
November 13, 2006



Acquisition

FY 2005 DoD Purchases Made
Through the National Aeronautics
and Space Administration
(D-2007-023)

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Acronyms

ADA	Antideficiency Act
DFARS	Defense Federal Acquisition Regulation Supplement
DISA	Defense Information Systems Agency
DITCO	Defense Information Technology Contracting Office
FAR	Federal Acquisition Regulation
FMR	Financial Management Regulation
IG	Inspector General
GAO	Government Accountability Office
NASA	National Aeronautics and Space Administration
OIG	Office of Inspector General
O&M	Operation and Maintenance
RDT&E	Research, Development, Test, and Evaluation
SEWP	Scientific and Engineering Workstation Procurement
SSC	Space and Naval Warfare Systems Center
USD(AT&L)	Under Secretary of Defense for Acquisition, Technology, and Logistics
USSOCOM	United States Special Operations Command



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

November 13, 2006

MEMORANDUM FOR UNDER SECRETARY OF DEFENSE FOR ACQUISITION,
TECHNOLOGY, AND LOGISTICS
ASSISTANT SECRETARY OF THE AIR FORCE
(FINANCIAL MANAGEMENT AND COMPTROLLER)
DIRECTOR, DEFENSE INFORMATION SYSTEMS
AGENCY
NAVAL INSPECTOR GENERAL

SUBJECT: Report on FY 2005 DoD Purchases Made Through the National Aeronautics
and Space Administration (Report No. D-2007-023)

We are providing this report for review and comment. We considered management comments on a draft of this report when preparing the final report.

DoD Directive 7650.3 requires that all recommendations be resolved promptly. We request that the Departments of the Navy and Air Force reconsider their comments on Recommendation 1.a. and the Defense Information Systems Agency reconsider its comments on Recommendation 1.b. by December 13, 2006.

If possible, please send management comments in electronic format (Adobe Acrobat file only) to AUDACM@dodig.mil. Copies of the management comments must contain the actual signature of the authorizing official. We cannot accept the / Signed / symbol in place of the actual signature. If you arrange to send classified comments electronically, they must be sent over the SECRET Internet Protocol Router Network (SIPRNET).

We appreciate the courtesies extended to the staff. Questions should be directed to Mr. Richard B. Jolliffe at (703) 604-9201 (DSN 664-9201) or Mr. Terry L. McKinney at (703) 604-9288 (DSN 664-9288). The team members are listed inside the back cover. See Appendix G for the report distribution.

A handwritten signature in black ink, appearing to read "Mary L. Ugone".

Mary L. Ugone
Deputy Inspector General
for Auditing

cc: Inspector General, National Aeronautics and Space Administration

Department of Defense Office of Inspector General

Report No. D-2007-023

November 13, 2006

(Project No. D2005-D000CF-0273.000)

FY 2005 DoD Purchases Made Through the National Aeronautics and Space Administration

Executive Summary

Who Should Read This Report and Why? DoD contracting officers, contracting specialists, program managers, and financial managers should read this report because it discusses commonly misunderstood guidance on planning, awarding, and funding of purchases made against contracts managed by non-DoD organizations. This report discusses issues identified when DoD organizations made purchases against the National Aeronautics and Space Administration (NASA) Scientific and Engineering Workstation Procurement contracts. Furthermore, this report discusses 14 potential Antideficiency Act violations related to the purchases reviewed.

Background. This report is one of several reports on DoD purchases made through non-DoD agencies. This audit was performed as required by section 811, "Inspector General Reviews and Determinations" of Public Law 109-163, "National Defense Authorization Act for Fiscal Year 2006," January 6, 2006.

NASA awarded 26 Government-wide acquisition contracts to 19 vendors that supplied various information technology products. These contracts are commonly referred to as the NASA Scientific and Engineering Workstation Procurement contracts. These contracts consisted of 9 groupings, known as "classes," and a group of 8(a) set-asides. There were 4 single-award classes, each containing 1 single-award contract; 5 multiple-award classes, consisting of 16 vendors on 19 contracts; and 3 8(a) set-aside contracts. The 26 Scientific and Engineering Workstation Procurement contracts provided commercial off-the-shelf products, and each class offered different types of information technology products. The orders awarded by DoD were direct acquisitions, which are orders issued by DoD contracting officers under a contract awarded by a non-DoD agency. As a result, funds used to purchase information technology products from those contracts were not transferred from DoD to NASA, and all award decisions for orders were made by DoD contracting officers. For use of the contract, DoD paid NASA a percentage fee relative to the size of the purchase being made.

As of October 11, 2005, DoD awarded 6,569 orders valued at \$343.2 million against the NASA Scientific and Engineering Workstation Procurement contracts in FY 2005. Of the 6,569 orders, 2,841 accounted for 88 percent of the money spent. Of the 238 contracting offices that awarded the 2,841 orders, we visited 6 DoD sites that awarded 1,336 orders valued at approximately \$155.8 million. At the 6 sites, we reviewed 111 orders valued at approximately \$85.9 million.

Results. DoD contracting and program personnel did not comply with acquisition rules and regulations when using non-DoD contracts. DoD financial and accounting officials

did not comply with appropriation laws and regulations. Of the 111 orders reviewed, valued at approximately \$85.9 million, 98 were either improperly executed, improperly funded, or both. Specifically,

- 71 orders, valued at \$73.4 million, had little or no justification in the files for using a non-DoD contract vehicle;
- 69 orders, valued at \$49.5 million, were awarded without providing fair opportunity to all contractors qualified under the multiple-award contracts;
- 26 orders, valued at \$25 million, had inadequate award documentation; and
- 14 orders, valued at \$19.6 million, were funded in a manner that resulted in potential Antideficiency Act violations.

As a result, funds were not used as intended by Congress, competition was limited, and DoD has no assurance it received the best value.

We recommended that the Acquisition Executives for the Navy, Air Force, and Defense Information Systems Agency require contracting officers conducting direct acquisitions for amounts greater than the simplified acquisition threshold to determine whether the use of non-DoD contracts is in the best interest of the Government and verify that the required goods, supplies, or services cannot be obtained as conveniently or economically by using a DoD contract. The contracting officer or another official designated by the agency head should document those conclusions in writing. The Acquisition Executives for the Navy, Air Force, and Defense Information Systems Agency should also develop a training course that instructs contracting and other program office personnel on proper acquisition planning and contract administration for assisted acquisitions. The course should also emphasize the bona fide needs rule and appropriations law.

We recommended that the Under Secretary of Defense for Acquisition, Technology, and Logistics should disseminate a memorandum to all DoD contracting offices to reemphasize that contracting officials must adhere to the competition and documentation requirements for multiple-award contracts; direct that contracting officers at DoD organizations using the NASA Scientific and Engineering Workstation Procurement contracts must take the free training provided by NASA; and require contracting officers to use the NASA Scientific and Engineering Workstation Procurement on-line tool when requesting quotes because the tool aids contracting officers in providing fair opportunity. See the Finding section of the report for the detailed recommendations.

We also identified 14 potential Antideficiency Act violations, which are listed in Appendix F. Recommendations for the Under Secretary of Defense (Comptroller)/Chief Financial Officer to initiate preliminary reviews regarding those potential violations are in the Inspector General audit report, “Potential Antideficiency Act Violations on DoD Purchases Made Through Non-DoD Agencies.”

Management Comments and Audit Response. The Under Secretary of Defense for Acquisition, Technology, and Logistics; Department of the Navy; Department of the Air Force; and Defense Information Systems Agency provided comments to our draft report. Also, the Department of the Navy and the United States Special Operations Command provided comments regarding potential Antideficiency Act violations.

The Director of Defense Procurement and Acquisition Policy (Director of Defense Procurement), commenting on behalf of the Office of the Under Secretary of Defense for

Acquisition, Technology, and Logistics, generally concurred with the recommendations. Although some of the Director of Procurement's comments only partially concurred, the actions proposed met the intent of the recommendations. The Director of Defense Procurement will issue a policy memorandum addressing most of the issues addressed in the recommendations. In addition, the Director of Defense Procurement will work with NASA to add language to the Web site for the Scientific and Engineering Workstation Procurement contracts addressing the remaining recommendations.

The Chief of Staff/Policy to the Deputy Assistant Secretary of the Navy for Acquisition Management (Chief) partially concurred with our recommendations. The Chief's comments did not fully meet the intent of the recommendations. The Chief disagreed with our statement that researching potential contracts should be DoD-wide. The Chief agreed to conduct research, but to limit that research to command-available contracts and other known contracts. We believe the research should be DoD-wide and not just contracts that are readily available. Accordingly, we request the Chief provide comments to the final report.

The Assistant Secretary of the Air Force (Acquisition) (Assistant Secretary) concurred with our recommendations. However, the comments did not fully meet the intent of the recommendations. Although the Assistant Secretary's comments emphasized more controls on the program officials generating the requirement, we believe the contracting officers have a responsibility to determine the best contract and contractor to meet a requirement. Furthermore, we believe the contracting officer should sign the justification for using a non-DoD contract. We also believe that procedures for contracting officers should be discussed in the Air Force guidebook. Accordingly, we request the Assistant Secretary provide comments to the final report.

The Director of Procurement, Chief of the Defense Information Technology Contracting Organization (Director of DITCO Procurement), commenting on behalf of the Defense Information Systems Agency, concurred with our recommendations. However, the comments did not fully meet the intent of the recommendations. The Director of DITCO Procurement stated that additional Economy Act training would be provided. However, the Director of DITCO Procurement did not address training on the use of non-DoD contracts not governed by the Economy Act and training procedures to properly execute the Agency's policy for using non-DoD contracts. Accordingly, we request the Director of DITCO Procurement provide comments on the final report.

The Chief of Staff/Policy to the Deputy Assistant Secretary of the Navy for Acquisition Management and the Comptroller for the United States Special Operations Command questioned the potential Antideficiency Act violation in Appendix F. We continue to believe that each of the orders may violate either the purpose statute or the bona fide needs rule.

We request that the Department of the Navy, the Department of the Air Force, and the Defense Information Systems Agency provide comments on the final report by December 13, 2006.

