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Report No. DODIG-2012-098

June 5, 2012

Inspector General

United States
Department of Defense



Controls Governing the Procurement Automated Contract Evaluation System Need Improvement

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Acronyms and Abbreviations

DFARS	Defense Federal Acquisition Regulation Supplement
DLA	Defense Logistics Agency
DLAD	Defense Logistics Acquisition Directive
FAR	Federal Acquisition Regulation
PACE	Procurement Automated Contract Evaluation
U.S.C.	United States Code



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

June 5 2012

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

SUBJECT: Controls Governing the Procurement Automated Contract Evaluation System Need Improvement (Report No. DODIG-2012-098)

We are providing this report for review and comment. Although controls and rules governing the Procurement Automated Contract Evaluation (PACE) System were generally applied in a uniform manner, the Defense Logistics Agency's (DLA's) use of electronic signatures in the PACE System violated public law and the Federal Acquisition Regulation. This use included 333,304 contracts, totaling more than \$1.5 billion, from FY 2008 through FY 2010. In addition, DLA did not have an effective and consistent oversight process to validate that prices paid for PACE awards at three DLA Supply Centers were fair and reasonable. DLA also used a generally excessive pricing criterion for all fully automated awards that did not ensure that 91,413 PACE procurements, totaling more than \$1.3 billion, were the best value in terms of costs for the Government. We considered management comments on a draft of this report when preparing the final report.

DoD Directive 7650.3 requires that recommendations be resolved promptly. The Director, Defense Logistics Agency, Acquisition, responded for the Director, Defense Logistics Agency. Comments from the Director, DLA Acquisition, on Recommendation A.1 were not responsive, and comments on Recommendations A.2, A.3, and B were responsive. Therefore, we request that the Director, DLA, provide additional comments on Recommendation A.1 by July 5, 2012.

If possible, please send a .pdf file containing your comments to audros@dodig.mil. Copies of the management comments must contain the actual signature of the authorizing official. Comments provided to the final report must be marked and portion-marked, as appropriate, in accordance with DoD Manual 5200.01. We are unable to accept the /Signed/ symbol in place of the actual signature. If you arrange to send classified comments electronically, you must send them over the SECRET Internet Protocol Router Network (SIPRNET).

We appreciate the courtesies extended to the staff. Please direct questions to me at (703) 604-^{(b) (6)} (DSN 664-^{(b) (6)}).

Alice F. Carey
Assistant Inspector General
Readiness, Operations, and Support



Results in Brief: Controls Governing the Procurement Automated Contract Evaluation System Need Improvement

What We Did

We determined whether Defense Logistics Agency (DLA) Supply Centers uniformly applied the controls and rules governing Procurement Automated Contract Evaluation (PACE) awards, whether DLA had a process to validate that prices were fair and reasonable, and whether DLA made PACE awards for best value. We analyzed 333,304 automated awards, totaling more than \$1.5 billion, from FY 2008 through FY 2010. We also identified an issue with PACE exclusions.

What We Found

Although DLA personnel generally applied the controls and rules governing PACE awards in a uniform manner, DLA did not ensure that PACE complied with public law or develop an effective and consistent process to validate fair and reasonable prices, and it might not have used pricing that determined the best value. Specifically,

- DLA allowed the PACE system, rather than contracting officers, to award fully automated contracts by affixing contracting officers' signatures, violating public laws and the Federal Acquisition Regulation. As a result, DLA did not ensure that PACE properly formed 333,304 contracts, totaling over \$1.5 billion, from FY 2008 through 2010, resulting in invalid obligations.
- DLA did not have an effective and consistent oversight process to validate that prices paid for PACE awards at DLA Supply Centers were fair and reasonable and, as a result, might not have obtained fair and reasonable prices.
- DLA programmed PACE to use a pricing criterion, which was generally excessive, for fully automated awards over \$3,000. As a result, DLA did not ensure that the 91,413

procurements, totaling more than \$1.3 billion, were the best value in terms of cost to the Government.

- In addition, DLA excluded priority 01 and select priority 02 and 03 purchase requests for nonstocked items from PACE due to urgency of need, but processed the remaining priority 02 and 03 items through PACE. As a result, DLA awarded 15,462 priority 02 and 03 requisitions an average of 23 days and delivered them an average of 75 days after the requisition date, which could have impacted mission capability.

What We Recommend

The DLA Director should:

- implement a PACE process that complies with public law regarding electronic signatures;
- standardize Supply Center oversight;
- establish variable increments for price ranges in determining best value, and
- identify the impact of processing all priority 02 and 03 nonstocked requests similarly to those already excluded.

Management Comments and Our Response

The Director, DLA Acquisition, provided comments on the draft report that were generally responsive. However, comments were not responsive on ceasing the use of the electronic signature process in PACE. We request additional comments by July 5, 2012. Please see the recommendations table on the back of this page.

Recommendations Table

Management	Recommendations Requiring Comment	No Additional Comments Required
Director, Defense Logistics Agency	A.1	A.2, A.3, B

Please provide comments by July 5, 2012.

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Introduction

Audit Objectives

Our objectives were to determine whether Defense Logistics Agency (DLA) Supply Centers uniformly applied the controls and rules governing Procurement Automated Contract Evaluation (PACE) awards, whether DLA had a process to validate that prices were fair and reasonable, and whether DLA awarded contracts through PACE to suppliers who offered the best value. See Appendix A for a discussion of the scope and methodology.

We performed this audit pursuant to Public Law 110-417, “Duncan Hunter National Defense Authorization Act for Fiscal Year 2009,” Section 852, “Comprehensive Audit of Spare Parts Purchases and Depot Overhaul and Maintenance of Equipment for Operations in Iraq and Afghanistan,” October 14, 2008. Section 852 requires:

thorough audits to identify potential waste, fraud, and abuse in the performance of Department of Defense contracts, subcontracts, and task and delivery orders for (A) depot overhaul and maintenance of equipment for the military in Iraq and Afghanistan; and (B) spare parts for military equipment used in Iraq and Afghanistan.

Background on the DLA’s PACE System

Defense Logistics Agency

DLA is the primary provider of logistics, acquisition, and technical services for the Military Departments, other Federal agencies, and combined and allied forces. Located at Fort Belvoir, Virginia, DLA sources and provides U.S. military forces with nearly 100 percent of their consumable items and 84 percent of their spare parts. These materials are covered within eight supply chains, with five million items managed. DLA’s supply chains are managed by primary-level field activities, including DLA Land and Maritime (Columbus, Ohio); DLA Troop Support (Philadelphia, Pennsylvania); and DLA Aviation (Richmond, Virginia). DLA is the agency responsible for administering the PACE System, which these primary-level field activities use to obtain items.

Origin of the PACE System

Established in May 2004 and based at DLA’s Land and Maritime Supply Center in Columbus, Ohio, PACE is DLA’s automated procurement system, with specified exclusions for acquisitions costing at or below \$100,000.¹ The Chief, Systems and Procedures, at DLA Land and Maritime, told us that one reason for implementing the PACE System was to automate routine purchases so that DLA’s limited number of contract staff could work on more complex acquisitions, such as long-term contracts. Additionally, the designers of PACE had two other goals for the system: to upgrade the

¹ According to the Federal Acquisition Regulation, the simplified acquisition threshold is \$150,000, with some exceptions. The threshold was increased from \$100,000 on October 1, 2010; however, the PACE System threshold remained at \$100,000.

supplier quoting process from the former Electronic Bulletin Board technology to the new Web-based technology and to reduce paper.

