



March 30, 2007

TO: Director, Goddard Space Flight Center
Procurement Officer, Goddard Space Flight Center

FROM: Assistant Inspector General for Auditing

SUBJECT: Final Memorandum Addressing Unnecessary Subcontract Costs and Other
Deficiencies in Goddard Space Flight Center's Multiple Award Schedule
Procurement Process (Report No. ML-07-006; Assignment
No. S-06-017-00)

On July 26, 2006, we received a hotline referral alleging that NASA misused funds on a contract action under General Services Administration (GSA) Multiple Award Schedule (MAS) Mission Oriented Business Integrated Services (MOBIS) schedule 874. The objective of our review was to determine the validity of the allegation. To accomplish this, we reviewed the MAS procurement process at Goddard Space Flight Center (Goddard) in general and specifically reviewed MOBIS schedule 874 delivery orders. (See Enclosure 1 for details on the review scope and methodology.)

Executive Summary

We found that Goddard personnel involved in the MOBIS schedule 874 procurement process improperly directed a prime contractor to subcontract with a particular subcontractor, did not choose the most appropriate and cost-effective procurement method to execute the contract action, and wasted funds by paying \$169,546.70 in unnecessary subcontract costs. We also identified other deficiencies and irregularities in Goddard's GSA MAS procurement process. For example, Goddard awarded approximately \$26.3 million to three contractors without appropriate competition or fair opportunity under the Federal Acquisition Regulation (FAR) guidelines.

Our December 29, 2006, draft of this memorandum recommended that the Goddard Procurement Officer ensure that procurement personnel do not issue or sign a contractually binding instrument that directs a prime contractor to subcontract with a particular subcontractor or authorize unnecessary pass through costs; ensure that contracting officer's technical representatives (COTRs) clearly understand the authority and area of responsibility accorded to them by their letters of delegation; and provide procurement personnel the necessary training to negotiate a subcontract rate commensurate with the prime contractor's effort to let and administer a resulting subcontract. We also recommended that the Goddard Procurement Officer provide procurement personnel the necessary training to properly solicit, award, and administer

GSA MAS task orders, Blanket Purchase Agreements (BPAs), and GSA Contractor Team Arrangements (CTAs) in accordance with FAR and GSA MAS policy and require that Goddard's contract review and approval policy is implemented and documented in the contract file.

The Goddard Procurement Officer concurred with our recommendations, or their intent, and stated that she was in general agreement with the findings as far as standard procurement processes and procedures. She noted that the findings in this review are all based on a single event that occurred under extenuating circumstances that were reviewed and resolved by the NASA Office of Inspector General's Office of Investigations. She also stated that Goddard did not believe that there are systemic issues that need to be corrected because the Goddard procurement workforce is trained pursuant to the Federal Acquisition Certification in Contracting program and in other forums that address the actions cited in our nine recommendations. (See Enclosure 2 for the full text of management's comments.)

The Procurement Officer's statement that this matter was resolved by the Office of Investigations is not correct. The Office of Investigations reviewed the performance of the COTR and his supervisor and concluded there was no basis to believe there was a violation of criminal law or other malfeasance. However, the investigators referred irregularities in Goddard's GSA MAS procurement process to the Office of Audits for further review.

We recognize that our findings focus primarily on the contract that was the subject of the hotline allegation, but we did find other deficiencies in Goddard's MAS process. We also understand the comment that our findings do not support a conclusion that there are systematic problems in the Goddard procurement process. On the other hand, the problems identified by our review occurred in the context of the existing training programs and statements of contracting officer (CO) and COTR responsibilities. Given this, we believed that the collective findings were significant enough to request an assurance from Goddard that CO and COTR responsibilities and ongoing training efforts adequately address the problem areas. While we consider management's comments, which provide such assurances, to be responsive, we also recommend that Goddard incorporate the specific instances of noncompliance identified in this memorandum as lessons learned in the training regimen.

Background

On June 17, 2002, Goddard issued a Request for Quote (RFQ) to three GSA vendors under MOBIS to support NASA's Academy of Program/Project and Engineering Leadership (APPEL) program. Goddard subsequently awarded delivery orders, on July 5, 2002, to those vendors: the Center for Systems Management (CSM), Four-Dimensional Leadership (4-D), and Inside Out.

The umbrella Statement of Work (SOW) required the contractors to provide performance support, mentoring, and succession planning services for the APPEL program. Goddard

predetermined that the selected companies had the requisite qualifications and expertise to perform work under one of two categories:

- assess and coach the leadership readiness of a team (4-D and Inside Out) and
- provide support for technical requirements (CSM).

On May 31, 2005, Goddard issued tasks 105, 106, and 107 to CSM to support APPEL team development and facilitation aspects of the SOW. The tasks, which were signed by the CO and the COTR, state “this effort will be sub-contracted through 4-D as an ODC [Other Direct Cost].” It was these tasks which prompted the hotline complaint.

Deficiencies Related to the Misuse of Funds Allegation

Deficiencies specific to the misuse of funds allegation are discussed in this section. As we were conducting our review relative to the allegation, we uncovered other deficiencies in Goddard’s GSA MAS process that are discussed later in our section headed “Other Contracting Deficiencies and Irregularities,” page 6.