Table of Contents

Executive Summary	i
Background	1
Objectives	3
Review of Internal Controls	3
Finding	
DoD Use of the NASA Scientific and Engineering Workstation Procurement Contracts	5
Appendixes	
A. Scope and Methodology	29
B. Prior Coverage	31
C. NASA Scientific and Engineering Workstation Procurement Contractors	33
D. Multiple-Award Contract Problems Identified	34
E. Single-Award Contract Problems Identified	38
F. Potential Antideficiency Act Violations	39
G. Report Distribution	44
Management Comments	
Office of the Under Secretary of Defense for Acquisition, Technology, and Logistics	46
Department of the Navy	49
Department of the Air Force	52
United States Special Operations Command	54
Defense Information Systems Agency	56

Background

This audit was performed as required by section 811, Public Law 109-163, “National Defense Authorization Act for Fiscal Year 2006,” January 6, 2006. Section 811 states:

“(a) INSPECTOR GENERAL REVIEWS AND DETERMINATIONS.—

(1) IN GENERAL.—For each covered non-defense agency, the Inspector General of the Department of Defense and the Inspector General of such non-defense agency shall, not later than March 15, 2006, jointly—

(A) review—

(i) the procurement policies, procedures, and internal controls of such non-defense agency that are applicable to the procurement of property and services on behalf of the Department by such non-defense agency; and

(ii) the administration of those policies, procedures, and internal controls; and

(B) determine in writing whether—

(i) such non-defense agency is compliant with defense procurement requirements;

(ii) such non-defense agency is not compliant with defense procurement requirements, but has a program or initiative to significantly improve compliance with defense procurement requirements; or

(iii) neither of the conclusions stated in clauses (i) and (ii) is correct in the case of such non-defense agency.”

The law requires audits of the Department of the Treasury, Department of the Interior, and National Aeronautics and Space Administration (NASA). In addition, the Ronald W. Reagan National Defense Authorization Act for Fiscal Year 2005, section 802, required the DoD Office of Inspector General (OIG) to jointly conduct an audit with the General Services Administration OIG of the General Services Administration. This report covers NASA and separate reports will address contracting at the Department of the Treasury, the Department of the Interior, and the General Services Administration.

DoD primarily made purchases through NASA on its Scientific and Engineering Workstation Procurement (SEWP) contracts. The NASA SEWP contracts are Government-wide acquisition contracts governed by the Clinger-Cohen Act. The Clinger-Cohen Act assigns the overall responsibility for the acquisition and management of information technology to the Director, Office of Management and Budget. The Office of Management and Budget designated NASA as an executive agent, which gave NASA the authority to make the SEWP contracts available to the entire Federal Government as Government-wide acquisition contracts. The Economy Act does not apply to Government-wide acquisition contracts.

NASA SEWP Contracts. NASA awarded 26 contracts to 19 vendors that supplied various information technology products. The NASA SEWP contracts were separated into 9 groupings, known as “classes,” and a group of

8(a) set-asides.¹ There were four single-awards classes, each containing one single-award contract; five multiple-award classes, consisting of 16 vendors on 19 contracts; and three 8(a) set-aside contracts. The 26 NASA SEWP contracts provided information technology commercial off-the-shelf products and services; however, the services cannot be procured separately and cannot exceed 30 percent of the total price for the associated hardware or software purchased. Appendix C provides a complete list of NASA SEWP contractors by class.

DoD FY 2005 Use of NASA SEWP Contracts. As of October 11, 2005, DoD contracting offices awarded 6,569 orders, valued at \$343.2 million, against the NASA SEWP contracts in FY 2005. Using the DoD activity address codes, we identified the DoD contracting offices that awarded 2,841 of the 6,569 orders. We could not identify the remaining orders because the delivery order number provided by NASA OIG did not contain a DoD activity address code. The value of the identifiable DoD orders was approximately \$302.6 million, which represented 88 percent of the total DoD orders awarded on NASA SEWP in FY 2005. Of the 238 contracting offices that awarded the 2,841 identifiable orders, we visited 6 DoD sites that awarded 1,336 orders valued at approximately \$155.8 million.

NASA and DoD Roles. NASA administers the SEWP contracts and provides a program office to process orders that user agencies issue. Orders awarded on the NASA SEWP contracts were direct acquisitions; therefore, DoD contracting officials issued and made all of the award decisions for orders placed against the NASA SEWP contracts. Generally, DoD program personnel identified the requirement and obtained funding from the financial and accounting office, which determined the appropriate fund type for the purchase. The program personnel provided the clearly defined requirement and funding to the DoD contracting office, which then determined which contract to use.

Contracting officials had different methods for determining which contract would be best to satisfy the requirement. Some contracting officers had previously used the NASA SEWP contracts and indicated that the contracts could satisfy many information technology needs that DoD contracts could not. Other contracting officers knew of individual contractors that could supply the required items, so they contacted the contractors directly. Some contracting officials used the NASA SEWP on-line tool to request quotes, while other contracting officials directly contacted contractors and requested the contractor provide its best price. The quotes provided on the NASA SEWP contracts were to include a separate fee for NASA. NASA charged a fee for orders over \$2,500 to use the contracts. Generally, NASA charged 0.65 percent of the total dollar amount of the items procured, but the fee could not exceed \$10,000. Contracting officials then chose the contractor for award, typically based on low price and delivery schedule, and used the NASA SEWP Web site to award the contract.

As part of the service provided by NASA, the agency reviewed orders over \$100,000 to determine whether the requested products were within the scope of its vendor's contracts. If the order was within the scope of the contract, NASA

¹ An 8(a) set-aside is a program that awards certain acquisitions exclusively to small disadvantaged business concerns.

approved the order. Once the order was approved, the order was forwarded to the vendor, who was then responsible for supplying the items to DoD. NASA was not involved in the funding of the orders and did not receive or track funds other than its fee. DoD was solely responsible for vendor payment and the vendor was responsible for paying NASA its fee.

NASA SEWP Tools. The NASA SEWP Web site provided tools to assist contracting officials in the procurement process. The tools assisted contracting officials in conducting market research and providing fair opportunity. The tools included product search, request for quote, and request for information. The product search feature was capable of searching by product description, manufacturer number, or NASA SEWP contract line item number. In addition, the product search enabled the end user to determine if the desired products were available, which vendors could supply the items, and which class supplied the items. The request for quote tool generated an e-mail request to the vendors the contracting official selected.

Objectives

Our overall audit objective was to review DoD procedures for purchases through NASA. Specifically, we examined the policies, procedures, and internal controls to determine whether DoD had a legitimate need to use NASA, whether DoD clearly defined requirements, whether NASA and DoD properly used and tracked funds, and whether NASA complied with defense procurement requirements. We also examined how NASA accepted and fulfilled the DoD requirements. See Appendix A for a discussion of the scope and methodology. See Appendix B for prior coverage related to the objectives.

Review of Internal Controls

At the sites visited, we identified material internal control weaknesses as defined by DoD Instruction 5010.40, "Management Control (MC) Program Procedures," August 28, 1996.² DoD organizations were required to develop policies for awarding orders using non-DoD contracts. The sites we visited had problems with policy development, implementation, and execution. Also, the regulations and statutes associated with contracting and funding should be incorporated into the internal controls for DoD organizations. Contracting, financial, and accounting officials should have the necessary training and knowledge to properly execute the orders. Contracting, financial, and accounting officials were not complying with regulations and statutes. Implementing the recommendations in this report should improve contracting procedures for orders awarded using non-DoD contracts. We are making no recommendations related to funding problems because Inspector General audit report, "Potential Antideficiency Act Violations on DoD Purchases Made Through Non-DoD Agencies," due out in FY 2007,

² On January 4, 2006, this instruction was canceled and replaced by DoD Instruction 5010.40, "Managers' Internal Control (MIC) Program Procedures."

contains recommendations that should correct the material funding weaknesses identified in this report. A copy of these reports will be provided to the senior official responsible for internal controls in the Office of the Under Secretary of Defense (Comptroller)/Chief Financial Officer.

DoD Use of the NASA Scientific and Engineering Workstation Procurement Contracts

DoD contracting and program personnel did not comply with acquisition rules and regulations when using non-DoD contracts. DoD financial and accounting officials did not comply with appropriation laws and regulations. Of the 111 orders reviewed, valued at approximately \$85.9 million, 98 were either improperly executed, improperly funded, or both. Specifically,

- 71 orders, valued at \$73.4 million, had little or no justification in the files for using a non-DoD contract vehicle;
- 69 orders, valued at \$49.5 million, were awarded without providing fair opportunity to all contractors qualified under the multiple-award contracts;
- 26 orders, valued at \$25 million, had inadequate award documentation; and
- 14 orders, valued at \$19.6 million, were funded in a manner that resulted in potential Antideficiency Act violations.

Most DoD organizations implemented their policies for using non-DoD contracts after the January 1, 2005, deadline set by the Principal Deputy Under Secretary of Defense (Comptroller) and the Acting Under Secretary of Defense (Acquisition, Technology, and Logistics) in the memorandum “Proper Use of Non-DoD Contracts,” October 29, 2004, (DoD October 29, 2004, Memorandum) and also inadequately executed the organization-specific policies for using non-DoD contracts. In addition, contracting officials were unaware of, did not follow, or misinterpreted regulations. Furthermore, financial and accounting officials misinterpreted, did not know, or did not follow regulations. As a result, DoD has no assurance it received the best value, competition was limited, and funds were not used as intended by Congress.

Orders Reviewed

We visited 6 of the 10 DoD contracting offices that spent the highest dollar amount on the NASA SEWP contracts in FY 2005. At the six sites, we selected orders that had the highest dollar values or that were awarded at the end of the fiscal year. Overall, we reviewed 111 orders valued at approximately

\$85.9 million. The sites visited, the number of orders reviewed at each site, and their respective dollar values are shown in the following table.

Summary of Site Visits

<i>Sites Visited</i>	<i>Number of Orders Reviewed</i>	<i>Value of Orders Reviewed</i>
Space and Naval Warfare Systems Center Charleston	20	\$22,988,994
Space and Naval Warfare Systems Center San Diego	32	3,376,304
6th Contracting Squadron, MacDill Air Force Base	13	3,672,829
Electronic Systems Center, Hanscom Air Force Base	20	10,553,029
Defense Information Technology Contracting Office National Capital Region	10	12,676,518
Defense Information Technology Contracting Office, Scott Air Force Base	16	32,584,767
Total	111	\$85,852,441

Contracting Criteria

Federal Acquisition Regulation. Federal Acquisition Regulation (FAR) Subpart 4.8, “Government Contract Files,” prescribes the requirements for establishing, maintaining, and disposing of contract files. FAR 4.801 states that the documentation in the files must be sufficient to constitute a complete history of the transaction. FAR 4.802 states that a contract file must consist of documents that detail the basis for the acquisition and the award. FAR 4.803 lists the records that are normally contained in the contract files, including source selection documents.

FAR 16.505, “Ordering,” governs orders under multiple-award contracts, including regulations for fair opportunity and decision documentation for orders.

Fair Opportunity. For orders exceeding the \$2,500 threshold and issued under multiple-delivery-order or multiple-task-order contracts, the contracting officer must provide each awardee a fair opportunity to be considered for award. However, the fair opportunity process has the following exceptions.