PACE Awards From FY 2008 Through FY 2010

From FY 2008 through FY 2010, PACE processed 557,629 purchase requests, resulting in 538,574 contract awards totaling more than \$2.19 billion. Of the 538,574 contracts awarded during this period, 333,304 were fully automated awards totaling more than \$1.51 billion, which was the combined value of the Fully Auto and Fast PACE awards discussed below. The DLA Troop Support’s Medical Directorate issued “A Simple Guide to the Business Systems Modernization Website,” August 1, 2006, which stated a “successful PACE item is never viewed by a buyer.” For this report, the Fully Auto and Fast PACE awards are referred to as fully automated awards. The remaining 205,270 awards, totaling about \$686 million, were awards requiring some manual intervention. See Table 1 for breakouts of individual PACE contracts by fiscal year and award type.

Table 1. PACE Contracts by Fiscal Year and Award Type

	No. of Contracts	Total \$ Value
Fiscal Year		
2008	157,669	\$691,732,871
2009	177,594	707,239,764
2010	203,311	798,850,467
Total by Fiscal Year	538,574	\$2,197,823,102*
Award Type		
Fast PACE	241,891	\$199,391,560
Fully Auto	91,413	1,312,471,630
2 nd Look	177,102	569,154,736
Buyer Assisted/Best Value	20,138	84,525,990
Buyer Assisted/Manual	7,947	30,887,189
Null	83	1,391,998
Total by Award Type	538,574	\$2,197,823,103*

*The \$1 difference between total dollar value by fiscal year and by award type is due to rounding.
Source: OIG analysis of data obtained from DLA Land and Maritime.

We reviewed PACE award data categorized as one of the following award types.

- Fast PACE – Fully system-generated awards up to a maximum of \$3,000. The system evaluates all quotes within the micro-purchase threshold for potential early award after a solicitation has been open for 3 days.
- Fully Auto – Fully system-generated awards up to a maximum of \$100,000. These awards are generally subject to a 14-day open solicitation period.

- 2nd Look – PACE chooses a prospective awardee, but drops for intervention to a “2nd Look Buyer,”² usually because of price reasonableness. The awardee is selected by the buyer.
- Buyer Assist/Best Value – PACE cannot make a fully automated award and drops for a best-value determination to the buyer of record (if PACE cannot make the award decision because of various failure reasons) or “2nd Look Buyer” (if PACE chooses an awardee, but needs buyer intervention for other reasons).
- Buyer Assist/Manual – PACE drops for intervention to the buyer of record for award decision.
- Null – Awards that had no entry in the “Award Type” data field.

Our review was generally limited to the Fully Auto and Fast PACE awards, which are those categories that make up awards generated by the system without manual intervention from solicitation to final award. See Appendix B for details on the PACE award process.

Internal Control Weaknesses in the PACE System

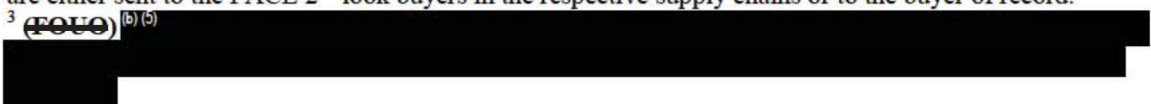
DoD Instruction 5010.40, “Managers’ Internal Control Program (MICP) Procedures,” July 29, 2010, requires DoD organizations to implement a comprehensive system of internal controls that provides reasonable assurance that programs are operating as intended and to evaluate the effectiveness of the controls. We identified internal control weaknesses for DLA’s fully automated award system.

~~(FOUO)~~ Specifically, DLA’s decision to allow the PACE System, rather than contracting officers, to affix contracting officers’ electronic signatures for fully automated awards violated Public Law 105-277, “Government Paperwork Elimination Act,” section 1710, October 21, 1998, and Public Law 106-229, “Electronic Signatures in Global and National Commerce Act,” section 106, June 30, 2000. ^{(b) (5)}


See Appendix C for applicable criteria.

For specific results of these weaknesses, see Finding A of this report. We will provide a copy of the report to the senior DLA official responsible for PACE internal controls.

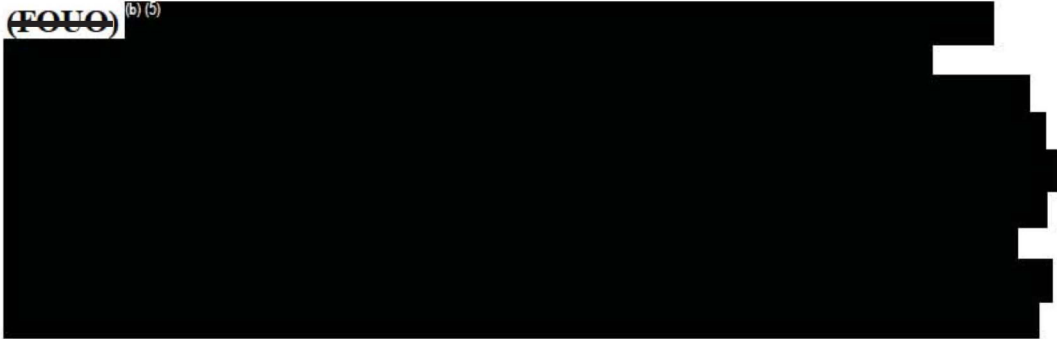
² Automated purchase requests that do not pass all of the programmed logic for automated awards in PACE are either sent to the PACE 2nd look buyers in the respective supply chains or to the buyer of record.

³ ~~(FOUO)~~ ^{(b) (5)} 

Finding A. Controls Over PACE Awards Need Improvement

Although DLA generally applied the controls and rules governing PACE awards in a uniform manner,⁴ DLA did not ensure that PACE complied with public law or develop an effective and consistent process for validating fair and reasonable prices for PACE awards. In addition, the PACE pricing criterion might not have provided the best value for the Government. Specifically:

- DLA allowed the PACE System, rather than contracting officers, to affix contracting officers' electronic signatures to fully automated PACE awards, which violated Public Law 105-277, "Government Paperwork Elimination Act," section 1710, October 21, 1998, and Public Law 106-229, "Electronic Signatures in Global and National Commerce Act," section 106, June 30, 2000. As used in PACE, electronic signatures do not ensure that a person with authority has bound the Government to the contract. This occurred because DLA personnel misinterpreted the public law and Federal Acquisition Regulation (FAR). As a result, DLA did not ensure that the 333,304 contracts, totaling more than \$1.5 billion from FY 2008 through FY 2010, were properly formed and that obligations on those contracts were valid.
- DLA did not have an effective and consistent oversight process to validate that prices paid for PACE awards at three DLA Supply Centers were fair and reasonable. DLA Aviation and DLA Troop Support did not conduct routine oversight of PACE awards, while DLA Land and Maritime's monthly reviews of PACE awards used a flawed pricing comparison based on unit prices alone. Furthermore, reviews did not show that DLA suggested actions to correct the overpriced PACE procurements they identified in contracting reviews. This occurred because Headquarters DLA did not develop standardized guidance or procedures for the oversight and review of PACE awards. Because it did not standardize oversight for PACE awards, DLA might not have obtained fair and reasonable prices for items procured.

- ~~(FOUO)~~ ^{(b) (5)} 

⁴ Appendix B describes the PACE award process.

Electronic Signatures in the Fully Automated PACE System Violate Public Law

DLA's practice of having PACE, rather than contracting officers, affix contracting officer electronic signatures to all fully automated PACE awards violated Public Law 105-277 and Public Law 106-229, "Electronic Signatures in Global and National Commerce Act," section 106, June 30, 2000, and did not comply with FAR requirements. Public Law 105-277 states that "the term electronic signature means a method of signing an electronic message that (A) identifies and authenticates a particular person as the source

PACE made 333,304 awards, totaling more than \$1.5 billion from FY 2008 through FY 2010, with no manual intervention from solicitation to final award.

of the electronic message, and (B) indicates such person's approval of the information contained in the electronic message." DLA misinterpreted the public law to allow system-generated electronic signatures in PACE. Public Law 106-229 states that an electronic signature is "executed or adopted by a person with the intent to sign the record." Without seeing the

document, there can be no intent to sign the document. Further, electronic signatures on fully automated PACE awards, as implemented, were noncompliant with FAR requirements outlined in FAR 1.602-1(b) "Authority" and FAR 2.101 "Definitions" (Signature or Signed). PACE made 333,304 awards, totaling more than \$1.5 billion from FY 2008 through FY 2010, with no manual intervention from solicitation to final award.