Improperly Directing CSM to Subcontract with 4-D. The Goddard CO¹ and COTR improperly directed CSM to subcontract with 4-D. Further, the COTR had not signed the appropriate delegation letters, which caution that the COTR may be “personally liable for actions taken or direction given beyond the authorities delegated in the letter.” The CO should have obtained the COTR’s signature on the letters.

In March 2005, Goddard identified a need for 4-D to perform a work effort estimated at \$1.8 million under the category of “assess and coach the leadership readiness of a team.” However, the July 5, 2002, 4-D delivery order had only \$509,521 remaining before it would reach the “not-to-exceed” ceiling of \$6,870,000. The COTR said that he was told by the CO that the ceiling would not be increased. When we interviewed the CO, we were told that although the 4-D ceiling could have been increased, the CO did not increase the 4-D delivery order ceiling to accommodate the work effort because the CO did not feel comfortable doing so due to the delivery orders, as originally set up, not being executed properly. The CO thought there was a provision in the CSM delivery order or contract file stating that CSM would not charge to pass through work.² We found no such provision in the CSM delivery order or contract file. However, it is plausible that the CO confused the CSM delivery order with the 4-D delivery order, which included the provision that “contracted work requested by APPEL will be passed through at cost.”

¹ This particular Goddard CO did not award the original July 5, 2002, delivery orders but was assigned to administer the delivery orders on or about January 1, 2003. We were unable to interview the CO that made the original delivery order awards.

² Pass through work, for the purpose of this review, means work that NASA contracted for with the prime contractor with the intent of having the prime contractor subcontract approximately 100 percent of the work to a subcontractor.

Goddard issued separate purchase requests (PRs) to fund the additional work:

- PR No. 4200105745 in the amount of \$509,521 was issued on March 15, 2005.
- PR No. 4200106372 in the amount of \$1.3 million was issued on March 18, 2005.

Subsequently, the 4-D and CSM delivery orders were modified as follows:

- The 4-D delivery order was modified (Mod. 15) on March 18, 2005, to increase funding by the PR amount of \$509,521.
- The CSM delivery order was modified (Mod. 23) on March 25, 2005, to increase funding by \$2.4 million (note that CSM Mod. 23 included, among other funding, the additional \$1.3 million PR funding for the 4-D work).

A representative from CSM told us that the Goddard COTR requested CSM to subcontract directly with 4-D. We verified that Goddard provided direction to CSM to subcontract to 4-D the work effort for tasks 105, 106, and 107. The tasks were signed by the CO and COTR and state “this effort will be sub-contracted through 4-D as an ODC.” Based on the CO stating that she was not aware of the 15 percent pass through charge, the CO apparently did not realize that the pass through charge was authorized once she signed and issued the task order and CSM commenced work on the task. We found the direction Goddard gave to CSM to subcontract with 4-D to be improper since it risked creating a de facto “privity of contract” relationship between the subcontractor and NASA, which could have exposed the Agency to direct liability for subcontractor claims from which it would normally be shielded under the Contract Disputes Act.³ The impact of the improper direction relative to subcontractor liability is not significant here, considering Goddard’s prime contract relationship with both CSM and 4-D; however, the improper direction resulted in a waste of funds that Goddard could have prevented.

Although we agree that it is not improper for authorized Goddard personnel to have discussions with a prime contractor about subcontracting possibilities, the decision to subcontract with a particular contractor must remain with the prime contractor who will be held legally responsible for satisfactory completion of the work. The practice of directing a prime contractor to subcontract with a particular subcontractor has the potential to relieve the prime contractors of responsibility for subcontractor performance and may increase NASA’s financial liability in cases of substandard subcontractor performance. For example, if the subcontractor fails to perform in a timely manner or if the subcontractor causes significant cost overruns, the Government may have no basis to

³ The issue was addressed in cases cited in *United States v. Johnson Controls, Inc.*, 713 F.2d 1541, 1551 (Fed. Cir. 1983): “The rule that subcontractors normally are not in privity with the Government and, therefore, may not appeal or sue the Government, other than under the ‘sponsorship’ approach, is familiar government contract law. . . . The articles cited by the [Armed Services Board of Contract Appeals] as authority in turn rely on two cases to establish the proposition that there can be privity of contract between the government and subcontractors where the prime contractor is a mere government agent.” See, for example, *Appeals of -- Advanced Engineering & Planning Corporation, Inc.*, ASBCA Nos. 53366, 54044, Armed Services Board of Contract Appeals (2005-1 B.C.A. (CCH) P32,806) (November 19, 2004), and cases cited therein.

deny the prime contractor's claim for increased costs since, arguably, the Government would be culpable due to the direction it gave the prime contractor. In addition, such improper direction puts the CO and COTR at risk for personal liability.

Contract Action, which Was Not the Most Appropriate Method, Resulted in Waste of Funds. The Goddard CO did not choose the most appropriate and cost-effective procurement method to meet the APPEL program objectives. Given the circumstances, we determined that the most convenient, efficient, and cost-effective way for Goddard to have contracted the work effort and meet the project schedule and program objectives would have been to contract directly with 4-D under the existing GSA MAS delivery order. Under this scenario, Goddard could have raised the 4-D delivery order ceiling by \$1.3 million and then allowed the delivery order to expire after the work effort in question was completed (which, in effect, is what occurred in an indirect and more costly manner).

