review the contract actions taken by contracting offices responsible for all pre-award actions for contract HT0015-16-C-0001, and if responsible officials did not appropriately apply the sole-source authority cited, determine whether the contract should be terminated and re-announced to award using full and open competition.

DoD Response. Concur that the Head of the Contracting Activity (HCA) review contract actions taken. The HCA has reviewed the contract action to sustain Secure Messaging (SM) Software as a Service and determined not to terminate and re-announce the contract for competition. Furthermore, the HCA has reviewed this matter and concluded that the decision by his predecessor to approve the sole-source justification and approval, represented a reasonable exercise of discretionary judgement. The contract currently sustains a critical capability enabling secure engagement between clinicians and 1,858,258 registered beneficiaries until such time that the capability can be deployed under the Defense Healthcare Management System Modernization and the Agency's Electronic Health Record contract.

Recommendation 1b. *Use of a Bridge Contract Was Not Proper.* We recommend that the Head of the Contracting Activity, Defense Health Agency issue guidance on the use of bridge contracts to include establishing a definition of a bridge contract, justifying its use, approval procedures, and tracking and reporting procedures.

DoD Response: Concur. On February 28, 2018, the HCA responded to a January 31, 2018 memo from the Office of the Under Secretary for Acquisition, Technology, and Logistics calling for Departments and Agencies to submit a plan for bridge action reduction. To implement this plan, the HCA will publish, by April 15, 2018, a Procurement Directive to provide policy guidance on the use of bridge contracts.

Defense Health Agency Comments (cont'd)

DEPARTMENT OF DEFENSE OFFICE OF THE INSPECTOR GENERAL
DRAFT REPORT DATED FEBRUARY 14, 2018
PROJECT NUMBER D2017-D000CCG-0172.000
“NONCOMPETITIVE INFORMATION TECHNOLOGY CONTRACTS
AT THE DEFENSE HEALTH AGENCY”

DEPARTMENT OF DEFENSE COMMENTS TO THE RECOMMENDATIONS

Recommendation 1c. *FAR Criteria for Three Other Contracts Not Met.* We recommend that the Head of the Contracting Activity, Defense Health Agency develop procedures that define minimum timeframes for procurement to allow for proper evaluation and award of contracts, and issue the guidance to all Defense Health Agency contracting offices and program executive offices to prevent occurrences of improper awards due to time constraints and unprioritized requirements.

DoD Response. Concur. The HCA issues, on an annual basis, standard Procurement Acquisition Lead Time so that customers know what they can expect to experience for various methods that might be employed. To ensure validity, the HCA performs analysis to identify trends both within the fiscal years and across fiscal years to discern whether PALT performance levels are consistent with good business practices. The HCA will review to consider whether to develop refined procedures to ensure adequate time is afforded to properly evaluate and award contracts and prevent the potential for improper awards due to time constraints and unprioritized requirements.

Defense Health Agency Comments (cont'd)

DEPARTMENT OF DEFENSE OFFICE OF THE INSPECTOR GENERAL
DRAFT REPORT DATED FEBRUARY 14, 2018
PROJECT NUMBER D2017-D000CCG-0172.000
“NONCOMPETITIVE INFORMATION TECHNOLOGY CONTRACTS
AT THE DEFENSE HEALTH AGENCY”

DEPARTMENT OF DEFENSE COMMENTS TO THE RECOMMENDATIONS

DoDIG: *Review of Internal Controls.* You should also comment on the internal control weaknesses discussed in the report. DoD Instruction 5010.40 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. We identified internal control weaknesses that DHA CO-HIT contracting personnel did not properly justify the use of other than full and open competition and related to determinations of fair and reasonable prices by DHA CO-HIT contracting personnel, and the procedures for posting notices to publicize contract opportunities and award information.

DoD Response: The DHA is committed to maximizing the use of competitive contracting because it is understood that competition, direct or indirect, is the most effective motivator for industry to reduce costs and improve performance. The following are examples of related DHA internal control processes:

- (1) DHA Policy Directive (PD) 01-05, Rev 002, Legal Reviews - was amended in January 2018. It lowers the dollar threshold for actions requiring legal reviews. As of the effective date of this policy, all solicitations and contract awards valued at more than \$2 million shall be presented to DHA OGC for legal review.
- (2) DHA Policy PD 06-01, Rev 005, Other than Full and Open Competition-Justification and Approval (J&A) - establishes that when utilizing the authority at FAR 6.302-1 the contracting officer shall post a request for information or sources sought notice, and shall include the results of this inquiry in the justification required by FAR 6.303. An exception to posting an RFI requires a waiver by the Head of the Contracting Activity (HCA), or designee; the Waiver authority may not be delegated lower than a general or flag officer or a member of the Senior Executive Service.

Based on the complexity each J&A requires coordination and/or approvals by the following subject matter experts:

- a. Technical/Functional and Requirements applicability (all)
- b. CO Determination - Fair and Reasonableness (all)
- c. Office of General Council (all)
- d. Competition Advocate (all)

Defense Health Agency Comments (cont'd)

DEPARTMENT OF DEFENSE OFFICE OF THE INSPECTOR GENERAL
DRAFT REPORT DATED FEBRUARY 14, 2018
PROJECT NUMBER D2017-D000CCG-0172.000
“NONCOMPETITIVE INFORMATION TECHNOLOGY CONTRACTS
AT THE DEFENSE HEALTH AGENCY”

DEPARTMENT OF DEFENSE COMMENTS TO THE RECOMMENDATIONS

- e. Head of Contracting (or Designee) (when required by threshold)
 - f. Director of Defense Health Agency or SPE (when required by threshold)
- (3) DHA Policy PD 10-01, Rev. 000, in concert with PD 06-01, establishes that prior to issuing any RFI, the contracting officer shall consult with the DHA Competition Advocate to ensure the RFI is not written in a way that will unduly restrict competition. Results of such consultation will be documented by the contracting officer. In addition, this policy mandates that prior to issuing any RFI or sources sought synopsis, the contracting officer shall consult with the DHA Director, Office of Small Business Programs to identify and incorporate all reasonable actions to increase the likelihood of competition by small business.
- (4) Use market research controls serves to ensure DHA is taking full advantage of benefits of a competitive environment. As such, strengthening and tracking compliance with DHA PD 10-01 and PD 06-01, provides reasonable assurance that program integrity is in compliance with applicable laws; and that fair and responsible determination are properly recorded.

Acronyms and Abbreviations

CO-HIT	Contracting Office-Health Information Technology
DFARS	Defense Federal Acquisition Regulation Supplement
DHA	Defense Health Agency
FAR	Federal Acquisition Regulation
FBO	Federal Business Opportunities
GAO	Government Accountability Office
GSA	Government Services Administration
IGCE	Independent Government Cost Estimate
IT	Information Technology
J&A	Justification and Approval
MHS	Military Health System
PA	Partnership Agreement
SaaS	Software as a Service
SBA	Small Business Administration
SM	Secure Messaging

Whistleblower Protection

U.S. DEPARTMENT OF DEFENSE

The Whistleblower Protection Ombudsman's role is to educate agency employees about prohibitions on retaliation and employees' rights and remedies available for reprisal. The DoD Hotline Director is the designated ombudsman. For more information, please visit the Whistleblower webpage at www.dodig.mil/Components/Administrative-Investigations/DoD-Hotline/.

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