Contracting Officers' Electronic Signatures for PACE Awards Were System-Generated

In a fully automated PACE award, the contracting officer's signature is affixed to the contract by the program itself, without the intervention or knowledge of the contracting officer. This may be an efficient method of contracting for items within the simplified acquisition threshold. However, we concluded the electronic signature as used in the PACE process violated public law and the FAR. After their initial acceptance to allow their signature to be used for automated awards, the contracting officers receive no notification before or after PACE affixes their signature to those awards. With no opportunity to review the contract before its award, the contracting officer cannot have approved the award, intended to sign the award, or ensured that all applicable procedures were met.

DLA Misinterpreted Public Law

DLA personnel misinterpreted the public law and FAR to allow for system-generated electronic signatures as used in PACE.

DLA personnel misinterpreted the public law and FAR to allow for system-generated electronic signatures as used in PACE. DLA's broad use of pre-programmed contracting

⁵ Superseded DFARS 217.7504.

officers' electronic signatures for the PACE fully automated awards did not support that a person approved the action on information contained in the electronic message. If the person whose signature was used never saw the electronic message, then the standards in Public Law 105-277 that the person is the source and approver of such message were not met.

Also, the electronic signature process, as implemented in PACE, did not comply with the definition of the term "electronic signature," established in Public Law 106-229. That is, the actions related to fully automated awards were not executed or adopted by a person demonstrating intent to sign a contract. In addition, the electronic signature process did not comply with the definition of "signature" in FAR subpart 2.101 as the signature used for fully automated awards could not indicate a "present intention" by an individual "to authenticate the writing."

In summary, a general awareness of how PACE works did not bind the contracting officer to the approval of a specific contract action. While contracting officers are authorized to use an electronic signature as a substitute for a written one to show their approval, the electronic signatures cannot substitute for their personal knowledge and approval of the action. The use of electronic signatures in the PACE System calls into question whether the contracts were properly formed and the recording of obligations on those contracts were valid.

DLA Supply Center Personnel Did Not Consistently Validate That PACE Prices Were Fair and Reasonable

DLA did not have an effective or consistent oversight process to validate that prices paid for PACE awards at the three DLA Supply Centers were fair and reasonable. Defense Logistics Acquisition Directive (DLAD) 90.1201, "Simplified Acquisition Price Review Program," May 11, 2000, requires that Supply Centers conduct post-award pricing analysis on a sample of the previous month's simplified acquisitions to identify significant or repetitive overpricing and to take corrective action. However, the Directive broadly defines oversight of simplified acquisitions; that is, it does not provide guidance on the number of manual versus automated awards to be represented in sampling.

Inadequate Oversight Processes for Fully Automated PACE Awards

The Supply Centers have different methods for reviewing and reporting PACE awards. These efforts represent proactive steps by the Supply Centers' oversight staff. However,

DLA Supply Center procurement oversight personnel either did not routinely target PACE awards for review, or they conducted flawed reviews...and could not demonstrate corrective actions taken on the problems identified in their monthly reviews.

without having effective and consistent oversight reviews of the PACE awards, DLA might not have obtained fair and reasonable prices. DLA Supply Center procurement oversight personnel either did not routinely target PACE awards for review (Aviation and Troop Support), or they conducted flawed reviews that focused on the differences between

unit prices, without regard to quantity or time, for example, and could not demonstrate corrective actions taken on the problems identified in their monthly reviews (Land and Maritime). The effectiveness of the reviews was questionable, as we did not see any actions recommended on the overpriced PACE procurements they identified in the reviews.

DLA Aviation and Troop Support Supply Centers Did Not Conduct Routine Oversight of PACE Awards

The DLA Aviation Supply Center's Chief, Pricing Division, explained that his staff conducted the required pricing reviews (b) (5) simplified acquisition awards per month. Staff sampled awards based on high-dollar, simplified acquisitions. The Chief, Pricing Division, also stated that because dollar value was the main criterion used to pull the sample, few fully automated PACE awards were included in the monthly pricing reviews. We obtained a September 2010 simplified acquisition pricing review that contained (b) (5), totaling about \$5.6 million and ranging between \$83,828 and \$99,999. There were no PACE awards in the sample selected for the review.

DLA Aviation Pricing Division personnel stated that they were implementing an automated program specifically to analyze PACE awards. According to a senior cost price analyst with DLA Aviation, this program could analyze all the awards for a period of time selected by the analyst. For example, it could analyze all awards for an individual month or all awards for a given quarter of the year. (b) (5)

For the DLA Troop Support Supply Center, the Compliance Office, Procurement Process Support group, was responsible for oversight of all procurements made in the construction and equipment, clothing and textiles, medical, and subsistence supply chains. The group conducted various types of contract oversight under three categories, including:

- procurement management reviews focusing on effectiveness of, and compliance with, procurement procedures;
- monthly post-award reviews of simplified acquisitions required by DLAD 90.1201; and
- special projects.

The Chief, Compliance Office, Procurement Process Support group, informed us that his office did not conduct routine PACE-specific pricing reviews, but that PACE awards had a chance of being selected in his office's routine pricing reviews of simplified acquisitions.

Our analysis of 50 simplified acquisition reports, dated between April 2008 and October 2010, showed that 27 of 671 of the awards reviewed in those reports were PACE

awards. Individual deficiencies or passing results were described for all sampled items, and recommendations for corrective actions were provided. For example, in the report for the Medical supply chain covering March 2008, the reviewer cited that one contract totaling \$10,687 did not have a DoD Form 2579, "Small Business Coordination," and that the buyer and contracting officer were the same individual. The recommendation stated that buyers should continue to maintain complete and accurate file documentation to support award decisions.

DLA Land and Maritime Supply Center Used Flawed Pricing Comparisons and Lacked Formal Corrective Actions

(FOUO) (b) (5)



Of the 10 reports that we reviewed, results for price reasonableness determinations were based on differences between unit prices on buys compared, without consideration for quantities ordered. This oversight approach was methodologically flawed because it was not consistent with the pricing logic used by the PACE system, which includes calculations to adjust quantity, time, and the lowest price paid in the last 12 months. Further, all of the findings in the 10 reports we analyzed indicated "no significant overpricing," although the DLA analyst identified large variances in some cases between the total PACE award prices and the comparable award prices. For instance in the December 2008 review, Land supply chain PACE awards were reported with \$582,638 (80 percent) cumulatively greater costs than comparison awards. One individual award cited a 71-percent price increase. In another case in the March 2010 report, Maritime supply chain PACE awards were reported with \$431,125 (54.13 percent) cumulatively greater costs than comparison awards. Two individual awards cited 38- and 75-percent price increases because of quantity sensitivity.

Although these results were likely inaccurate because of the flawed pricing comparisons, our concern was that, of the 10 reports we reviewed, there were no details on the type of items reviewed nor were there suggested corrective actions for the awards DLA categorized as "unreasonable." Therefore, it appeared DLA Land and Maritime did not suggest any corrective action on the PACE items it classified as overpriced. According to the price cost analyst responsible for supervising the reviews at Land and Maritime, these results were used to identify areas to improve buyer performance. Furthermore,

because the sole focus of these reviews was on pricing, their value in providing systemic benefits for improving the PACE System was limited.