Had Goddard contracted directly with 4-D, the consulting services that CSM performed for \$17,940 could have been passed through 4-D "at cost" (i.e., at no additional cost) in accordance with the pass through work provision contained in 4-D's delivery order. FAR 52.232-7, "Payments Under Time-and-Materials and Labor-Hour Contracts," which is incorporated in the delivery order, provides the authority to increase the ceiling. The Goddard CO stated that she did not feel comfortable raising the 4-D delivery order ceiling because the delivery orders, as originally awarded, were not executed properly and were problematic. We determined that the CO's next best alternative procurement method would have been to negotiate and issue a justifiable urgent and compelling sole-source commercial services contract to 4-D, in accordance with FAR Parts 6 and 12, that would meet the project schedule, contain pricing at or below 4-D's GSA pricing, and would otherwise be cost-effective when taking into account re-procurement costs.

As a result of the decision not to increase the 4-D ceiling, Goddard wasted funds by paying CSM \$169,546.70 to pass work through to 4-D. We reviewed CSM and 4-D invoices and payments to determine that amount. CSM charged Goddard a total of \$1,317,798, comprising \$17,940 for 156 hours of consulting work that CMS personnel performed, \$1,130,311.30 for the subcontracted work by 4-D, and a 15 percent ODC rate (pass through cost) on 4-D work of \$169,546.70.

The CO stated that she would not have intentionally paid CSM a 15 percent pass through cost, and stated that she believed CSM would not charge Goddard for subcontracting the work to 4-D. We determined that the application of the 15 percent ODC rate to pass through work was unreasonably high, given the minimum effort required by CSM to let and administer the subcontract. Further, Goddard did not determine the ODC rate to be fair and reasonable as required by GSA policy. Had Goddard negotiated a rate commensurate with CSM's effort to pass the work through, the amount of funds wasted would have been less.

Other Contracting Deficiencies and Irregularities in Goddard's Multiple Award Schedule Procurement Process

Delivery Order BPA Deficiencies. Goddard contracting personnel awarded delivery orders rather than multiple BPAs to three vendors under a GSA MAS and subsequently issued a series of noncompetitive task orders over a 3-year period. This method is not authorized under FAR 8.405 ordering procedures and created a barrier to task order competition that runs counter to FAR 8.405-3(b)(2) criteria for multiple vendor awards. When Goddard awarded the delivery orders in July 2002, it did not specify the procedure for placing orders, as required by FAR 8.405-3(a)(3), "Blanket purchase agreements (BPAs)."

On or about January 2003, the CO modified the delivery orders to exercise all option periods. This effectively merged the base period and option periods into one 54-month performance period. The CO stated that the delivery orders were modified to exercise all options because a BPA would not have had separate periods. The CO apparently recognized problems with the original award and attempted to bring the delivery orders in line with the way they should have been originally awarded; that is, as multiple BPAs or as a Contractor Team Arrangement (CTA) if the tasks were not feasible for competition, in accordance with the FAR (FAR Subparts 8.4 and 9.6, respectively). When we spoke with the CO's supervisor about the CO's reference to BPAs, the supervisor responded by stating that "it is apparent that they [the orders] were set-up, operated, and administered as T&M [Time and Material] BPAs, though the reference or identification of Blanket Purchase Agreement is not found in any of the documents." We verified that the RFQ, delivery orders, and other contract file documentation fell short of making reference to BPAs or otherwise identifying the order as a BPA. However, the RFQ stated that Goddard reserved the right to make multiple awards. If Goddard's intent was to award and execute multiple BPAs, then Goddard improperly wrote and executed the contract action by not including ordering procedures and by issuing noncompetitive tasks among the three selected vendors. Further, multiple BPAs are inappropriate for APPEL requirements where, according to the COTR, tasks for assessment and coaching leadership were awarded to either 4-D or Inside Out (until Inside Out was no longer utilized) and tasks for technical support were awarded to CSM.

A GSA CTA is an appropriate vehicle when multiple vendors are needed to fulfill a program need and task orders must be issued noncompetitively to the contractor with the requisite expertise for a predetermined category. Under a CTA, the predetermined work categories would be specified in the contractor-generated CTA document. For multiple BPAs, FAR 8.405-3(b)(2) requires the agency to forward task requirements exceeding the \$3,000 micro-purchase threshold to an appropriate number of BPA holders as established in the BPA ordering procedures, evaluate the responses received, make a best value determination, and place the order with the BPA holder that represents best value.

The unwritten procedure Goddard used to award task orders to CSM, 4-D, and Inside Out did not meet or follow any of these criteria. As a result, Goddard has awarded, in total, approximately \$26.3 million to three contractors without appropriate competition or fair opportunity under FAR guidelines. We note that the follow-on GSA multiple award

BPA for similar APPEL requirements awarded at Langley Research Center (Langley) on or about October 27, 2005, contain provisions for competing tasks among the selected vendors. The Langley BPA also notes that CTAs are permitted in accordance with FAR Subpart 9.6.