- The agency need for the supplies or services is so urgent that providing a fair opportunity would result in unacceptable delays.
- Only one awardee is capable of providing the supplies or services required at the level of quality required because the supplies or services ordered are unique or highly specialized.

-
- The order must be issued on a sole-source basis in the interest of economy and efficiency as a logical follow-on to an order already issued under the contract, provided that all awardees were given a fair opportunity to be considered for the original order.
 - It is necessary to place an order to satisfy a minimum guarantee.

Award Selection Documentation. The contracting officer must document in the contract file the rationale for placement and price of each order, including the basis for award. Also, the contract file must identify the basis for using an exception to the fair opportunity process.

Defense Federal Acquisition Regulation Supplement Criteria. Defense Federal Acquisition Regulation Supplement (DFARS) Subpart 217.78, “Contracts or Delivery Orders Issued by a Non-DoD Agency,” implemented the DoD October 29, 2004, Memorandum, which introduced controls to ensure that non-DoD contracts were the best method to satisfy DoD requirements. The memorandum required DoD organizations to conduct the reviews on orders awarded on or after January 1, 2005, and with values greater than the simplified acquisition threshold. DFARS 217.7802, “Policy,” states that the procedures for review should include:

- (a) Evaluating whether using a non-DoD contract for the acquisition is in the best interest of DoD. . .
- (b) Determining that the tasks to be accomplished or supplies to be provided are within the scope of the contract to be used;
- (c) Reviewing funding to ensure that it is used in accordance with appropriation limitations;
- (d) Providing unique terms, conditions, and requirements to the assisting agency for incorporation into the order or contract as appropriate to comply with all applicable DoD-unique statutes, regulations, directives, and other requirements; and
- (e) Collecting data on the use of assisted acquisition for analysis.

Compliance with Acquisition Rules

DoD contracting and program personnel did not comply with acquisition rules and regulations when using the NASA SEWP contracts. Contracting problems involved inadequate justifications for using non-DoD contracts because DoD organizations implemented their policies for the use of non-DoD contracts after January 1, 2005, the deadline set by the DoD October 29, 2004, Memorandum. Furthermore, contracting and program officials inadequately executed the DoD organization-specific policies that were implemented. Contracting problems also included contractors not being given a fair opportunity and inadequate contract documentation, which occurred because contracting officers misused the FAR and other guidance. Appendixes D and E provide details of each order’s contracting problems.

Inadequate Justifications. Contracting officials did not prepare or inadequately prepared justifications for using non-DoD contracts. To meet the requirements of the DoD October 29, 2004, Memorandum, DoD organizations had to conduct an initial review of existing DoD contract vehicles to determine whether one of those could satisfy the requirements, delivery schedules, and pricing.

Contracting officials at two sites did not review contracts offered by DoD entities other than their own. Contracting officials at these two sites justified the need for going outside of DoD by stating that their specific command or Service did not have any contracts that could meet the requirements. At Space and Naval Warfare Systems Center (SSC) San Diego, contracting officers stated that the NASA SEWP contracts had to be used because SSC San Diego did not have existing contracts to satisfy the requirements. However, the contracting officers did not disclose which specific DoD contracts were evaluated, disclose the extent to which market research was performed, or document their conclusion that NASA was the best contract to use. Also, at Electronic Systems Center, Hanscom Air Force Base, contracting personnel stated that the NASA SEWP contracts had to be used because existing Air Force contracts could not satisfy delivery requirements. However, personnel at these activities did not determine that they had a legitimate need to use the NASA SEWP contracts nor that other DoD contracts could not satisfy the requirement. Several contracting vehicles existed for the acquisition of information technology products and services that were awarded within DoD by the Army, Navy, and Air Force.

Of the 111 orders we reviewed, 71 valued at \$73.4 million were awarded after January 1, 2005, and were over \$100,000; therefore, they required a justification for use of a non-DoD contract. However, contracting officials did not provide a justification for use of a non-DoD contract for 50 of the 71 orders, valued at \$62.1 million. The 21 justifications contracting officials completed were not sufficient to satisfy the DFARS requirement. Furthermore, contracting officials awarded 17 orders, valued at \$16.8 million, without completing a justification even after the DoD organizations implemented their specific policies that outlined justification requirements for using non-DoD contracts.

Inadequate Policy Implementation and Execution. DoD organizations inadequately implemented and contracting and program personnel inadequately executed Military Department and agency-specific policies for placing orders on non-DoD contracts. The DoD October 29, 2004, Memorandum gave DoD organizations approximately 2 months to develop and disseminate their specific policies for use of non-DoD contracts; however, only one site implemented its policy by the January 1, 2005, deadline. The other sites took several months to implement their policies, and one site took over a year to implement its policy. Because most DoD organizations implemented the policies after the required deadline, contracting and program officials were left without formal guidance on the requirements for justifying the use of non-DoD contracts.

When contracting and program officials received the policies, the officials executed the policies inadequately. Poor policy execution occurred because contracting and program officials did not understand the importance of identifying existing DoD contracts that could satisfy the requirements or did not put forth the effort necessary to determine whether a non-DoD contract was in the

best interest of the Government. Furthermore, contracting officers did not adequately complete or document the non-DoD award justifications.

The sites we visited implemented their policies for using non-DoD contracts from December 20, 2004, through January 20, 2006. Because some of the policies were not implemented by the required deadline, orders awarded on non-DoD contracts may not have been justified. In addition, some policies required that a checklist or form be prepared that documented the procedures the contracting or program officials performed when justifying the use of a non-DoD contract. However, contracting officers did not successfully complete the forms. Every site visited either implemented their policy after the January 1, 2005, deadline or improperly executed the policy.

SSC Charleston. SSC Charleston had the earliest policy implementation: December 20, 2004. The policy provided contracting officers with specific guidance on how to adequately justify the use of a non-DoD contract. The policy required the contracting officer to

... discuss the market research conducted. Identify, by contract number and contractor, Spawar [Space and Naval Warfare Systems Command], Navy, and DoD contracts that were considered as alternate vehicles for meeting the requirement. Discuss why these vehicles were not chosen in favor of a non-DoD contract vehicle. **This item may not be left blank.** If no contracts are listed, explain why.

Of the 20 orders reviewed, 16 required a justification. However, contracting officers failed to justify 12 of the 16 orders and inadequately justified the remaining 4 orders. For those four orders, the contracting officers did not state that DoD contracts had been reviewed or why DoD contracts had not been reviewed, as was required. For two of the four orders, the contracting officer used that section of the justification to state that the purchase was sole sourced from the manufacturer, but did not state that a DoD contractor could not sell the item required. For one of the other two orders, the contracting officer stated that a request for quote was issued through NASA SEWP to three vendors; however, one of the vendors was not a NASA SEWP contractor. For the remaining order, the contracting officer stated that a request for quote was sent through NASA SEWP. The 16 orders were not justified because contracting officers were either unaware of the policy or improperly executed the policy.

SSC San Diego. SSC San Diego implemented its policy on January 26, 2005. The policy provided the technical requirements officials and contracting officers with guidance on how to justify the use of a non-DoD contract. The policy required the technical requirements officials to coordinate with contracting officials to determine whether the requirement could be satisfied by an existing DoD contract. The technical requirements officials were also required to complete a memorandum to “make the appropriate assessment and decision that the contract action is in the best interest of Space and Naval Warfare” by determining the “non-availability of a suitable contract vehicle within DoD.” However, the policy should require the technical requirements officials to document all of the DoD contracts reviewed and why those contracts

could not satisfy the requirement. If technical requirements officials could not identify any DoD contracts, they must explain that conclusion.

Of the 32 orders reviewed, 8 required a justification. Of those eight orders, seven were awarded after SSC San Diego implemented its agency-specific policy. Because SSC San Diego implemented its policy after the January 1, 2005, deadline set in the DoD October 29, 2004, Memorandum, contracting officers were unaware of the requirement for justifying one of the eight orders. For the seven orders awarded after policy implementation, contracting officers failed to justify one and inadequately justified the remaining six. For the six orders with inadequate justifications, the contracting officer did not state which DoD contracts were reviewed or why those contracts could not satisfy the requirement. The eight orders were not justified because contracting officers were unaware of the policy or improperly executed the policy.

6th Contracting Squadron, MacDill Air Force Base. The 6th Contracting Squadron, MacDill Air Force Base implemented its policy on May 10, 2005. The Assistant Secretaries of the Air Force for Acquisition and for Financial Management and Comptroller issued the Air Force policy on December 6, 2004, and provided this policy to all the major commands within the Air Force. However, the Air Mobility Command did not disseminate the policy to 6th Contracting Squadron, MacDill Air Force Base until May 10, 2005. It is unclear why it took the Air Mobility Command until May 10, 2005, to disseminate the policy. The policy required the contracting officer to “document the contract file to reflect” that awarding on a non-DoD contract “is in the best interest of the Air Force.” No justification form was provided to the contracting offices. Prior to the May 10, 2005, policy implementation, the contracting officers at 6th Contracting Squadron, MacDill Air Force Base gathered information from contracting offices outside of the Air Mobility Command and developed a justification form. The contracting officials began using the justification form on April 11, 2005. The 6th Contracting Squadron, MacDill Air Force Base took a proactive approach; however, the form they issued repeatedly referred to the General Services Administration Federal supply schedules. The form should not refer to the General Services Administration Federal supply schedules as the only non-DoD contracts. Also, the policy should require the contracting officers to document all of the DoD contracts reviewed and why those contracts could not satisfy the requirement. Lastly, if the contracting officers could not identify any DoD contracts, they must explain that conclusion.

Of the 13 orders reviewed, 11 required a justification. Because 6th Contracting Squadron implemented its policy after the deadline set in the DoD October 29, 2004, Memorandum, contracting officers were unaware of the requirement for justifying 4 of the 11 orders. Of the 11 orders, 7 were awarded after the April 11, 2005, justification form was implemented. However, contracting officers failed to justify four of the seven orders and inadequately justified the remaining three orders. For the three orders with inadequate justifications, the contracting officers did not state which DoD contracts were reviewed or why those contracts could not satisfy the requirement. The 11 orders were not justified because contracting officers were unaware of the policy or improperly executed the policy.

Electronic Systems Center, Hanscom Air Force Base. Electronic Systems Center, Hanscom Air Force Base implemented its policy on March 4, 2005. The policy did not provide the contracting officers with specific guidance on how to justify the use of a non-DoD contractor. The policy required the program manager to “certify that use of a non-DoD contract is in the best interests of the Air Force.” The policy should provide specific guidance on how contracting officers should conduct and document market research. Also, the policy should require the program manager to document all of the DoD contracts reviewed and why those contracts could not satisfy the requirement. Lastly, if program managers could not identify any DoD contracts, they must explain that conclusion.