Implementing an Effective and Standardized PACE Oversight Process

DLA headquarters did not implement an effective or standardized process, including policies and procedures, for recurring oversight reviews of PACE awards. According to one DLA Aviation Cost and Pricing official, aside from the required DLAD 90.1201 simplified acquisition reviews, other acquisition oversight activities focused available resources on reviews with higher dollar value impact. (b) (5)

DLA Land and Maritime's review process, although conducted monthly, contained a flawed methodology in only comparing unit prices, without regard to quantity and time, and lacked a formal mechanism for corrective actions.

[REDACTED]

The PACE Team Supervisor for Oversight stated, "In terms of corrective actions, the results of their reports are informally discussed with the responsible buyers either in a team or individual setting."

In summary, each of the Supply Centers developed its own oversight processes. However, they did not include effective and consistent oversight reviews of PACE awards, and DLA might not have obtained fair and reasonable prices.

Static Pricing Criterion for PACE Fully Automated Awards Was Less Effective Than Stratified

(FOUO) (b) (5)
[REDACTED]

(FOUO) (b) (5)
[REDACTED]

[REDACTED]

(FOUO) (b) (5)
[REDACTED]

[REDACTED]

(b) (5)

Fully Automated Awards for FY 2008 Through FY 2010

(FOUO) We identified 91,413 fully automated PACE acquisitions made from FY 2008 through FY 2010. While the majority of the awards were equal to or less than \$30,000, more than 10,800 awards, totaling about \$590.6 million, were more than \$30,000. Table 2 provides the stratification of these awards to show the breakdown by number, dollar value, and (b) (5) stratum.

(FOUO) It should be noted that a (b) (5) to a \$90,000 item is \$22,500, (b) (5) which is only \$750. Management should use variable percentages for the multiple dollar ranges to ensure it obtains the best value for PACE procurements.

Table 2. PACE Fully Automated Awards by Dollar Range (FOUO)

Dollar Range	Number	Dollar Value	(b) (5)
>3,000 & <=10,000	56,139	\$306,458,773	
>10,000 & <=30,000	24,470	415,402,938	
>30,000 & <=50,000	5,602	215,712,561	
>50,000 & <=70,000	2,575	151,860,021	
>70,000 & <=90,000	1,753	140,033,217	
>90,000 – 100,000	874	83,004,119	
Total	91,413	\$1,312,471,629*	

* The difference of \$1 between total dollar values in Table 1, Fully Auto, and this table is due to rounding. Source: PACE awards data provided by DLA, December 14, 2010.

(FOUO) Pricing (b) (5) Was Excessive

(FOUO) (b) (5)

DLA Management Was Taking Action to Address Control Weaknesses, but Must Do More


During the audit, DLA issued “Procurement Systems Using Automated Solicitation, Evaluation, and Award Processes – Documentation and Oversight Requirements,” November 4, 2011, regarding electronic signatures and the lack of standardized or effective oversight of PACE awards. This memorandum provided guidance to address the issues associated with procurement systems that apply electronic signatures to fully automated awards, standardized the oversight review process for those systems, and updated parts of the DLAD and DLAD Procurement Guidance and Instructions. However, there were some areas in the guidance that DLA management needs to address further.

Specifically, the following language included in the guidance for the PACE system’s automated use of contracting officers’ electronic signatures indicates that DLA will continue the status quo process by:

- designating PACE as the contracting officers’ electronic agent for fully automated awards;
- stating that contracting officers’ general knowledge and consent for the system to use their signature makes awards legally binding, as if they were processed manually; and
- waiving contracting officers’ responsibilities to have direct intervention and personal knowledge for each fully automated award action.

Further, DLA should add guidance to ensure that PACE review sampling includes both fully automated awards and awards that were dropped for 2nd Look or manual review after processing through the system. Finally, to maintain independence in the process, DLA should include in the guidance that contracting officers are not to conduct oversight reviews of awards for which they were responsible.

~~(FOUO)~~ (b) (5)


We agreed that DLA should establish the more flexible approach of a configurable pricing logic among award dollar ranges. This could provide more benefit to the Government by ensuring that a procurement totaling \$100,000 was not awarded at the same percentage used to calculate price reasonableness as a procurement totaling  (b) (5). Having a more flexible reasonable pricing criterion ought to provide savings to the Government.

Conclusion

Although DLA officials generally applied the controls and rules governing these awards uniformly among its Supply Centers, we identified problems with PACE controls and processes. DLA improperly used electronic signatures for PACE awards because it interpreted the law to allow it. DLA's allowing the PACE system, rather than contracting officers, to affix contracting officers' electronic signatures to fully automated awards called into question whether the contracts were properly formed and whether obligations recorded on those contracts were valid. DLA needs to cease the current use of electronic signatures in PACE and amend the PACE signature process to bring it into compliance with public law and the FAR.

Also, DLA used varying methods for oversight of PACE awards because it did not have a standardized process, and the three Supply Centers did not have an effective procedure to ensure fair and reasonable prices. Because it did not standardize oversight for PACE awards, DLA might not have obtained fair and reasonable prices for items. DLA needs to establish an effective and standardized oversight process across the Supply Centers to increase its ability to determine that prices are fair and reasonable.

(FOUO) (b) (5)



Recommendations, Management Comments, and Our Response

A. We recommend that the Director, Defense Logistics Agency:

1. **Cease the current process of automated affixing of contracting officers' electronic signatures to fully automated awards in the Procurement Automated Contract Evaluation System and develop an alternate method compliant with Public Law 105-277, "Government Paperwork Elimination Act," October 21, 1998, Public Law 106-229, "Electronic Signatures in Global and National Commerce Act," June 30, 2000, and the Federal Acquisition Regulation.**

Defense Logistics Agency Comments

The Director, DLA Acquisition, responding for the DLA Director, disagreed and stated that the report took a restrictive and unreasonable reading of the applicable statutory and FAR definitions. Based on a memorandum from DLA's Office of General Counsel, the Director, DLA Acquisition, stated that DLA disagreed that the contracting officer must have specific knowledge of the content of each purchase order processed in PACE and that the contracting officer must take action to approve each purchase order before issuance.

The Director summarized DLA's position based on the DLA Office of General Counsel's Memorandum:

- The current process is permissible because the contracting officers are aware that PACE will issue unilateral purchase orders and affix their signatures to the orders electronically, and a contract will be formed upon the awardee's performance, without the contracting officers' personal intervention. Both the Director, Defense Procurement and Acquisition Policy, and DoD Office of General Counsel supported DLA's position on this issue.
- Public Law 106-229 authorizes the use of electronic agents "so long as the action of any electronic agent is legally attributable to the person to be bound," defines "electronic agent" as "a computer program or an electronic or other automated means used independently to initiate an action or respond to electronic records or performances in whole or in part without review or action by an individual at the time of the action or response," and states that an electronic signature is "executed or adopted by a person with the intent to sign the record."
- Public Law 105-277 states an electronic signature "indicates such person's approval of the information." The Director stated that DLA issued policy (updated and clarified during the audit) that required contracting officers to sign a statement designating PACE as their electronic agent for automated awards and acknowledging that the placement of the electronic signature was made with their knowledge and consent with the intent that the awards would be legally binding.
- DLA's PACE automated award system met the requirements of an electronic agent as defined by the statute and was consistent with the FAR requirement that electronic signatures may be used on purchase orders by automated methods and "when affixed to a writing with the knowledge and consent of the individual, indicates a present intention to authenticate the writing."
- Knowledge of the specific content of each purchase order is not required to use an electronic agent and show intent to authenticate the purchase order. The contracting officer only has to know that the system will process the purchase order according to the rules that govern how the system processes requests, quotes, and orders.

The Director noted that contracting officers involved with PACE receive training in the system operation and rules and designate the system as their electronic agent, inherently showing intent to be bound by the purchase orders issued by the system.