Fair and Reasonable Cost Determination Deficiencies. The Goddard CO did not make a determination of whether prices were fair and reasonable for non-GSA negotiated line items and costs in accordance with the GSA MOBIS "Instruction Guide" and FAR 15.404, "Proposal Analysis." We reviewed Goddard's June 27, 2002, Price Negotiation Memorandum (PNM) and determined that the Goddard CO had not evaluated CSM's 15 percent General and Administrative (G&A) travel rate and 15 percent ODC rate, which would be necessary to make such a determination.

The PNM also shows that the non-GSA costs and rates contained in the 4-D delivery order were not evaluated or negotiated. However, we consider this to be immaterial since 4-D proposed a 0 percent G&A travel rate and a 0 percent ODC rate, and the delivery order states that "contracted work requested by APPEL will be passed through at cost." With regard to the Inside Out delivery order, the delivery order does not show these costs to be separately priced. Since these costs for 4-D and Inside Out are probably embedded in the GSA schedule price, they would not be subject to a price reasonableness determination.

The CSM representative who administered the delivery order was unresponsive to our request to demonstrate that the CSM 15 percent G&A travel rate and 15 percent ODC rate are equivalent to what CSM customarily charges its other customers or otherwise demonstrate the rates to be actual rates. The CSM representative referred us to the CSM MOBIS contract to obtain the rates. The CSM MOBIS contract states that resultant task orders should specify any applicable ODC. The MOBIS contract does not specify a G&A travel rate or an ODC rate. The CSM representative did not respond to our request for non-certified cost data to support the 15 percent rates.

GSA policy does not allow a charge of profit or fee on reimbursable items. Thus, the rates should have been evaluated to provide Goddard reasonable assurance that the CSM's 15 percent rates excluded any percentage for profit or fee and to otherwise determine the rates to be fair and reasonable. Given the potential cost impact of not evaluating any non-GSA negotiated cost or price, Goddard should provide assurance that any future non-GSA schedule cost or price will be evaluated, negotiated when necessary, and documented to ensure that the cost or price is fair and reasonable.

Maximum Order Threshold and BPA Price Reduction Deficiencies. The CO did not seek price reductions for orders that exceeded the \$1 million maximum order threshold or for BPAs as required by FAR 8.405-2(c)(3)(ii). We reviewed the Goddard PNM, which should generally discuss all important elements of the delivery order solicitation, selection, and award process, including any price negotiations or discussions that take place. The PNM states that Goddard accepted all GSA MAS proposed prices. We found no documented price discussions or negotiations in the PNM to show that Goddard

sought any price reductions for orders that exceeded the MOBIS \$1 million maximum order threshold or for BPAs.

Based on our review of the PNM, in conjunction with our review of the GSA prices contained in the MOBIS contract and Goddard delivery orders, we determined that the Goddard CO did not seek or negotiate price reductions from any of the companies with orders exceeding the maximum order threshold of \$1 million. We verified through a GSA MOBIS Pre-award Branch Chief that the \$1 million maximum order threshold was in effect at the time the Goddard delivery orders in question were issued. Goddard records for all CSM and 4-D task orders issued, including all modifications to each order, shows that the orders listed in the following table exceeded the \$1 million maximum order threshold.

CSM and 4-D Task Orders Exceeding the \$1 Million Threshold	
<u>Task Order</u>	<u>Amount</u>
CSM 01	\$ 2,361,482
CSM 60	1,214,440
4-D 02	3,153,914
4-D 04	1,375,138
4-D 06	1,032,023
4-D 09	1,396,258
Total	\$10,533,255

The spreadsheets provided by the Chief Engineer contractor representative show that task order CSM 01 in the amount of \$2,361,482 was originally awarded at \$1,719,000. The spreadsheet does not show an original award amount for the remaining orders shown in the table above; however, all of the orders appeared to be incrementally funded. The COTR told us that there were increases to the orders that resulted from APPEL project team's increases in demand. To avoid significant incremental cost growth, procurement personnel should have ensured that the COTR or other responsible program office official defined the requirements and estimated the total costs of individual task orders with better accuracy and precision, as well as provided adequate COTR oversight to prevent significant cost growth. In cases where demand exceeded the original estimates, the estimated cost of the task should have been revised accordingly.

In addition to FAR 8.405-2(c)(3)(ii) BPA price reduction criteria, FAR 8.405-4 states that ordering activities should seek a price reduction when establishing a BPA to fill recurring requirements, since the potential volume of orders under BPAs, regardless of the size of individual orders, offers the opportunity to secure greater discounts. There is a potential lost savings opportunity for NASA when the CO does not seek price reductions in accordance with the FAR. Goddard must ensure that the CO is adequately trained to seek and negotiate, on a task-by-task basis if necessary, price reductions in accordance with FAR Subpart 8.4, "Federal Supply Schedules." In order to meet the FAR 8.405-4, 8.405-1(d), or 8.405-2(c)(3)(ii) criteria for seeking price reductions, the CO should

document in the PNM whether or not the seeking of such price reductions is applicable to the task order, delivery order, BPA, or CTA and, as applicable, include contract provisions in the ordering instrument for price reductions and document the results of seeking such price reductions in the PNM.