Of the 20 orders reviewed, 14 required a justification. Because Electronic Systems Center, Hanscom Air Force Base implemented its policy after the deadline set in the DoD October 29, 2004, Memorandum, program managers were unaware of the requirement for justifying 6 of the 14 orders. The remaining eight orders were awarded after Electronic Systems Center, Hanscom Air Force Base implemented its agency-specific policy. For those eight orders, program managers inadequately justified using a non-DoD contract because they indicated only Air Force contracts that could not satisfy the requirement. Program managers did not provide documentation supporting that the Air Force contracts could not satisfy the requirement or state whether they reviewed other DoD contracts. The 14 orders were not justified because program managers either were unaware of the policy or improperly executed the policy.

Defense Information Technology Contracting Offices National Capital Region and Scott Air Force Base. Defense Information Technology Contracting Office (DITCO) National Capital Region and DITCO, Scott Air Force Base are two contracting offices within the Defense Information Systems Agency (DISA); therefore, they are governed by the DISA non-DoD award policy. DISA did not implement its policy until January 20, 2006. Initially, the DISA acquisition office issued its non-DoD award policy on July 22, 2005. However, a DISA official stated that the July 22, 2005, policy was retracted the same day it was issued because the policy office within the agency felt that it was their duty to issue the agency’s non-DoD award policy. The policy office issued the guidance on January 20, 2006, which was over a year later than was required in the DoD October 29, 2004, Memorandum. In addition, the policy issued on July 22, 2005, and the policy issued on January 20, 2006, were minimally different. It is unclear why it took the policy office an additional six months to issue the policy; the requirements and justification documents contained in both policies were essentially the same. The policy did not provide the requirements office with specific guidance on how to justify the use of a non-DoD contractor. Although the policy states that “the requirement official shall document” that “the use of a non-DoD contract/order is in the best interests of DoD and DISA,” it does not provide specific guidance on how the requirements officials should conduct market research. Also, the policy should require the officials to document all of the DoD contracts reviewed and why those contracts could not satisfy the requirement. Lastly, if requirements officials could not identify any DoD contracts, they must explain that conclusion.

Of the 26 orders reviewed, 22 required a justification. Because DISA implemented its policy after the deadline set in the DoD October 29, 2004, Memorandum, the requirements officials were unaware of the need to justify the 22 orders.

Lack of Fair Opportunity for Multiple-Award Vendors. Contracting officers did not provide multiple-award contractors with a fair opportunity to be considered for award. According to FAR 16.505, when including multiple-award contractors in the award process, each multiple-award contractor must be provided a fair opportunity for award consideration or an exception to fair opportunity must be documented. Of the 111 orders we reviewed, 69 orders, valued at \$49.5 million, included at least one vendor from a multiple-award class for consideration. However, contracting officials did not provide fair opportunity to all vendors in a multiple-award contract and did not adequately document an exception to fair opportunity.

- For 45 of the 69 orders awarded on multiple-award contracts, valued at approximately \$29.2 million, contracting officials considered combinations of NASA SEWP vendors from multiple classes or combinations of NASA SEWP, General Services Administration, and other non-SEWP vendors, including vendors from the National Institute of Health's Electronic Commodities Store III contracts and the open market. However, the contracting officials did not consider all contractors in multiple-award contracts. When soliciting vendors from more than one contract vehicle, including multiple-award contracts, contracting officials must ensure they provide fair opportunity to all vendors in the multiple-award contracts.
- For 22 of the 69 orders awarded on multiple-award contracts, valued at approximately \$18.4 million, contract officials awarded on a sole-source basis. Only one vendor was considered for award, but there was not an adequate justification for the decision. For 13 orders, valued at approximately \$14.5 million, the contracting officer identified the contractor for award before the purchase process began. To properly award on a sole-source basis, contracting officials must document an exception to fair opportunity.
- For 2 of the 69 orders awarded on single-award contracts, valued at approximately \$1.9 million, contract officials considered multiple-award vendors for award. Contracting officials did not provide a fair opportunity to all vendors within a multiple-award contract or document an exception to fair opportunity. Instead, contracting officials considered combinations of NASA SEWP vendors from multiple classes or combinations of NASA SEWP and non-SEWP vendors. Because all vendors awarded a multiple-award contract have the same capabilities to meet requirements, all of the vendors should have been considered.

For example, at SSC Charleston, order N65236-05-F-2404 was awarded for approximately \$3 million to Northrop Grumman, a Class 11 and 13 multiple-award contractor. The contracting officer only requested a bid from Northrop

Grumman and did not consider any of the other vendors in Classes 11 and 13—Unisys, GTSI, and Government Micro Resources. Because Northrop Grumman is on a multiple-award contract, the contracting officer should have followed FAR 16.505, which requires that all contractors in a multiple-award be provided a fair opportunity for contract award.

In another example, the DITCO National Capital Region awarded orders HC1047-05-F-4075 and HC1047-05-F-4081 for approximately \$520,000 and \$1.6 million, respectively. These orders were part of the Global Information Grid Bandwidth Expansion program. The Global Information Grid Bandwidth Expansion acquisition plan stated that one contractor would be used for \$10 million in program purchases. However, the contracting officer did not compete the entire \$10 million requirement. The contracting officer competed only the first order, valued at approximately \$830,000, among all 8 contractors in Class 12 of the NASA SEWP contracts. The request for quote stated that the awardee would receive all subsequent orders related to the Global Information Grid Bandwidth Expansion program on a sole-source basis, citing “the logical follow-on” exception to fair opportunity. Technica Corporation was the only vendor to provide a complete bid for the order and therefore received the award.

This award was an inappropriate use of the logical follow-on exception. The contracting officer should have issued the initial request for quote for the entire \$10 million requirement, and provided a fair opportunity to all Class 12 vendors in the initial request for quote. The contracting officer may have generated more interest and received lower bids by competing the entire requirement. We do not believe that the “logical follow-on” exception should be used to maintain the same contractor by splitting the full requirement into small increments.

Inadequate Documentation. Contracting officials did not consistently prepare award selection documents. FAR Subpart 4.8 and FAR 16.505 provide requirements for order documentation. FAR Subpart 4.8 requires that contract file documents the basis for award. In addition, FAR 16.505 requires contracting officials to provide decision documents for orders awarded on multiple-award contracts. The decision documents must state the rationale for placement and price of each order, including the basis for award or the basis for using an exception to the fair opportunity process. Of the 111 orders reviewed, 26 orders that were valued at approximately \$25 million did not contain award selection documents.

For example, SSC Charleston awarded order N65236-05-F-9314 for approximately \$1.8 million to iGov, a multiple-award contractor. The order file did not contain an award document to indicate why iGov was the only contractor considered for award. Because the contracting officer did not prepare an award document, the rationale for the award is unknown, which could affect future purchases of similar items.

FAR Implementation and NASA SEWP Assistance. DoD contracting and program officials were unaware of, did not follow, or misunderstood the rules under which the NASA SEWP contracts operated. Furthermore, DoD officials did not take advantage of the NASA SEWP Web site and training opportunities.

Basic FAR Knowledge. Contract personnel are required to have knowledge of the legislation, regulations, and methods used in contracting and the skill to apply the guidance to specific actions. The FAR is the primary acquisition regulation in the Federal Government; therefore, contracting officials should be cognizant and well-versed in FAR criteria and how those criteria relate to the specific contracting vehicles they use. Contracting officials should have basic FAR knowledge about providing fair opportunity on multiple-award contracts and documenting award decisions. In addition, although contracting officers may receive advice from specialists in law, audit, engineering, transportation, finance, or other functions, they remain the ones who are responsible and accountable for the contracts. At each of the sites visited, contracting officers exhibited a lack of appropriate FAR knowledge. The 69 orders were awarded without fair opportunity because contracting officials misinterpreted or lacked knowledge of FAR Subpart 8.4, “Federal Supply Schedules,” FAR Part 13, “Simplified Acquisition Procedures,” or FAR 16.505.

For 29 of the 69 orders, valued at \$18.3 million, contracting officers followed the General Services Administration Federal supply schedule procedures. Contracting officials at SSC Charleston; SSC San Diego; 6th Contracting Squadron, MacDill Air Force Base; and DITCO National Capital Region stated during interviews that FAR Subpart 8.4 applied to the NASA SEWP contracts. FAR Subpart 8.4 provides policies and procedures for the acquisition of goods and services on the General Services Administration Federal supply schedule and multiple-award schedule contracts. These procedures include considering a minimum of three vendors for award. However, the NASA SEWP contracts are single- and multiple-award contracts, not schedules.

For 40 of the 69 orders, valued at \$31.2 million, contracting officers awarded the orders on multiple-award contracts without providing an adequately documented exception to fair opportunity. Of the 40 orders, 22 were awarded on a sole-source basis. Also, contracting officers followed simplified acquisition procedures for awarding 1 of the 22 sole-source orders. Although only one order was awarded using simplified acquisition procedures, contracting officers at SSC San Diego believed that FAR Part 13 applied to NASA SEWP orders with values less than the simplified acquisition threshold. FAR Part 13 prescribes policies and procedures for the acquisition of supplies and services, including construction, research and development, and commercial items, the aggregate amount of which does not exceed the simplified acquisition threshold, which is defined in FAR Subpart 2.1, “Definitions,” as \$100,000. However, simplified acquisition procedures do not take precedence over the procedures required for task orders awarded on multiple-award contracts. In addition, because all items on the NASA SEWP contracts are commercial off-the-shelf, more than one vendor should generally be able to supply the required goods.

Competition and Discounts. Because contracting officials consistently failed to provide fair opportunity, or solicited only one vendor, the officials did not always obtain the best price. The NASA SEWP contracts are single- and multiple-awards with published prices. Although the prices are considered fair and reasonable, the multiple-awards are still governed by FAR 16.505, which required fair opportunity. However, when using a single-award contract, the price can be discounted. When orders were awarded competitively, the product prices

were lower than the NASA SEWP list prices. In addition, the NASA SEWP Web site stated that contract holders could charge less than the listed price. Because contractors can charge reduced prices, contracting officials should seek these discounts through competition or by request.

Portions of 13 orders, totaling \$11.1 million of competitive purchases, had the NASA SEWP list prices documented in the contract file. Had the Government paid the NASA SEWP list prices, these purchases would have cost \$14.8 million. Thus, by competing these purchases, the Government saved a total of \$3.7 million or 25 percent. Clearly, competing the orders produced better prices than those listed.