Our Response

Comments from the Director, DLA Acquisition, were not responsive. DLA's arguments rest on the statements that the law and the FAR allow electronic signatures and that the contracting officer's awareness of the PACE system is sufficient to meet the responsibility of the contracting officer in approving a contracting action. We agree that

the law and the FAR allow electronic signatures in the procurement process in general. However, we do not agree that electronic signatures as used in PACE meet the necessary legal and FAR requirements or that knowledge of the system is enough to allow use of an electronic agent and to show intent to be bound by the system's actions.

It should be noted that 15 U.S.C. § 7001(h) states that such electronic agents are deemed valid "so long as the action of any such electronic agent is legally attributable to the person to be bound." In this case, the "person" to be bound is an agency of the Federal Government and the only persons with authority to bind that "person" are warranted contracting officers, acting within their authority. A general awareness of how PACE works does not bind the contracting officer to the approval of a specific contract action. This type of action is not permitted. A contracting officer may use an electronic signature or system to show the contracting officer's approval of a specific document when it is a substitute for a written signature. The electronic signature and system do not substitute for the contracting officer's personal knowledge and approval of the action.

Further, as stated in the finding, Public Law 105-277 states "the term electronic signature means a method of signing an electronic message that (A) identifies and authenticates a particular person as the source of the electronic message, and (B) indicates such person's approval of the information contained in the electronic message." FAR Subpart 2.101 states that "signature" means the discrete, verifiable symbol of an individual that, when affixed to a writing with the knowledge and consent of the individual, indicates an intention to authenticate the writing. This includes electronic signatures. There can be no intent established in compliance with the public law or FAR provisions because PACE completes fully automated awards without the knowledge of the contracting officer to authenticate the contract. The contracting officers are not even aware of what purchase orders PACE issues under their signature. The FAR requires a discrete and separate intention to authenticate for each use of the electronic signature. The FAR subpart does not provide unlimited authority to use an electronic signature for every PACE award.

We request that the Director, DLA reconsider his position and provide further comments on the final report.

2. Establish an effective and standardized oversight process to determine whether fair and reasonable pricing occurs on Procurement Automated Contract Evaluation System awards across the Supply Centers.

Defense Logistics Agency Comments

The Director, DLA Acquisition, agreed and stated that, during the audit, DLA strengthened its oversight process by issuing policy to include representative samples of PACE acquisitions within the monthly simplified acquisition review. In addition, the policy implemented the semiannual DLA Automated Procurement Systems Internal Controls Process to standardize reviews of DLA automated procurement results, pricing, and contracting officer training. The first process review was to be conducted in April 2012. The Director stated that the new review process would complement existing

reviews, including DLA headquarters Procurement Management Reviews of PACE buys and technical reviews of PACE system logic.

Our Response

Comments from the Director, DLA Acquisition, were responsive, and no additional comments were required.

3. ~~(FOUO)~~ ^{(b) (5)}



Defense Logistics Agency Comments

The Director, DLA Acquisition, agreed and stated that DLA upgraded PACE functionality in December 2011 to allow each supply chain to adjust the percentage. The Director noted that the supply chains would complete analyses to determine their optimum percentages in April 2012. In addition, the Director stated that in April 2012, DLA would upgrade PACE system functionality to allow different pricing criteria for dollar value increments. Finally, by July 2012, additional upgrades would provide capabilities to enable analysis of the impact of changing variables in the PACE pricing logic.

Our Response

Comments from the Director, DLA Acquisition, were responsive, and no additional comments were required.

Finding B. DLA Used the PACE System for Priority 02 and 03 Items, Which Delayed Delivery to Combat and Support Units

Although DLA contracting personnel excluded priority 01 and select priority 02 and 03 purchase requests for nonstocked items from PACE due to urgency of need, they processed the remaining priority 02 and 03 purchase requests through the PACE award system.⁶ DLA contracting personnel decided not to exclude all nonstocked priority 02 and 03 items because of concerns about having enough emergency buyers to handle the additional manual workload.

As a result, of 15,462 priority 02 and 03 items for which we had delivery dates from FY 2008 through FY 2010, PACE awards averaged 23 days after the requisition date, and contractors delivered the items an average of 76 days after the requisition date. DLA contracting personnel did not exclude all nonstocked priority 02 and 03 items from PACE because they did not believe they had the resources to manually process them.

Continuing to process priority 02 and 03 requirements under the current method in the PACE System could adversely impact a combat unit's mission. It would be beneficial for DLA to either exclude all priority 02 and 03 items from PACE or modify PACE procedures to expedite their processing, given the high urgency with which they were requested.

Procedures for Processing Priority 02 and 03 Items Delayed Support for the Warfighter

DLA excluded all priority 01 and specific priority 02 and 03 items from PACE and used emergency buyers to process them. However, the remaining 15,462 priority 02 and 03 requisitions for which we had delivery dates and were processed through PACE took an average of 23 days from purchase request to process and award the contract and 76 days from purchase request to delivery, clearly delaying support for the warfighter.

In another instance, a purchase request was made under priority 02 on November 12, 2007, for elastic bandages for wrapping injuries to hands and feet. The contract for 360 bandages, totaling \$1,894, was awarded on January 24, 2008, 73 days later, and was delivered 15 days after award.

For example, one purchase request was made under priority 02 on November 1, 2007, for medical headlamps. The contract for 40 headlamps, totaling \$1,389, was awarded on January 24, 2008, 84 days after the request, and was delivered 10 days after award. In another instance, a purchase request was made under priority 02 on November 12, 2007, for elastic bandages for wrapping injuries to hands and feet. The contract for 360 bandages, totaling

⁶ Priority designators are two-digit numeric codes 01 (highest) through 15 (lowest) that express the relative importance of requisitions and materiel movement. Priority 01, 02, and 03 are requested under the highest importance and an equivalent urgency of need.

\$1,894, was awarded on January 24, 2008, 73 days after the request, and was delivered 15 days after award.

DLA excluded certain high-priority requirements from PACE award, according to PACE's priority code exclusions, which are the following:

- all priority 01 requirements,
- priority 02 requirements for profit centers 1011 (Aviation Center) and 5011 (Aviation Detachment at Troop Support Center), and
- priority 03 requirements for profit center 5011.

We concluded that, as a best business practice, DLA should conduct a risk assessment to identify the impact of processing all priority 02 and 03 requests for nonstocked items with the urgency applied to priority 01 and those select 02 and 03 requests already excluded from the PACE System. The number of these high-priority awards was less than 3 percent of the total PACE awards for this period. However, there were still 15,462 priority 02 and 03 requirements that resulted in award timeframes averaging 23 days and delivery dates averaging 76 days from the request. If DLA continues processing these requirements under the current method in the PACE System, it could adversely impact the warfighter's combat and combat support missions. DLA should determine the feasibility of processing all priority 02 and 03 requisitions with similar urgency used for priority 01 nonstocked items.

Recommendation, Management Comments, and Our Response

B. We recommend the Director, Defense Logistics Agency, conduct a risk assessment to identify the impact of processing all priority 02 and 03 requests for nonstocked items with similar urgency applied to priority 01 and select 02 and 03 requests, which are excluded from the Procurement Automated Contract Evaluation System, and report to the DoD Inspector General the actions the Agency plans to take in response to the results of the risk assessment.

Defense Logistics Agency Comments

The Director, DLA Acquisition, agreed and stated that the DLA would conduct a risk assessment to identify the impact of processing all priority 02 and 03 requests with similar urgency applied to priority 01 and select 02 and 03 requests and report the results and planned way forward in May 2012. The Director stated that DLA was committed to timely support for the warfighter and would review whether DLA was meeting delivery dates for customers.

Our Response

Comments from the Director, DLA Acquisition, were responsive, and no additional comments were required.