Contract Review and Approval Deficiencies. We reviewed Goddard Circular 98-2, Revision 9, “Review and Approval of Procurement Documents and Related Actions,” March 27, 2006, and determined that Goddard did not include contract file documentation that reviews were performed in accordance with the Circular. For example, the Circular requires “request for offers” under MAS contracts from \$5 million to \$50 million to be reviewed by the CO, the procurement manager, and a senior staff member of the Procurement Operations Division and to be approved by the cognizant Associate Chief of the Procurement Operations Division. The highest level of reviewer or signatory authority that we were able to identify during our review of the \$26.3 million procurement action was the CO. The Circular further states that review and approval should be evidenced by signature or initials on Form 210-86, routing sheet, or other documentation.

Goddard procurement managers who we interviewed were unable to discuss the review process used for the initial delivery order awards because the initial award predated their tenure and the contract file did not include documentation showing that the necessary reviews and approvals had been obtained. We were told by a Goddard procurement official that no established review form is used on a regular basis for task order awards. This is not consistent with the requirements of the Circular. Goddard’s review and approval process is a vital internal control function that must be adhered to in order to ensure contract compliance and to safeguard NASA assets. The high level reviews required by the Circular may have or should have identified some of the deficiencies discussed in this memorandum. Therefore, Goddard must ensure that the review and approval requirements of the Circular are adhered to and documented in the contract file.

Recommendations, Management’s Response, and Evaluation of Management’s Response

Recommendation 1. The Goddard Procurement Officer should issue a memorandum or directive to procurement personnel instructing them to not issue, sign, or allow the COTR to issue or sign a contractually binding instrument that directs or instructs a prime contractor to subcontract work to a particular subcontractor or authorize unnecessary pass through costs.

Management’s Response. Management concurred with the intent of the recommendation, stating that this restriction is an existing regulatory requirement that the Goddard procurement workforce is fully aware of through ongoing training and information sharing. The Goddard Procurement Officer also stated that procurement personnel are trained to be aware that directed subcontractors are only authorized if a Justification for Other Than Full and Open Competition is approved in accordance with FAR Part 6. A separate memorandum or directive is not required.

Evaluation of Management's Response. Although we consider management's comments to be responsive, we consider the recommendation to be unresolved and request additional comments. Since the problems discussed in this memorandum occurred in the context of the existing statements of CO and COTR responsibilities, we recommend that Goddard incorporate this issue as a lesson learned in its training regimen. We will close the recommendation upon verification that such training has been established.

Recommendation 2. The Goddard Procurement Officer should develop and implement a procedure for COs to review the COTR letter of delegation with assigned COTRs, to clarify the limits of COTR authority and area of responsibility in accordance with the COTR delegation letter, to include a discussion of what a COTR cannot do, such as providing improper direction to the prime contractor, and discuss possible disciplinary action, including the removal of the COTR, for violations; the procedure should also ensure that the COTR signs the delegation letter.

Management's Response. Management concurred with the intent of the recommendation, stating that Goddard COTRs are thoroughly advised of the responsibilities of their delegation, including what they cannot do. These responsibilities are included in the COTR delegation letter and are part of NASA's COTR training program, which must be completed before becoming a COTR. In addition to the basic COTR training, Goddard requires COTR refresher training every 5 years and maintains a database of certified COTRs. Failure to complete the required training will result in the removal of the COTR.

Evaluation of Management's Response. Although we consider management's comments to be responsive, we consider the recommendation to be unresolved and request additional comments. Since the problems discussed in this memorandum occurred in the context of the existing statements of CO and COTR responsibilities, we recommend that Goddard incorporate this issue as a lesson learned in its training regimen. We will close the recommendation upon verification that such training has been established.

Recommendation 3. The Goddard Procurement Officer should provide procurement personnel the necessary training to consider and execute the most cost-effective procurement alternative needed to meet program needs and project schedule.

Recommendation 4. The Goddard Procurement Officer should provide procurement personnel the necessary training to negotiate, on a task-by-task basis if necessary, a fair and reasonable subcontract rate commensurate with the prime contractor's effort to let and administer a resulting subcontract.

Recommendation 5. The Goddard Procurement Officer should properly train procurement personnel in soliciting, awarding, and administering GSA MAS contract actions, including "single award" task orders or delivery orders, single BPAs, and multiple BPAs, in accordance with FAR Subpart 8.4.

Recommendation 6. The Goddard Procurement Officer should properly train procurement personnel in soliciting, awarding, and administering GSA CTAs, when the use of a CTA is appropriate, in accordance with FAR Subpart 9.6 and GSA CTA guidance and instructions.

Recommendation 7. The Goddard Procurement Officer should provide procurement personnel the necessary training to evaluate, analyze, negotiate as necessary, and document all non-GSA schedule prices and cost, including any proposed ODC and indirect costs, and determine that the rates are fair and reasonable in accordance with GSA MAS MOBIS policy.

Recommendation 8. The Goddard Procurement Officer should provide procurement personnel the necessary training to seek; negotiate; document in the PNM; and, as necessary, incorporate a price reduction provision into the contract in accordance with FAR 8.405-4, 8.405-1(d), or 8.405-2(c)(3)(ii).