To ensure that contracting officers are making the proper decisions when using non-DoD contracts, DoD needs to provide specific guidance and training to contracting officers, emphasizing the need to conduct market research prior to deciding that a DoD contract cannot satisfy the requirement. This training and guidance should include instruction on how to search for existing DoD contract vehicles and should emphasize the importance of this control to minimize making purchases outside of DoD. The consistent failure to search for available DoD contracts may have precluded contracting officials from identifying capable contractors within DoD and saving administrative fees paid to NASA. In addition, contracting officials were unaware of, did not follow, or misinterpreted the FAR. Contracting officials should be cognizant of FAR guidelines and their applicability to different contract types, including multiple-awards, single-awards, and Federal supply schedules. Consequently, contracting officials should be reminded that FAR 16.505 governs multiple-award contracts, and that contracting officials should seek as much price competition as possible.

NASA SEWP Web Site. The NASA SEWP Web site provided abundant and clear reminders that FAR 16.505 applies to the multiple-award contracts. The Web site reminded contracting officials of the appropriate FAR requirements in the section titled, "Fair Opportunity When Using SEWP Contracts." The section details the requirements of market research and fair opportunity and provides links to the appropriate FAR parts. Further, the Web site's request for quote and product search tools assist contracting officials in providing fair opportunity. When a contracting official selects one of the multiple-award vendors within the tool, the Web site generates a notification that reminds the contracting official that fair opportunity is required. The notification also identifies the other vendors in the multiple-award contract and automatically selects those vendors to receive a request for quote. In order to not provide fair opportunity, a contracting official would have to deselect the vendors. Contracting officials either did not take the time to research the NASA SEWP contracts prior to awarding orders or disregarded the Web site's reminders.

NASA Training Opportunities. As part of the fee to use the SEWP contracts, NASA provides training to requesting activities on how to use the NASA SEWP contracts and the tools found on the Web site. Throughout FY 2005, only 15 DoD offices took advantage of the NASA SEWP free training, although 238 contracting offices used the NASA SEWP contracts in FY 2005. Of the sites visited, only SSC Charleston received training prior to our review. However, SSC Charleston contracting officers continued to award 16 of the 19

multiple-award orders without fair opportunity. We believe that when effectively implemented, the NASA SEWP training is still a valuable tool that DoD organizations should use. Additional training is required to ensure that contracting officials apply the correct FAR guidelines. After our site visit to DITCO National Capital Region, the agency took a proactive approach to limit future misuse of the NASA SEWP contracts by receiving NASA SEWP training on March 1, 2006. Had contracting officials received and effectively implemented the NASA SEWP training in conjunction with adequate FAR training prior to using the NASA SEWP contracts, improper award procedures may have been avoided.

Funding Criteria

Antideficiency Act. The Antideficiency Act (ADA) is codified in a number of sections of title 31, United States Code. The purpose of the ADA is to enforce the constitutional budgetary powers residing in Congress with respect to the purpose, time, and amount of expenditures made by the Federal Government. Violations of other laws may trigger violations of ADA provisions. This audit found potential violations of the ADA in section 1341(a)(1)(A), title 31, United States Code.

Purpose Statute. The purpose statute is codified in section 1301, title 31, United States Code. A violation of the purpose statute may cause a violation of the ADA. The statute states, “appropriations shall be applied only to the objects for which the appropriations were made except as otherwise provided by law.” The Government Accountability Office Red Book states, “appropriations may be used only for their intended purposes.”

Bona Fide Needs Rule. The bona fide needs rule is codified in section 1502(a), title 31, United States Code. A violation of the bona fide needs rule may cause a violation of the ADA. To use appropriated funds, DoD organizations must have a bona fide need for the requirement in the year the appropriations are available for obligation.

In addition, the Government Accountability Office Red Book, chapter 5, section B.4, “Delivery of Materials beyond the Fiscal Year,” states that materials purchased in one fiscal year and not delivered until the following fiscal year do not violate the bona fide needs rule if the delay in delivery is:

- due to production and fabrication of the material, which cannot be purchased on the open market at the time needed for use;
- due to unforeseen delays to an otherwise properly made obligation; or
- for replacement of stock.

If agencies purchase goods or services and schedule delivery for a subsequent fiscal year, one could question whether the contract was made in the earlier fiscal year only to obligate funds from an expiring appropriation.

Also, the DoD Financial Management Regulation (FMR), volume 11a, chapter 2, states that the bona fide needs rule should

. . . not be construed to preclude procurement lead-time. Thus, where materials cannot be obtained in the same fiscal year in which they are needed and contracted for, a provision for delivery in the subsequent fiscal year does not violate the bona fide needs rule so long as the time intervening between contracting and delivery is not excessive and the procurement is not for standard commercial items readily available from other sources.

DoD Financial Management Regulation Guidance. Annual appropriation acts define the uses of each appropriation and set specific timelines for use of the appropriations. However, the DoD FMR, volume 2A, chapter 1, provides guidelines on most commonly used DoD appropriations for determining the correct appropriation to use when planning acquisitions.

Expenses and Investments. All costs are classified as either an expense or an investment. Expenses are costs of resources consumed in operating and maintaining DoD and typically are less than the currently approved dollar threshold of \$250,000 for expense and investment determinations. Investments are costs to acquire capital assets, such as real property and equipment, and are more than the currently approved dollar threshold of \$250,000 for expense and investment determinations. Costs budgeted in the operation and maintenance (O&M) appropriation are considered expenses. Costs budgeted in the procurement appropriation are considered investments. Costs budgeted in the research, development, test, and evaluation (RDT&E) appropriation include both expenses and investments.

Expenses and Investments Conditional Cases. Continuous technology refreshment is the intentional, incremental insertion of newer technology to improve reliability, improve maintainability, reduce cost, or add minor performance enhancement, typically in conjunction with depot or field level maintenance. The insertion of such technology into end items as part of maintenance is funded by the O&M appropriations. However, technology refreshment that significantly changes the performance envelope of the end item is considered a modification and, therefore, an investment.

Commercial Off-the-Shelf. All commercial off-the-shelf purchases should be funded in the procurement or O&M appropriations, as determined by the expense and investment criteria.

RDT&E Appropriations. RDT&E requirements, including designing prototypes and processes, should be budgeted in the RDT&E appropriations. In general, all developmental activities included in bringing a program to its objective system are to be budgeted in RDT&E. RDT&E funds are available for obligation for 2 years.

Procurement Appropriations. Acquisition and deployment of a complete system with a cost of \$250,000 or more is an investment and should be budgeted in a procurement appropriation. Complete system cost is the aggregate

cost of all components that are part of, and function together, as a system to meet an approved requirement. Procurement funds are available for obligation for 3 years.

O&M Appropriations. Expenses incurred in continuing operations and current services are budgeted in the O&M appropriations. Modernization costs under \$250,000 are considered expenses, as are one-time projects, such as development of planning documents and studies. O&M funds are available for obligation for 1 year.

Defense Working Capital Fund. The information technology systems developed and acquired through the Defense working capital fund are reflected in the Capital Budget if the system costs \$100,000 or more. Systems costing less than \$100,000 are funded through the operating budget. Defense working capital funds do not have a restriction on the time they are available for obligation.

Compliance with Appropriation Laws and Regulations

DoD financial and accounting officials did not comply with appropriation laws and regulations. We identified 14 incidents of potential ADA violations for orders valued at \$19.6 million. The potential violations occurred when the purpose statute was violated, the bona fide needs rule was violated, or both. These conditions existed because financial, accounting, and contracting officials were unaware of, did not follow, misinterpreted, or abused the regulatory uses and limitations of fund types. Appendix F provides details of each potential violation.

Potential Purpose Statute Violations. Financial and accounting officials provided funding documents citing the wrong appropriation to contract officials, resulting in potential purpose statute violations. Volume 2A, chapter 1 of the FMR states that commercial off-the-shelf items fall under the expense and investment criteria. This criteria states that purchases less than \$250,000 should be procured by using O&M funds and purchases greater than \$250,000 should be procured by using procurement funds. Because all items offered on the NASA SEWP contracts are commercial off-the-shelf, orders greater than \$250,000 should be purchased using procurement funds. Of the 14 potential ADA violations, 6 orders each valued over \$250,000 and collectively totaling \$18.1 million were procured with O&M funds. Of the six orders, five grouped the items purchased into lots greater than \$250,000, and one listed each item separately with a total more than \$250,000. Because the orders were greater than \$250,000, procurement funds should have been used.

Misinterpretation of the FMR. Financial and accounting officials either were unaware of, misinterpreted, or did not follow the FMR. Six orders potentially violated the purpose statute by using the wrong appropriation. Financial and accounting officials provided O&M funds to procure these orders; however, each of the orders exceeded the \$250,000 threshold for expenses. Orders exceeding the threshold are considered investments and should have been purchased with procurement funds.

For one of the six orders, the agency that provided the funds (Defense Security Service) stated that it had been appropriated only O&M funds. However, the financial and accounting officials should have requested procurement funds to fulfill the requirement, because the purchase was for \$10.9 million, which exceeds the O&M ceiling of \$250,000.

For five of the six orders, the financial and accounting officials routinely did not follow FMR guidelines.

- For two of the six orders, financial and accounting officials either did not know, misinterpreted, or did not follow the regulations that state the \$250,000 threshold for O&M purchases. For example, the financial and accounting personnel at United States Central Command believed that the \$250,000 threshold for use of O&M funds only applied to certain types of equipment.
- For one of six orders, budget officials incorrectly budgeted a \$738,000 purchase with O&M funds, exceeding the \$250,000 threshold. The financial and accounting officials determined which funds to use by reviewing the budget and the FMR. However, despite reviewing the FMR, financial and accounting officials did not correct the fund type.
- For two of the six orders, financial and accounting officials misinterpreted or did not follow the technology refreshment conditional case. The FMR provides a conditional case that permits the use of O&M funds for purchases greater than the \$250,000 threshold. The conditional case defines technology refreshment as “the intentional, incremental insertion of newer technology to improve reliability, improve maintainability, reduce cost, and/or add minor performance enhancement.” For one order, the financial and accounting officials considered the project a technology refreshment, although it was for the installation of a system at new sites. The conditional case also states that procurement funds should be used when the purchase “significantly changes the performance envelope of the end item.” For the other order, financial and accounting officials disregarded this portion of the criteria. For example, DITCO, Scott Air Force Base awarded order HC1013-05-F-2810 for \$4.1 million on behalf of DISA. The purchase was a router upgrade for the Standardized Tactical Entry Point Information Assurance Tools at all sites worldwide and would increase bandwidth. DITCO, Scott Air Force Base funding personnel stated that the upgrade was technology refreshment and that the conditional case for technology refreshment governed the purchase and permitted the use of O&M funds. We believe the purchase significantly increased the bandwidth, which significantly increased the performance of the system. Therefore, they should have used procurement funds.