Appendix A. Scope and Methodology

We conducted this performance audit from August 2010 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 objectives. The evidence obtained provides a reasonable basis for our findings and conclusions based on our audit objectives.

We assessed PACE processes and controls at DLA's Aviation, Land and Maritime, and Troop Support Supply Centers by reviewing various PACE and Business Systems Modernization documents and flowcharts and discussing the PACE processes with cognizant PACE personnel. We discussed PACE oversight with personnel from compliance, fraud, post-awards, and cost and pricing groups and reviewed the results of audits and reviews they performed. We reviewed applicable public law, U.S.C., FAR, DFARS, Office of Management and Budget guidance, DoD and DLA Directives, and appropriate portions of DoD 7000.14-R, "DoD Financial Management Regulation." We reviewed and discussed existing internal control procedures and reviewed the results of internal audits and reviews.

DLA's PACE System awarded 538,574 contracts, totaling more than \$2.19 billion, from FY 2008 through FY 2010. Of the 538,574 contracts that PACE awarded, 333,304 (61.9 percent), totaling more than \$1.51 billion, were fully automated. The remaining 205,270 awards (38.1 percent), totaling more than \$685.95 million, required manual intervention. Our review was generally limited to only the Fully Auto and Fast PACE awards, which are those generated by the system without manual intervention from solicitation to final award.

Computer-Processed Data Were Sufficiently Reliable

We used computer-processed data for FYs 2008 through 2010 of PACE purchase requests and awards that DLA personnel obtained through the DLA Office of Operations Research and Resource Analysis and quotes obtained through the DLA Internet Bid Board System. We performed Access queries and created Excel spreadsheets to determine whether PACE performed as designed and whether requirements that should have been excluded from PACE processing were excluded. We used these data to determine whether items procured through PACE met the system's requirements and whether the calculated lowest prices were accurate.

We conducted tests of the data through the course of our audit work, including tests of exclusion criteria; tests for missing data, duplicate records, and invalid data; tests of system logic; and tests to track purchase requests through the process to award. None of the error rates from our tests exceeded 0.5 percent. From the tests and audit work we performed, we decided that the data were sufficiently reliable for the purpose of determining whether the PACE System processed requisitions accurately.

Use of Technical Assistance

We obtained legal input from the DoD Inspector General's Office of General Counsel regarding contracting officers' electronic signatures on fully automated contracts awarded by the PACE System.

Prior Coverage on the PACE System

No prior coverage has been conducted on PACE during the last 5 years.

Appendix B. PACE Award Process

A purchase request undergoes a number of automated actions to determine whether the requirements are suitable for PACE award, according to criteria outlined in the Solicitation/PACE Exclusion tables. The requirements must meet the criteria to prevent PACE from excluding the request from a fully automated PACE award and dropping it for manual review. If a purchase request successfully passed the exclusion checks, an auto-solicitation was generated. See the Figure for a diagram of the process.

Exclusions and Auto-Solicitation

Exclusion tables allow flexibility to have a purchase request:

- auto-solicited, auto-evaluated, and auto-awarded;
- auto-solicited and auto-evaluated, but not auto-awarded;
- auto-solicited, but not auto-evaluated or auto-awarded; or
- excluded from automated solicitation, automated evaluation, and automated award (manual purchase request).

PACE has multiple exclusion tables, including but not limited to, tables for national stock numbers, Federal supply classes, and priority and project codes. Purchase requests that passed the requirements for auto-solicitation and exclusion checks were posted on the DLA Internet Bid Board System for eligible vendors to submit quotes. Solicitations were generally open for 14 days for vendor quoting, with the exception of Fast PACE for micropurchases (automated programming, which allowed the system to make awards up to 4 days after solicitation issue date) and Extended-Negotiation (automated programming, which allowed the system to extend the closing date to allow further quoting by vendors).

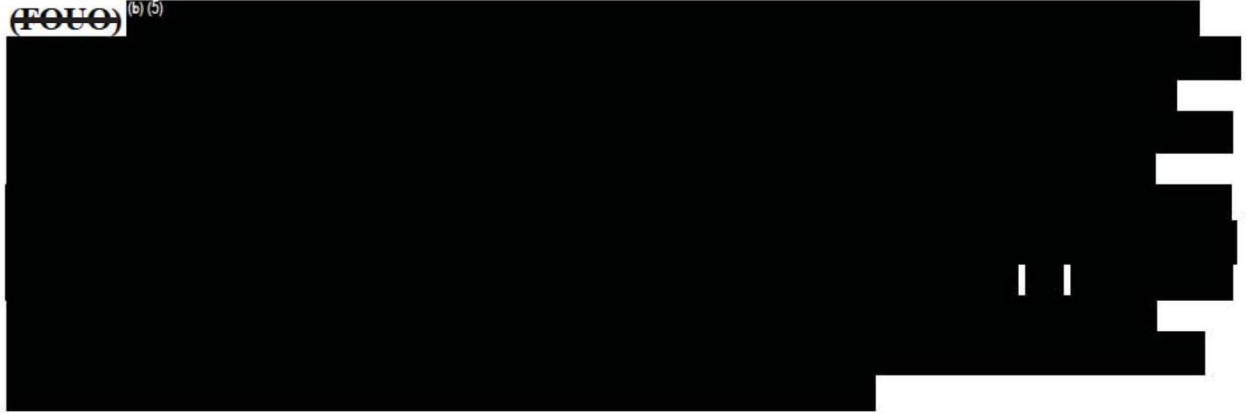
While the simplified acquisition threshold increased as of the start of FY 2011 to \$150,000, PACE still used a previously established \$100,000 threshold. Regardless of the dollar value, PACE considered small business requirements by generating automated DoD Form 2579 “Small Business Coordination Record,” for all PACE. Combined set-asides allowed PACE to consider more than one type of set-aside (Historically Underutilized Business Zones, Service-Disabled Veteran-Owned Small Businesses, and total small business) according to their order of precedence.

Evaluation of Qualified Vendors

To automate the simplified acquisition process, resulting in issuance of a purchase order, PACE used a pricing algorithm and other evaluation criteria to make fully automated and buyer-assisted awards totaling \$100,000 or less. The system only considered “qualified” vendor quotations submitted on the DLA Internet Bid Board System. Qualified quotes were those for which the vendor’s bid met the requirements listed in the auto-solicitation, and the vendor was not

suspended or debarred, or if there was a set-aside requirement, the vendor was an eligible small business.