Recommendation 9. The Goddard Procurement Officer should require that Goddard procurement personnel adhere to Goddard Circular 98-2 requirements for review, concurrence, approval, and “evidence of signature” and that the document used to evidence the signatures is contained in the contract file.

Management’s Response. Management concurred with Recommendations 3 through 9, stating that Goddard procurement personnel are thoroughly trained in selecting procurement alternatives; in negotiating subcontract rates; in soliciting, awarding, and administering GSA MAS contract actions; in using CTAs; in evaluating, negotiating, and documenting non-GSA schedule prices and cost; in price negotiation memorandums; in handling price reductions; and in the requirements of Goddard Circular 98-2.

The Goddard Procurement Officer stated that the workforce is trained pursuant to the Federal Acquisition Certification in Contracting program and that focused mini-training sessions are provided internally on a regular basis, as well as on-the-job training. She added that there are also other forums, such as Agency Procurement Conferences, available for procurement personnel to share information, lessons learned, and best practices with each other.

Evaluation of Management’s Response. Although we consider management’s comments to be responsive, we consider the recommendations to be unresolved and request additional comments. Since the problems discussed in this memorandum occurred in the context of the existing training, we recommend that Goddard incorporate the specific instances of noncompliance identified in this memorandum as lessons learned in the training regimen. We will close the recommendations upon verification that the mini-training sessions adequately addressed the issues discussed in this memorandum.

We request that Goddard provide additional comments in response to this final memorandum. We request that management provide a single, coordinated Agency response by April 30, 2007.

We appreciate the courtesies extended the review staff during the review. If you have any questions, or need additional information, please contact Mr. Larry T. Chisley, Acting Director, Procurement Directorate, Office of Audits, at 321-867-4073. (larry.t.chisley@nasa.gov)



Evelyn R. Klemstine

2 Enclosures

cc:

Acting Assistant Administrator for Internal Controls and Management Systems

Scope and Methodology

We performed this review at NASA Headquarters and Goddard from August through December 2006 in accordance with applicable generally accepted government auditing standards. Our review objective was to determine the validity of the hotline allegation.

We evaluated Goddard's procurement process for awarding multiple delivery orders under GSA MAS MOBIS schedule 874 in support of the Academy of Program/Project and Engineering Leadership (APPEL) program. We tested Goddard's procurement methods against the stated FAR, GSA, and Goddard criteria, including

- contract ceiling criteria under FAR 52.232-7;
- GSA task order and BPA criteria under FAR Subpart 8.4;
- "Contractor Team Arrangements" criteria under FAR Part 9.6 and the GSA "Contractor Team Arrangements" brochure dated October 16, 2006;
- GSA policy on non-GSA negotiated items and costs as contained in MOBIS GSA Schedule 874 "Instructional Guide";
- fair and reasonable price determination criteria under FAR 15.404; and
- Goddard Circular 98-2, Revision 9, "Review and Approval of Procurement Documents and Related Actions," March 27, 2006.

In performing this review, we obtained applicable contract documentation, including the COTR letters of delegation, for review and analysis. We also obtained documentation from Langley on its APPEL-related contract actions. The documentation we reviewed included:

- Goddard Request for Quote no. RFQW-07113-MMH, undated
- Goddard Price Negotiation Memorandum dated June 27, 2002
- CSM Delivery Order W-92578 (includes COTR delegation) dated July 5, 2002, and applicable modifications
- CSM GSA Contract GS-10F-0148K MOBIS Schedule 874 effective August 19, 2005
- 4-D Delivery Order W-92580 (includes COTR delegation) dated July 5, 2002, and applicable modifications
- 4-D GSA Contract GS-10F-01-0311L MOBIS Schedule 874, dated October 3, 2006
- Inside Out Delivery Order W-92579 (includes COTR delegation) dated July 5, 2002, and applicable modifications

- Inside Out GSA Contract GS-10F-0165L MOBIS Schedule 874 dated November 2, 2006
- Goddard Tasks CSM-105, CSM-106, and CSM-107 dated May 31, 2005
- CSM and 4-D invoices and payments for tasks 105, 106, and 107
- Langley Memorandum for File dated October 27, 2005
- Langley multiple BPA NNLO6AA00Z dated October 28, 2005

We also conducted interviews with Goddard, Langley, and Headquarters procurement and program personnel, Langley contractor personnel, CSM personnel, and 4-D personnel.

Computer-Processed Data. To identify the total amount expended under Goddard delivery orders with CSM, 4-D, and Inside Out, and the totals expended, invoiced, and paid under tasks 105, 106, and 107, we relied on data provided by the Goddard Regional Finance Office, Cost and Commercial Accounts. The data provided was obtained from NASA's Systems Application Product (SAP) Core Financial System. We were unable to validate the accuracy of the total expenditures data we received and, therefore, relied solely on the Core Financial System for its accuracy. However, we did validate that the data obtained from the Core Financial System specifically for tasks 105, 106, and 107 was consistent, dollar for dollar, with the computer-processed invoices, payments, and checks we received from CSM and 4-D.