In addition, five of the six orders were placed at the end of the fiscal year, from August 25, 2005, through September 28, 2005. Because O&M funds expire at the end of the fiscal year in which they were appropriated, financial and accounting officials may have been trying to use the funds before they had to be returned to

the treasury. Of these five orders, four also potentially violated the bona fide needs rule.

Potential Bona Fide Needs Rule Violations. Contracting officials awarded numerous orders at the end of the fiscal year. The delivery of some of these items continued or began in the following fiscal year, resulting in potential bona fide needs rule violations. An appropriation is available for payment of costs incurred only during the period in which the fund is available for use. Thus, when commercial off-the-shelf purchases were made, contracting officials should have ensured that the purchases were funded with money appropriated for the period in which the products would be required and delivered. All goods purchased through NASA SEWP were commercial off-the-shelf and therefore have a short lead time for delivery. If the Government did not need the items until FY 2006, then the purchase should have been made with funds that were available for use in FY 2006.

Of the 14 potential ADA violations, 12 orders, valued at \$7.9 million, were potential bona fide needs rule violations. For 11 of the 12 orders, goods were received entirely in FY 2006, from October 3, 2005, through January 6, 2006. For 1 of the 12 orders, the delivery of goods began in FY 2005; however, some of the goods were not delivered until FY 2006.

For example, DITCO National Capital Region awarded order HC1047-05-F-4552 for approximately \$980,000 on September 28, 2005, two days before the end of FY 2005. The purchase was for internet software, routing engine boards, forwarding engines, licenses, power cables, ethernet interfaces, and other items for the expansion of the Combined Federated Battle Lab. The purchase was funded with O&M funds, which expired at the end of FY 2005. The goods were not accepted until November 4, 2005. Because DITCO National Capital Region had no reasonable expectation of receiving the item in FY 2005 and the items neither required a long lead time, nor were to replenish stock, we believe the purchase potentially violated the bona fide needs rule.

Misinterpretation of the Bona Fide Needs Rule. Contracting officials were unaware of, did not follow, or misinterpreted the bona fide needs rule. DoD officials misinterpreted the bona fide needs rule to mean that using expiring funds at the end of the fiscal year was acceptable as long as the funds were awarded prior to the end of the fiscal year. The goods provided on the NASA SEWP contracts are commercial off-the-shelf, which are readily available in the commercial market place. Because of this, the customers should have received the commercial off-the-shelf goods purchased with expiring funds prior to the end of the fiscal year. If the goods were needed in FY 2005, then proper planning, such as identifying the requirement earlier in the year, would have resulted in delivery within the fiscal year.

Financial and accounting officials who authorize and certify funding documents should be cognizant of funding guidelines and be familiar with the appropriate uses and limitations of common appropriations, including O&M, RDT&E, procurement, and working capital. Because the FMR was not properly applied at the sites visited, financial, accounting, and contracting officials should be provided with clear and specific guidance on the use of O&M and expiring funds.

Furthermore, identifying the bona fide need earlier in the year and awarding the contract earlier in the year would have prevented the potential bona fide needs rule violations.

We identified 14 potential Antideficiency Act violations, which are listed in Appendix F. Recommendations for the Under Secretary of Defense (Comptroller)/Chief Financial Officer to initiate preliminary reviews regarding those potential violations are in the audit report, "Potential Antideficiency Act Violations on DoD Purchases Made Through Non-DoD Agencies," due out in FY 2007.

Conclusion

The consistent failure to determine the availability of a DoD contract may have precluded contracting officials from identifying capable contractors. The intent of multiple-award contracting is to use a streamlined acquisition process to achieve competition without increasing the Government's risk; however, the failure to provide fair opportunity to the SEWP multiple-award contractors prevented the Government from fully achieving the savings available from price competition. Furthermore, training is needed to ensure that misapplication of procurement regulations is not passed on among contracting officials.

DoD officials were unaware of, misinterpreted, or did not follow the FMR, which caused 14 potential ADA violations. The potential violations included violating the purpose statute, the bona fide needs rule, or both. Better acquisition planning may have precluded some of the potential violations. Furthermore, DoD officials who decide which types of funds to use for goods and services need clear guidance on the proper use and timing of funds. Expired funds should be returned to the treasury.

Management Comments on the Finding and Appendix F and Audit Response

Department of the Navy Comments. The Department of the Navy provided draft report comments signed by the Chief of Staff/Policy to the Deputy Assistant Secretary of the Navy for Acquisition Management (Chief). The Chief questioned whether order N66001-05-F-Q174 represented a potential bona fide needs rule violation. The Chief stated that the need was identified in May 2005, the requirement was submitted for procurement in August 2005, and both procurement lead time and delivery lead time were reasonable.

Audit Response. We disagree with the Chief that the order does not potentially violate the bona fide needs rule. For this order, the items were commercial and sufficient time should have been available to receive the goods within the year that the funds were available for use. However, the order stated that the items were scheduled for delivery on October 7, 2005, which was in FY 2006. Because the order had a FY 2006 scheduled delivery, FY 2006 operations and maintenance

funds should have been used. Orders placed using expiring money should be scheduled for delivery and delivered within the fiscal year of the money's use.

United States Special Operations Command Comments. Although not required to comment, the United States Special Operations Command provided the following comments on the finding and Appendix F. For the full text of the comments, see the Management Comments section of the report.

The United States Special Operations Command (USSOCOM) provided draft report comments signed by the Comptroller. The Comptroller agreed with the potential purpose statute violation for order FA4814-05-F-A154. USSOCOM has initiated a preliminary investigation to determine if it was inappropriate to use O&M funds for order FA4814-05-F-A154. However, the Comptroller did not agree with the potential bona fide needs rule violations for orders FA4814-05-FA717, FA4814-05-FA860, FA4814-05-FA895, and FA4814-05-FA917. The Comptroller provided quotes from the GAO *Principles of Appropriations Law*, third edition, volume I, and the DoD Financial Management Regulation, volume 11A, chapter 2, paragraph 020508. These quotes state respectively,

. . . where materials cannot be obtained in the same fiscal year in which they are needed and contracted for, provisions for delivery in the subsequent year do not violate the *bona fide* needs rule as long as the time intervening between contracting and delivery is not excessive and the procurement is not for standard commercial items readily available from other sources.

. . . where materials, for example, cannot be obtained in the same fiscal year in which they are needed and contract for, a provision for delivery in a subsequent fiscal year does not violate the bona fide need rule so long as the time intervening between contracting and delivery is not excessive and the procurement is not for standard commercial items readily available from other sources.

Furthermore, the Comptroller did not agree with the potential purpose statute violation for wrongful use of O&M funds in order FA4814-05-F-A895. The Comptroller stated that the goods purchased were not for a system, but were “a variety of parts and smaller items to include modems, scalars, drives, cable, memory, back up platforms, labor, licensing and lots of software.”

Audit Response. We disagree with the Comptroller that the orders do not violate the bona fide needs rule. As stated in the bona fide needs rule criteria provided in this report and the criteria quoted by the Comptroller, delivery in the subsequent fiscal year is only permitted if the “procurement is not for standard commercial items.” The orders were for a file storage and server system, another server, assorted hardware, assorted software, and licenses. All of these items are commercial off-the-shelf items as are all items on the NASA SEWP contracts. In addition, the goods for orders FA4814-05-FA717, FA4814-05-FA860, FA4814-05-FA895, and FA4814-05-FA917 were scheduled for delivery in the subsequent fiscal year. To prevent violations of the bona fide needs rule, the Comptroller should provide requirements to contracting offices and contracting

offices should issue orders with sufficient time for goods to be delivered within the fiscal year.

We agree that the use of O&M funds for order FA4814-05-F-A895 was appropriate. We have removed this order from our discussion of potential violations of the purpose statute.

Recommendations, Management Comments, and Audit Response

Revised Recommendation. In response to management comments, we modified Recommendation 1.a. by removing the necessity for the documentation to be a determination and finding. Our recommendation now states that the conclusions need to be in writing, but does not specify the type of document. We simply want the contract files to contain adequate documentation to justify the use of a non-DoD contract, because we found that type of documentation lacking or insufficient at the sites visited.

1. We recommend that Acquisition Executives for the Navy, Air Force, and Defense Information Systems Agency:

a. Require contracting officers conducting direct acquisitions for amounts greater than the simplified acquisition threshold to determine whether the use of non-DoD contracts is in the best interest of the Government and verify that the required goods, supplies, or services cannot be obtained as conveniently or economically by using a DoD contract. The contracting officer or another official designated by the agency head should document those conclusions in writing.

Department of the Navy Comments. The Department of the Navy provided draft report comments signed by the Chief of Staff/Policy to the Deputy Assistant Secretary of the Navy for Acquisition Management (Chief). The Chief partially concurred with the first part of the recommendation, but stated, “research is limited to command-available contracts and other contracts” of which the contracting officer has knowledge, because “there is no existing ‘DoD-Wide Contract Search Tool’ to satisfy a comprehensive search of all DoD contracts available.” The Chief concurred in principle with the second part of the recommendation, by agreeing that the conclusions should be documented in the contract file, but added that the requirement for a separate determination and finding is unnecessary.

Audit Response. Because the Chief limited research for direct acquisitions, his comments do not fully meet the intent of the recommendation. We disagree that contracting officers need to review only command-available contracts and other DoD contracts of which the contracting officers are already aware. Defense Federal Acquisition Regulation Supplement 217.7802 requires DoD to evaluate “whether the use of a non-DoD contract is in the best interest of DoD.” We do not believe that this evaluation can be adequately supported without making an effort to conduct a thorough review of available DoD contracts. This means

performing some research into all contracts available, not just the contracts that are readily available. When Navy contracting officers award a new contract, their research is not limited to command-available contracts, and the research may include a review of the marketplace to ensure DoD is getting the best value. We believe that the same research should be conducted before placing orders for direct acquisitions. We request that the Chief reconsider the research limitation. Accordingly, we request that the Chief provide comments on the final report.

As noted previously, we revised the recommendation based on the Chief's comments on the documentation requirement.

Department of the Air Force Comments. The Department of the Air Force provided draft report comments signed by the Assistant Secretary of the Air Force (Acquisition) (Assistant Secretary). The Assistant Secretary concurred with the recommendation and stated,

Air Force Contracting along with Air Force Finance have formed a working group to address [the recommendation] and other issues with interagency contracts to find ways to ensure better compliance with current policies. The Working group will recommend that the current certification be reemphasized as a determination and finding signed by the requirements official. For acquisition of services, the Services Designated Official will sign the D&F [determination and finding].

The Assistant Secretary estimates that working group's date of completion will be December 2006.