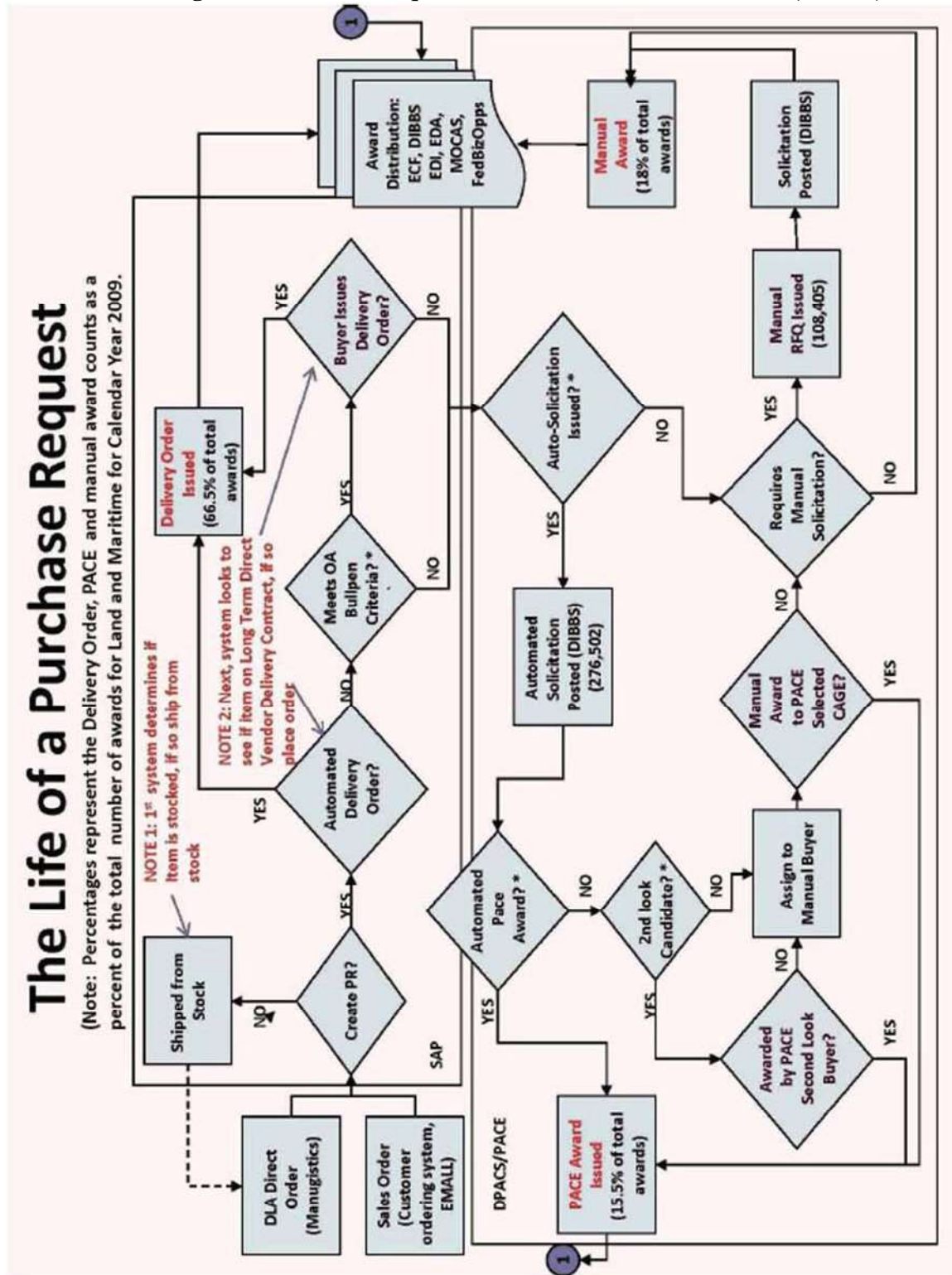
~~(FOUO)~~ (b) (5)



A pamphlet issued by Troop Support Medical Directorate, "A Simple Guide to the Business Systems Modernization Website," August 1, 2006, states "successful PACE item is never viewed by a buyer. In order for PACE to evaluate offers for award, offers must be exact to the terms of the solicitation; that is 'without exception.'* If no offers are received without exception, the buy will reject from the system and be sent to a buyer for manual review."

* "Without exception" means that all bids received meet the specific requirements listed in the auto-solicitation.

Figure. Purchase Request to PACE or Manual Award (FOUO)



Source: PACE Team, DLA Land and Maritime.

Appendix C. Regulatory Guidance

Electronic Signature Requirements

Public Law No. 105-277, “Government Paperwork Elimination Act,” section 1710, 112 Stat. 2681–751, October 21, 1998, states that “the term electronic signature means a method of signing an electronic message that (A) identifies and authenticates a particular person as the source of the electronic message, and (B) indicates such person’s approval of the information contained in the electronic message.”

Public Law 106-229, “Electronic Signatures in Global and National Commerce Act,” section 106, 114 Stat. 472, June 30, 2000, states that “the term electronic signature means an electronic sound, symbol, or process, attached to or logically associated with a contract or other record and executed or adopted by a person with the intent to sign the record.”

The definition of the term “electronic signature” was established under section 7006, title 15, United States Code (15 U.S.C. § 7006 [2010]) and means “an electronic sound, symbol, or process attached to or logically associated with a contract or other record and executed or adopted by a person with the intent to sign the record.”

FAR 1.602-1 (b) states, “No contract shall be entered into unless the contracting officer ensures that all requirements of law, executive orders, regulations, and all other applicable procedures, including clearances and approvals, have been met.”

FAR 2.101, “Definitions,” states, “(Signature) or (signed) means the discrete, verifiable symbol of an individual that, when affixed to a writing with the knowledge and consent of the individual, indicates a present intention to authenticate the writing. This includes electronic symbols.”

Contract Pricing^{*}

DFARS Subpart 217.75, “Acquisition of Replenishment Parts,” revised June 27, 2000, Section 217.7504, “Limitations on Price Increases.” This section provides implementing guidance for section 1215 of Public Law 98-94 (10 U.S.C. § 2452 note), “(a) The contracting officer shall not award, on a sole source basis, a contract for any centrally managed replenishment part when the price of the part has increased by 25 percent or more over the most recent 12-month period.”

Revision 4 of the DLAD 4105.1, issued January 1, 1998, Section 17.7504, “Limitations on Price Increases,” “(a)(2) The thresholds for base price comparison check procedures under Standard Automated Materiel Management System simplified purchase procedures and local automated procedures shall not exceed 25 percent and \$250, after adjustments specified in DFARS 217.7504(a)(1).”

^{*} Note: These were the criteria in place at the time PACE was implemented in May 2004. They have subsequently been superseded by DFARS 217.7505 and DLAD 17.7505, respectively.

Defense Logistics Agency Comments



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

MAR 14 2012

MEMORANDUM FOR DEPARTMENT OF DEFENSE INSPECTOR GENERAL (DoDIG)
ATTN: PROGRAM DIRECTOR, GLOBAL LOGISTICS DIVISION I

THROUGH: DEFENSE LOGISTICS AGENCY (DLA) OFFICE OF INSPECTOR GENERAL

SUBJECT: DoDIG Audit D2010-D000LD-0264.000, Controls and Processes Pertaining to
DLA Procurement Automated Contract Evaluation (PACE) System

This responds to your memorandum dated February 13, 2012, requesting comments from the Director, DLA, on the recommendations in the subject report. The following responses are provided to address the recommendations:

DoDIG Recommendation A.1. We recommend that the Director, Defense Logistics Agency[,] ... [c]ease the current process of automated affixing of contracting officers' electronic signatures to fully automated awards in the Procurement Automated Contract Evaluation System and develop an alternate method compliant with Public Law 105-277, "Government Paperwork Elimination Act," October 21, 1998, Public Law 106-229, "Electronic Signatures in Global and National Commerce Act," June 30, 2000, and the Federal Acquisition Regulation (FAR).

DLA Response: Non-concur. The report takes an unduly restrictive view of the relevant statutory and FAR definitions that is not compelled by a reasonable reading of the applicable statutes and the FAR without citing any authority requiring such a restrictive view. The report concludes that, to be in compliance with these definitions, the contracting officer must have specific knowledge of the content of each purchase order processed using PACE and must take some affirmative action to approve issuance of each purchase order before it is issued. DLA respectfully disagrees, for the reasons discussed in the DLA Office of General Counsel's Memorandum of Law dated September 23, 2011, which was provided to the audit team during the review, and for the further reasons discussed below.

DLA's position is summarized in the DLA Office of General Counsel's Memorandum of Law as follows:

The fact that the contracting officers are not personally aware of each fully-automated purchase order is irrelevant. The whole purpose of using a fully-automated purchase system is to eliminate the need for human intervention in each purchase. The contracting officers are fully aware that PACE will issue a series of unilateral purchase orders without their personal intervention, that their signatures will be included on the purchase orders electronically, and that a contract will be formed when each of the purchase order awardees performs (see FAR 2.101, definition of "contract"). The contracting officers therefore implicitly

consent to use of their signatures with the present intention to authenticate each purchase order in the series issued by PACE.