To identify the task orders that exceeded \$1 million, we relied on data submitted on spreadsheets from a Langley contractor employee tasked by the Office of the Chief Engineer with maintaining the task order files. Although we were unable to verify the accuracy of the data entered on the spreadsheet, errors in data entry, if any, would not have significantly affected the results of this review.

Internal Controls. We reviewed and evaluated Goddard's GSA MAS contract review process against the applicable criteria contained in Goddard Circular 98-2. Although we found the content and structure of the internal control policy and procedures to be adequate, we found no contract file documentation to demonstrate that the Circular's requirements for review, concurrence, and approval had been implemented for the delivery orders under review. The Goddard procurement manager we interviewed stated that all of the COs involved in the process had unlimited warrant authority.

Prior Coverage. During the last 5 years, the NASA Office of Inspector General has issued one report of particular relevance to the subject of this report: "NASA Acquisition of Services Using the Federal Supply Schedules" (IG-02-014, March 27, 2002). Unrestricted reports can be accessed over the Internet at <http://www.hq.nasa.gov/office/oig/hq/audits/reports/FY07/index.html>.

Management's Comments

National Aeronautics and
Space Administration
Goddard Space Flight Center
Greenbelt, MD 20771



Reply to Attn of: 201

March 19, 2007

TO: NASA Headquarters
Attn: Office of the Inspector General/Evelyn Klemstine

FROM: 200/Procurement Officer

SUBJECT: Goddard Space Flight Center (GSFC) Response to Draft Office of
Inspector General (OIG) Memorandum Addressing Unnecessary
Subcontract Costs and Other Deficiencies in GSFC's Multiple Award
Schedule (MAS) Procurement Process (Assignment No. S-06-017-00, 12/29/06)

Thank you for the opportunity to review and comment on the subject draft memorandum. We appreciate the role and responsibility of the Inspector General to independently and continuously assess, evaluate, and review government controls to ultimately protect and ensure prudent management of the American taxpayers' money. To that end, we are always striving to carefully and vigilantly award and manage contracts.

In general, we are in agreement with the findings of the review as far as standard procurement processes and procedures. Our workforce is trained pursuant to the Federal Acquisition Certification in Contracting program. In addition, focused mini-training sessions are provided internally on a regular basis, as well as on-the-job training. There are also other forums, such as Agency Procurement Conferences, available for procurement personnel to share information, lessons learned, and best practices with each other. In the 2005 NASA Headquarters biannual survey of procurement operations at Goddard, the areas of procurement workforce training and career development, Contracting Officer's Technical Representative (COTR) training, and multiple-award contracts were specifically reviewed. GSFC was commended for the overall quality of its procurement training programs. As we explained to you in our 2/1/07 comments, the findings in this review are all based on a single event that occurred under extenuating circumstances and was looked into and resolved by the NASA OIG Office of Investigations. We do not believe that there are systemic issues that need to be corrected. In fact, the actions cited in the nine recommendations are already instituted as detailed below and, therefore, we consider them to be closed.

OIG Recommendation 1: The Goddard Procurement Officer should issue a memorandum or directive to procurement personnel instructing them to not issue, sign, or allow the COTR to issue or sign a contractually binding instrument that directs or instructs a prime contractor to subcontract work to a particular subcontractor or authorize unnecessary pass-through costs.

GSFC Response to Recommendation 1: Concur with intent. This restriction is an existing regulatory requirement that the Goddard procurement workforce is fully aware of through the ongoing training and information sharing noted above. It is also part of NASA's COTR training program. Procurement personnel are trained to be aware that directed subcontractors are only authorized if a Justification for Other Than Full and Open Competition is approved in accordance with Federal Acquisition Regulation (FAR) Part 6. A separate memorandum or directive is not required.

OIG Recommendation 2: The Goddard Procurement Officer should develop and implement a procedure for Contracting Officers (COs) to review the COTR letter of delegation with assigned COTRs, to clarify the limits of COTR authority and area of responsibility in accordance with the COTR delegation letter, to include a discussion of what a COTR cannot do, such as providing improper direction to the prime contractor, and discuss possible disciplinary action, including the removal of the COTR, for violations; the procedure should also ensure that the COTR signs the delegation letter.

GSFC Response to Recommendation 2: Concur with intent. Goddard COTRs are thoroughly advised of the responsibilities of their delegation, including what they cannot do. These responsibilities are included in the COTR delegation letter and are part of NASA's COTR training program, which must be completed before becoming a COTR. In addition to the basic COTR training, Goddard requires COTR refresher training every 5 years and maintains a database of certified COTRs. Failure to complete required training will result in removal of the COTR. In the 2005 NASA Headquarters biannual survey of procurement operations, Goddard was commended for the overall quality of its COTR training programs.

OIG Recommendation 3: The Goddard Procurement Officer should provide procurement personnel the necessary training to consider and execute the most cost-effective procurement alternative needed to meet program needs and project schedule.

GSFC Response to Recommendation 3: Concur. Goddard procurement personnel are thoroughly trained in selecting procurement alternatives. Our workforce is trained pursuant to the Federal Acquisition Certification in Contracting program. In addition, focused mini-training sessions are provided internally on a regular basis, as well as on-the-job training. There are also other forums, such as Agency Procurement Conferences, available for procurement personnel to share information, lessons learned, and best practices with each other. In the 2005 NASA Headquarters biannual survey of procurement operations, Goddard was commended for the overall quality of its procurement training programs.