Audit Response. Because the Assistant Secretary only indicates that the requirements official must sign the certification, her comments do not fully meet the intent of the recommendation. We believe that the contracting officer should also sign the certification document, because it is the responsibility of the contracting officer to determine the best contract and contractor to meet a requirement. We request that the Assistant Secretary reconsider her comments and also require contracting officers to sign the certification. Accordingly, we request that the Assistant Secretary provide comments on the final report.

Defense Information Systems Agency Comments. The Defense Information Systems Agency (DISA) provided draft report comments signed by the Director for Procurement, Chief of the Defense Information Technology Contracting Organization (Director of DITCO Procurement). The Director of DITCO Procurement concurred with the recommendation. On July 22, 2005, and January 20, 2006, the DISA Vice Director issued a memorandum titled, "Proper Use of Non-DoD Contracts," which addressed both direct acquisitions and assisted acquisitions of supplies or services. The memorandum also incorporated a requirements official's checklist for use of non-DoD contracts, in place of a determination and finding, to validate the use of a non-DoD contract and document that appropriate funding was used. The Director of DITCO Procurement stated that DISA will modify its checklist to include more detail. The proposed implementation date is first quarter of FY 2007.

Office of the Under Secretary of Defense for Acquisition, Technology, and Logistics Comments. Although not required to comment on Recommendation 1.a., the Office of the Under Secretary of Defense for Acquisition, Technology, and Logistics [USD(AT&L)] provided comments signed by the Director of Defense Procurement and Acquisition Policy (Director of Defense Procurement). The Director of Defense Procurement stated that DoD is currently reviewing all courses to ensure that the subjects included in the recommendation are covered properly. The Director of Defense Procurement also stated that the Defense Acquisition University may play a role in developing appropriate course materials.

Audit Response. We commend USD(AT&L) for taking a proactive role in ensuring that training courses contain the subjects discussed in the recommendation.

b. Develop a training course that instructs contracting and other program office personnel on proper acquisition planning and contract administration for direct acquisitions. The course should also emphasize the bona fide needs rule and appropriations law.

Department of the Navy Comments. The Chief partially concurred. The Chief stated that it would be counterproductive for the Navy, Army, and Air Force to develop component-centric training on the proper use of interagency acquisitions. In addition, the Chief stated that the Navy was participating in an “OSD [Office of the Secretary of Defense] sponsored inter-component working group to provide comprehensive guidance on proper use of interagency acquisition.” One of the objectives of the working group was to recommend that DoD establish a DoD-wide training course on interagency acquisitions.

Audit Response. The comments meet the intent of our recommendation. However, we do not believe that component-centric training on the proper use of interagency acquisitions would be counterproductive, because each component developed different procedures and requirements for justifying the use of a non-DoD contract, as was required by Defense Federal Acquisition Regulation Supplement 217.7802. The training, whether component-centric or DoD-wide, should emphasize the procedures for proper use of non-DoD contracts, Federal Acquisition Regulation guidelines for the types of non-DoD contracts used, the purpose statute, the bona fide needs rule, and appropriations law. No further comments are necessary.

Department of the Air Force Comments. The Assistant Secretary concurred with our recommendation and stated that an Air Force Contracting and Financial Management working group will “produce a guidebook. . .that will give step-by-step procedures. . .on how to prepare and execute interagency acquisitions, both directed and assisted, focused toward program and project managers.” The guidebook will “highlight bona fide needs rule and Antideficiency Act requirements.” In addition, “the working group will address compliance with appropriations law for financial managers.”

Audit Response. Because procedures for contracting officers are not addressed, the comments do not fully meet the intent of our recommendation. Although we

commend the Air Force for developing a comprehensive guidebook, the guidebook should also address procedures for contracting officers, because contract execution falls under the purview of the contracting officer. We request the Assistant Secretary reconsider the Air Force's comments and add contracting officer procedures to the guidebook. Accordingly, we request the Assistant Secretary provide comments on the final report.

DISA Comments. The Director of DITCO Procurement concurred with the recommendation. The Director of DITCO Procurement stated, "DISA recognized the need for training regarding the use of non-DoD contracts and provided Economy Act D&F [determination and finding] training on March 16, 2004." DISA will provide additional Economy Act training, which will specifically address direct acquisitions, appropriation law, and the bona fide needs rule. The proposed implementation date is the first quarter of FY 2007.

Audit Response. Because the training is limited to non-DoD contracts that are governed by the Economy Act, the comments do not fully meet the intent of the recommendation. We commend management for providing additional training. However, the training should not be limited to non-DoD contracts that are governed by the Economy Act. This report addresses the National Aeronautics and Space Administration's Scientific and Engineering Workstation Procurement contracts, which are not governed by the Economy Act but still require justification for their use, as prescribed in Defense Federal Acquisition Regulation Supplement 217.7802. In addition, DISA should train contracting officers on the agency's policy for using non-DoD contracts so the contracting officers can effectively execute the policy. We request the Director of DITCO Procurement reconsider the DISA training plan and training on the use of non-DoD contracts that are not governed by the Economy Act and on procedures to properly execute the DISA policy for using non-DoD contracts. Accordingly, we request the Director provide comments on the final report.

2. We recommend that Under Secretary of Defense for Acquisition, Technology, and Logistics:

a. Disseminate a memorandum to all DoD contracting offices to reemphasize the following:

(1) That contracting officials are responsible for knowing and adhering to the regulations for different contract types, including single-award contracts, multiple-award contracts, and Federal supply schedules.

Office of USD(AT&L) Comments. The Director of Defense Procurement concurred with the recommendation. The Director of Defense Procurement stated that DoD will issue a policy memorandum emphasizing competition requirements when using non-DoD contracts. The Director of Defense Procurement plans to issue the policy memorandum on November 15, 2006.

(2) Although the prices obtained on the National Aeronautics and Space Administration Scientific and Engineering Workstation Procurement contracts are considered fair and reasonable, contract holders are permitted to charge less than the list price. Therefore, contracting

officers should seek discounts when awarding orders on the single-award contracts.

Office of USD(AT&L) Comments. The Director of Defense Procurement concurred with the recommendation. The Director of Defense Procurement is coordinating with the National Aeronautics and Space Administration to add language to the Web site for the Scientific and Engineering Workstation Procurement contracts encouraging DoD contracting officers to seek discounts when using the contracts.

(3) Contracting officers are required to follow Federal Acquisition Regulation 16.505 when placing orders on multiple-award contracts. Contracting officers must provide a fair opportunity to all contractors in a multiple-award contract.

Office of USD(AT&L) Comments. The Director of Defense Procurement concurred with the recommendation. The Director of Defense Procurement stated that DoD will issue a policy memorandum emphasizing competition requirements, including fair opportunity, when using non-DoD contracts. The Director of Defense Procurement plans to issue the policy memorandum on November 15, 2006.

(4) Federal Acquisition Regulation Subpart 8.4 applies *only* to the General Services Administration Federal supply schedule and certain Department of Veterans Affairs Federal supply schedules, to which General Services Administration delegated the authority for Department of Veterans Affairs to procure medical supplies.

Office of USD(AT&L) Comments. The Director of Defense Procurement concurred with the recommendation. The Director of Defense Procurement stated that DoD will issue a policy memorandum emphasizing that Federal Acquisition Regulation Subpart 8.4 does not apply to acquisition placed under the National Aeronautics and Space Administration Scientific and Engineering Workstation Procurement contracts. The Director of Defense Procurement plans to issue the policy memorandum on November 15, 2006.

(5) Federal Acquisition Regulation 4.8 and 16.505 require the contract files to contain award selection documents that explain the basis for award.

Office of USD(AT&L) Comments. The Director of Defense Procurement concurred with the recommendation. The Director of Defense Procurement stated that DoD will issue a policy memorandum emphasizing the requirement to document in the contract file the basis for contract award when using non-DoD contracts. The Director of Defense Procurement plans to issue the policy memorandum on November 15, 2006.

b. Require DoD organizations that use the National Aeronautics and Space Administration Scientific and Engineering Workstation Procurement contracts to take the free training provided by the National Aeronautics and Space Administration.

Office of USD(AT&L) Comments. The Director of Defense Procurement partially concurred with the recommendation. The Director of Defense Procurement stated that DoD will encourage DoD users of the Scientific and Engineering Workstation Procurement contracts to take full advantage of training provided by the National Aeronautics and Space Administration. DoD will provide language on the contracts' Web site endorsing the training. The Director of Defense Procurement plans to add the language to the Web site by October 25, 2006.

Audit Response. Although the Director of Defense Procurement only partially concurred, his comments meet the intent of the recommendation. On November 7, 2006, we reviewed the National Aeronautics and Space Administration Scientific and Engineering Workstation Procurement contracts' Web site and noted that the DoD language was added to the Web site.

c. Require contracting officers to use the National Aeronautics and Space Administration Scientific and Engineering Workstation Procurement on-line tool when requesting quotes because the tool aids contracting officers in providing fair opportunity, and instruct contracting officers that they should not deselect contractors that the on-line tool automatically chooses unless one of the exceptions to fair opportunity is documented.

Office of USD(AT&L) Comments. The Director of Defense Procurement partially concurred with the recommendation. The Director of Defense Procurement stated that DoD will encourage DoD users of the Scientific and Engineering Workstation Procurement contracts to fully use the Web site's on-line quote tool by adding language to the contracts' Web site.

Audit Response. Although the Director of Defense Procurement only partially concurred, his comments meet the intent of the recommendation.

Appendix A. Scope and Methodology

We performed the audit in accordance with the National Defense Authorization Act for FY 2006. We reviewed DoD use of the National Aeronautics and Space Administration (NASA) Scientific and Engineering Workstation Procurement (SEWP) contracts, which consisted of 26 contracts. The NASA SEWP contracts were separated into 9 groupings, known as “classes,” and a group of 8(a) set-asides. There were four single-awards classes, each containing one single-award contract; five multiple-award classes, consisting of 16 vendors on 19 contracts; and three 8(a) set-aside contracts. The NASA SEWP contracts provide Government agencies access to information technology products and services.

We did not conduct the review jointly with NASA Office of the Inspector General (OIG) because DoD contracting officials made all award decisions, and funds for those purchases remained within DoD. The NASA OIG provided us with a list of all FY 2005 transactions made by DoD through the NASA SEWP contracts, as of October 11, 2005. The list included 6,569 actions, valued at approximately \$343.2 million. We used the DoD activity address codes to identify which DoD agency’s contracting office awarded the orders. Of the total actions, 2,841 actions valued at \$302.6 million had an identifiable DoD activity address code.

We organized the 2,841 actions, awarded by 238 DoD contracting offices, valued at \$302.6 million by DoD activity address code. Of the 238, we then determined the ten highest (dollar value) DoD contracting offices, and we selected six to visit. These 6 contracting offices awarded approximately \$155.8 million, or 51 percent of the identifiable orders. We visited the 6 contracting offices from September 2005 through January 2006. At the 6 contracting offices, we reviewed 111 orders and respective modifications totaling approximately \$85.9 million, which was 28 percent of the total dollar value of identifiable orders.