DLA discussed its position with the Director of Defense Procurement and Acquisition Policy and with the Department of Defense General Counsel's Office during the course of the audit, and both supported DLA's position on this issue. DLA offered to meet with the legal counsel supporting the audit team to discuss the DLA position and the audit team counsel's concerns, but the audit team's counsel declined to meet with DLA.

The report's disagreement with this position does not consider a highly-relevant provision in the Electronic Signatures in Global and National Commerce Act (ESGNCA), Public Law 106-229, which authorizes use of electronic agents "so long as the action of any such electronic agent is legally attributable to the person to be bound" (ESGNCA section 101(h), codified at 15 U.S.C. §7001(h)). ESGNCA section 106(3) (15 U.S.C. §7006(3)) defines "electronic agent" as follows:

The term "electronic agent" means a computer program or an electronic or other automated means used independently to initiate an action or respond to electronic records or performances in whole or in part without review or action by an individual at the time of the action or response.

DLA strengthened its implementation of statutes and regulations associated with the use of electronic signatures by issuing policy (which was updated and clarified during the audit) to require that contracting officers who are responsible for PACE awards sign a statement that designates PACE as their electronic agent for purposes of making automated awards and acknowledges that "automated placement of my electronic signature on fully-automated awards is made with my knowledge and consent and with the intention that all such awards will be legally binding on the Government . . ." (DLA Acquisition Directive (DLAD) 1.602-2(92); DLAD Procedures, Guidance and Instructions (PGI) 1.602-2(92)). DLA's PACE automated award system qualifies as an electronic agent under the statutory definition, because it is an automated means of independently initiating actions (requests for quotes) and responding to electronic records (quotes) submitted by offerors by issuing unilateral (signed by the contracting officer but not by the awardee) purchase orders that the contracting officer intends to be legally binding. This is fully consistent with the FAR, which states, at 13.302-1(c), that "[f]acsimile and electronic signature may be used in the production of purchase orders by automated methods." Thus, DLA is authorized to issue automated purchase orders "without review or action by an individual at the time of the action or response." The report's recommendation to cease use of the PACE automated award process is therefore inconsistent with existing statutory and regulatory authority to use such a system.

For purposes of this recommendation, the key terms in the statutory and FAR definitions of "electronic signature" are: "indicates such person's approval of the information" (The

Government Paperwork Elimination Act, Public Law 105-277, Title XVII, section 1707); “executed or adopted by a person with the intent to sign the record” (ESGNCA, section 106(5), codified at 15 U.S.C. §7006(5)); and “when affixed to a writing with the knowledge and consent of the individual, indicates a present intention to authenticate the writing” (FAR 2.101, definition of “signature”). In the context of an automated award process functioning as an electronic agent, knowledge of the specific content of each purchase order is not required in order to approve and adopt the information in the purchase order and have a present intent to authenticate each purchase order. The knowledge that is required relates to the contracting officer’s relationship to the automated system, which is a relationship of principal to agent. In this context, the contracting officer only has to have knowledge that the agent will process purchase orders on behalf of the contracting officer in accordance with the conditions the contracting officer, as principal, has placed on the actions of the agent. In this case, the conditions applicable to the agent’s actions are the system rules that control how the system issues requests for quotes, reviews quotes, and issues purchase orders. DLA policy requires that contracting officers responsible for PACE awards receive training in the operation of the system and the system rules that are applicable to the system and designate the system as their electronic agent. Each contracting officer’s present intent to approve and adopt each purchase order issued by the system is inherent in that contracting officer’s designation of the system as the contracting officer’s electronic agent. Because of this designation, the contracting officer has a continuing intent to be bound by the agent’s actions throughout the entire course of the agent’s operation. If the contracting officer were required to personally review and approve each such action at the time it occurs, the principal-agent relationship would be meaningless.

As noted above, DLA policy requires that contracting officers responsible for PACE awards be trained in the system’s operations, designate PACE as the contracting officers’ electronic agent, and consent in writing to the system’s use of their electronic signatures with the continuing intent to be legally bound. These factors in combination “indicate [the contracting officer’s] approval” of PACE awards, that the awards are “adopted by [the contracting officer] with the intent to sign the record,” and that the contracting officer’s signature is “affixed to [the awards] with the knowledge and consent of the [contracting officer], [indicating] a present intention to authenticate the writing.” This complies with each of the “electronic signature” definitions cited above, showing that PACE’s use of contracting officers’ electronic signatures is authorized by the applicable statutes and the FAR.

DoDIG Recommendation A.2. We recommend that the Director, Defense Logistics Agency[,] [e]stablish an effective and standardized oversight process to determine whether fair and reasonable pricing occurs on Procurement Automated Contract Evaluation System awards across the Supply Centers.

DLA Response: Concur. Existing DLA policy required Heads of Contracting Activities (HCAs) to ensure adequate oversight of simplified acquisitions via monthly reviews and internal Procurement Management Reviews. PACE contracts were reviewed as part of the overall simplified acquisition population. DLA strengthened its oversight process by issuing policy,

during the audit, directing HCAs to include a representative sample of acquisitions solicited, evaluated and awarded through the automated procurement system within their monthly reviews of simplified acquisitions. The new policy also implemented the semi-annual DLA Automated Procurement Systems Internal Controls (APSIC) Process to standardize the review of DLA automated procurement system functional outcomes, pricing parameters, and contracting officer training (DLAD PGI 1.601-90(b)(3)(iv)). The first APSIC review will be conducted in April 2012. The APSIC reviews will ensure PACE functional outcomes comply with all requirements of law, executive orders, regulations, and other applicable procedures, consistent with outcomes that would have occurred if the award had been processed manually. The APSIC reviews will complement existing DLA system review procedures. The existing review procedures include HQ DLA Procurement Management Reviews of PACE buys; analysis of all proposed acquisition policy changes and implementation of system changes as needed; and on-going technical reviews of PACE system logic that incorporate regression testing of changes to ensure other system logic outcomes are not adversely affected. The APSIC reviews will also include an assessment of pricing parameter settings to determine if stratified pricing levels have been adjusted consistent with market changes. Finally, the APSIC reviews will confirm that contracting officer completion of mandatory training and consent to use of their electronic signature with the intent to bind the Government has been documented. Contracting officer training is currently conducted by each of the Supply Chains. Enterprise training will be implemented in April 2012.

DoDIG Recommendation A.3 (b) (5)
(b) (5)

DLA Response: (b) (5)
(b) (5)

(b) (5)

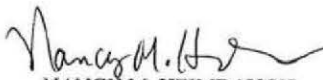


DoDIG Recommendation B. We recommend that the Director, Defense Logistics Agency, conduct a risk assessment to identify the impact of processing all priority 02 and 03 requests for non-stocked items with similar urgency applied to priority 01 and select 02 and 03 requests, which are excluded from the Procurement Automated Contract Evaluation System, and report to the DoD Inspector General the actions the Agency plans to take in response to the results of the risk assessment.

DLA Response: Concur. DLA is committed to delivering timely support to our warfighters! As part of our commitment, we will analyze our performance in meeting customer requested delivery dates. An initial look at the three anomalies mentioned in the report would lead one to believe the DLA response time was excessive. Further analysis revealed legitimate reasons for the apparent delays. As recommended, DLA will conduct a risk assessment to identify impacts of processing all priority 02 and 03 requests for non-stocked items with similar urgency applied to priority 01 and select 02 and 03 requests. We will report our results and planned way-ahead to the DoD Inspector General in 60 days.

Thank you for the opportunity to comment. Please direct any questions to




NANCY M. HEIMBAUGH
Director, DLA Acquisition

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Inspector General
Department *of* Defense

~~FOR OFFICIAL USE ONLY~~