OIG Recommendation 4: The Goddard Procurement Officer should provide procurement personnel the necessary training to negotiate, on a task-by-task basis if necessary, a fair and reasonable subcontract rate commensurate with the prime contractor's effort to let and administer a resulting subcontract.

GSFC Response to Recommendation 4: Concur. Goddard procurement personnel are thoroughly trained in negotiating subcontract rates. Our workforce is trained pursuant to the Federal Acquisition Certification in Contracting program. In addition, focused mini-training sessions are provided internally on a regular basis, as well as on-the-job training. There are also other forums, such as Agency Procurement Conferences, available for procurement personnel to share information, lessons learned, and best practices with each other. In the 2005 NASA Headquarters biannual survey of procurement operations, Goddard was commended for the overall quality of its procurement training programs.

OIG Recommendation 5: The Goddard Procurement Officer should properly train procurement personnel in soliciting, awarding, and administering General Services Administration (GSA) MAS contract actions, including "single award" task orders or delivery orders, single Blanket Purchase Agreements (BPAs), and multiple BPAs, in accordance with FAR Subpart 8.4.

GSFC Response to Recommendation 5: Concur. Goddard procurement personnel are thoroughly trained in soliciting, awarding, and administering GSA MAS contract actions. Our workforce is trained pursuant to the Federal Acquisition Certification in Contracting program. In addition, focused mini-training sessions are provided internally on a regular basis, as well as on-the-job training. There are also other forums, such as Agency Procurement Conferences, available for procurement personnel to share information, lessons learned, and best practices with each other. In the 2005 NASA Headquarters biannual survey of procurement operations, Goddard was commended for the overall quality of its procurement training programs.

OIG Recommendation 6: The Goddard Procurement Officer should properly train procurement personnel in soliciting, awarding, and administering GSA Contractor Team Arrangements (CTAs), when the use of a CTA is appropriate, in accordance with FAR Subpart 9.6 and GSA CTA guidance and instructions.

GSFC Response to Recommendation 6: Concur. Goddard procurement personnel are thoroughly trained in using CTAs. Our workforce is trained pursuant to the Federal Acquisition Certification in Contracting program. In addition, focused mini-training sessions are provided internally on a regular basis, as well as on-the-job training. There are also other forums, such as Agency Procurement Conferences, available for procurement personnel to share information, lessons learned, and best practices with each other. In the 2005 NASA Headquarters biannual survey of procurement operations, Goddard was commended for the overall quality of its procurement training programs.

OIG Recommendation 7: The Goddard Procurement Officer should provide procurement personnel the necessary training to evaluate, analyze, negotiate as necessary, and document all non-GSA schedule prices and cost, including any proposed other direct costs and indirect costs, and determine that the rates are fair and reasonable in accordance with GSA MAS Mission Oriented Business Integrated Services policy.

GSFC Response to Recommendation 7: Concur. Goddard procurement personnel are thoroughly trained in evaluating, negotiating, and documenting non-GSA schedule prices and cost. Our workforce is trained pursuant to the Federal Acquisition Certification in Contracting program. In addition, focused mini-training sessions are provided internally on a regular basis, as well as on-the-job training. There are also other forums, such as Agency Procurement Conferences, available for procurement personnel to share information, lessons learned, and best practices with each other. In the 2005 NASA Headquarters biannual survey of procurement operations, Goddard was commended for the overall quality of its procurement training programs.

OIG Recommendation 8: The Goddard Procurement Officer should provide procurement personnel the necessary training to seek; negotiate; document in the Price Negotiation Memorandum; and, as necessary, incorporate a price reduction provision into the contract in accordance with FAR 8.405-4, 8.405-1(d), or 8.405-2(c)(3)(ii).

GSFC Response to Recommendation 8: Concur. Goddard procurement personnel are thoroughly trained regarding Price Negotiation Memoranda and in handling price reductions. Our workforce is trained pursuant to the Federal Acquisition Certification in Contracting program. In addition, focused mini-training sessions are provided internally on a regular basis, as well as on-the-job training. There are also other forums, such as Agency Procurement Conferences, available for procurement personnel to share information, lessons learned, and best practices with each other. In the 2005 NASA Headquarters biannual survey of procurement operations, Goddard was commended for the overall quality of its procurement training programs.

OIG Recommendation 9: The Goddard Procurement Officer should require that Goddard procurement personnel adhere to Goddard Circular 98-2 requirements for review, concurrence, approval, and "evidence of signature" and that the document used to evidence the signatures is contained in the contract file.

GSFC Response to Recommendation 9: Concur. Goddard procurement personnel are thoroughly trained in the requirements of Circular 98-2. Our workforce is trained pursuant to the Federal Acquisition Certification in Contracting program. In addition, focused mini-training sessions are provided internally on a regular basis, as well as on-the-job training.

If you need additional information, please contact Ms. Barbara Sally, GSFC Audit Liaison Officer, at (301) 286-8436.

Valorie A. Burr
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