We reviewed 111 order files maintained by the DoD contracting offices to determine whether:

- the contracting officer or program official adequately justified that the use of a non-DoD contract for purchases awarded after January 1, 2005, and with values greater than the simplified acquisition threshold of \$100,000 was in the best interest of DoD;
- fair opportunity was provided to the multiple-award contractors in accordance with Federal Acquisition Regulation 16.505, which requires the contracting officer to provide a fair opportunity to all contractors within a class or to document why fair opportunity was not provided;
- the award documentation within the file was adequate, by determining if an award document was prepared and if the document sufficiently described the basis for award;
- the appropriate fund type was chosen in accordance with the DoD Financial Management Regulation, Volume 2A, chapter 1; and

-
- DoD had a bona fide need for the requirement and whether it was for the fiscal year that financed the requirement.

We interviewed contracting officers, contracting specialists, program personnel, and financial and accounting personnel involved in the procurement process.

We performed this audit from August 2005 to July 2006 in accordance with generally accepted government auditing standards.

Use of Computer-Processed Data. The NASA OIG provided a list of all orders awarded by DoD using NASA SEWP contracts. The data included the award amount, the date of the transaction, the order number, the NASA SEWP contract number, the Military Department, and the SEWP contractor. We did not perform a reliability assessment of the data NASA provided. However, we did not find any discrepancies in the data provided for the 111 orders reviewed.

Government Accountability Office High-Risk Area. The Government Accountability Office has identified several high-risk areas in DoD. This report provides coverage of the high-risk area “DoD Contract Management” and “Management of Interagency Contracting.”

Appendix B. Prior Coverage

During the last 5 years, the Government Accountability Office (GAO), DoD Inspector General (IG), Army Audit Agency, and Air Force Audit Agency have issued 17 reports discussing interagency and information technology contracting. Unrestricted reports can be accessed over the Internet: GAO, <http://www.gao.gov>; DoD IG, <http://www.dodig.mil/audit/reports>; Army, <http://www.hqda.army.mil>; and Air Force, <http://www.afaahq.af.mil>.

GAO

GAO Report No. GAO-06-996, “Interagency Contracting: Improved Guidance, Planning, and Oversight Would Enable the Department of Homeland Security to Address Risks,” September 2006

GAO Report No. GAO-05-456, “Interagency Contracting: Franchise Funds Provide Convenience, but Value to DoD is Not Demonstrated,” July 2005

GAO Report No. GAO-05-274, “Contract Management: Opportunities to Improve Surveillance on Department of Defense Service Contracts,” March 2005

GAO Report No. GAO-05-207, “High-Risk Series: An Update,” January 2005

GAO Report No. GAO-03-1069, “Budget Issues: Franchise Fund Pilot Review,” August 2003

GAO Report No. GAO-02-734, “Contract Management: Interagency Contract Program Fees Need More Oversight,” July 2002

DoD IG

DoD IG Report No. D-2006-029, “Report on Potential Antideficiency Act Violations Identified During the Audit of the Acquisition of the Pacific Mobile Emergency Radio System,” November 23, 2005

DoD IG Report No. D-2005-096, “DoD Purchases Made Through the General Services Administration,” July 29, 2005

DoD IG Report No. D-2005-003, “DoD Antideficiency Act Reporting and Disciplinary Process,” October 14, 2004

DoD IG Report No. D-2004-084, “Antideficiency Act Investigation of the Research, Development, Test and Evaluation, Defense-Wide, Appropriation Account 97 FY 1989/1990 0400,” May 28, 2004

DoD IG Report No. D-2003-090, “Use and Control of Military Interdepartmental Purchase Requests at the Air Force Pentagon Communications Agency,” May 13, 2003

DoD IG Report No. D-2002-110, “Policies and Procedures for Military Interdepartmental Purchase Requests at Washington Headquarters Services,” June 19, 2002

DoD IG Report No. D-2002-109, “Army Claims Service Military Interdepartmental Purchase Requests,” June 19, 2002

DoD IG Report No. D-2001-189, “Multiple Award Contracts for Services,” September 30, 2001

Army Audit Agency

Army Audit Agency Report No. A-2004-0244-FFB, “Information Technology Agency Contract Management,” May 25, 2004

Army Audit Agency Report No. A-2002-0536-IMU, “Military Interdepartmental Purchase Requests Logistics Assistance Group—Europe,” August 21, 2002

Air Force Audit Agency

Air Force Audit Agency Report No. F2005-0006-FBP000, “GSA Military Interdepartmental Purchase Requests, 353rd Special Operations Group, Kadena AB, Japan,” November 10, 2004

Air Force Audit Agency Report No. F2004-0046-FBP000, “GSA Military Interdepartmental Purchase Requests, 390th Intelligence Squadron, Kadena AB, Japan,” August 11, 2004

Appendix C. NASA Scientific and Engineering Workstation Procurement Contractors

Class 1 - Single-award	Hewlett-Packard Development Company, L.P.
Class 2 - Single-award	GTSI Corporation (Sun Microsystems products)
Class 4 - Single-award	International Business Machines (IBM) Corporation
Class 5 - Single-award	Silicon Graphics, Inc.
Class 6 - Multiple-award	Government Micro Resources (Cray products) Hewlett-Packard Development Company, L.P. (Compaq products) Silicon Graphics, Inc.
Class 10 - Multiple-award	FCN Technology Solutions Intelligent Decisions
Class 11 - Multiple-award	GTSI Corporation Northrop Grumman Information Technology Unisys
Class 12 - Multiple-award	DLT Solutions, Inc. World Wide Technology, Inc. iGov CounterTrade Products, Inc. Intelligent Decisions CDW Government, Inc. Technica Corporation Sword and Shield Enterprise Security, Inc.
Class 13 - Multiple-award	Government Micro Resources, Inc. GTSI Corporation Northrop Grumman Information Technology
8(a) Set-asides	MIRATEK Corporation Eyak Technology, LLC psi technology, doing business as Petrosys Solutions, Inc.

Appendix D. Multiple-Award Contract Problems Identified

Order Number	Inadequate or No Justification	Fair Opportunity Not Provided	Inadequate Award Documentation
Space and Naval Warfare Systems Center Charleston			
N65236-05-F-0251	Not Applicable	•	•
N65236-05-F-0792	•	•	•
N65236-05-F-1871	•	•	•
N65236-05-F-1883	•	•	•
N65236-05-F-2404	•	•	•
N65236-05-F-3017	•	•	•
N65236-05-F-3065	•	•	•
N65236-05-F-4145	•		
N65236-05-F-4150	•	•	
N65236-05-F-4151	•	•	
N65236-05-F-4258	•	•	
N65236-05-F-8070	•		
N65236-05-F-8114	•		
N65236-05-F-9314	Not Applicable	•	•
N65236-05-F-9315	Not Applicable	•	•
N65236-05-F-9316	Not Applicable	•	•
N65236-05-F-9535	•	•	•
N65236-05-F-9543	•	•	•
N65236-05-F-9560	•	•	•
Space and Naval Warfare Systems Center San Diego			
N66001-05-F-G057	Not Applicable		
N66001-05-F-G076	Not Applicable		
N66001-05-F-K086	Not Applicable	•	
N66001-05-F-L003	Not Applicable	•	
N66001-05-F-L021	Not Applicable	•	
N66001-05-F-L034	Not Applicable	•	
N66001-05-F-N083	Not Applicable	•	
N66001-05-F-N092	Not Applicable	•	
N66001-05-F-P077	•	•	

Appendix D. Multiple-Award Contract Problems Identified (cont'd)

Order Number	Inadequate or No Justification	Fair Opportunity Not Provided	Inadequate Award Documentation
Space and Naval Warfare Systems Center San Diego (cont'd)			
N66001-05-F-P196	•		
N66001-05-F-P205	•		
N66001-05-F-Q055	Not Applicable		
N66001-05-F-Q128	•	•	
N66001-05-F-Q174	Not Applicable		
N66001-05-F-R614	•		
N66001-05-F-V083	Not Applicable	•	
N66001-05-F-W008	Not Applicable	•	
N66001-05-F-W009	Not Applicable	•	•
N66001-05-F-W015	•	•	
N66001-05-F-Y050	Not Applicable	•	
N66001-05-F-Y116	Not Applicable		
N66001-05-F-Z040	•	•	
N66001-05-F-Z089	Not Applicable		
N66001-05-F-Z092	Not Applicable	•	
6th Contracting Squadron, MacDill Air Force Base			
FA4814-05-F-A140	•	•	•
FA4814-05-F-A154	•	•	
FA4814-05-F-A214	•	•	•
FA4814-05-F-A284	•	•	•
FA4814-05-F-A299	•	•	
FA4814-05-F-A456	•		
FA4814-05-F-A717	•		•
FA4814-05-F-A731	•	•	
FA4814-05-F-A814	•	•	
FA4814-05-F-A860	•		•
FA4814-05-F-A863	Not Applicable	•	•
FA4814-05-F-A895	•	•	•
FA4814-05-F-A917	Not Applicable	•	•

Appendix D. Multiple-Award Contract Problems Identified (cont'd)

Order Number	Inadequate or No Justification	Fair Opportunity Not Provided	Inadequate Award Documentation
Electronic Systems Center, Hanscom Air Force Base			
FA8706-05-F-0003	•	•	
FA8706-05-F-0005	•	•	
FA8706-05-F-0008	•	•	
FA8706-05-F-0012	•	•	
FA8706-05-F-0014	•	•	
FA8706-05-F-0016	•		
FA8706-05-F-0018	•		
FA8707-05-F-0031	•	•	•
FA8720-05-F-0001	Not Applicable	•	
FA8720-05-F-0006	Not Applicable	•	
FA8720-05-F-0007	Not Applicable	•	
FA8720-05-F-0008	•	•	
FA8720-05-F-0010	Not Applicable	•	
FA8720-05-F-0016	•	•	
FA8720-05-F-0017	Not Applicable	•	
FA8720-05-F-8008	•	•	
FA8720-05-F-8010	•	•	
FA8720-05-F-8011	•		
FA8726-05-F-0001	Not Applicable		
FA8726-05-F-0003	•		
Defense Information Technology Contracting Office National Capital Region			
HC1047-05-F-4075	Not Applicable	•	
HC1047-05-F-4081	Not Applicable	•	
HC1047-05-F-4177	•	•	
HC1047-05-F-4184	•		
HC1047-05-F-4192	•		
HC1047-05-F-4223	•		
HC1047-05-F-4313	•		•

Appendix D. Multiple-Award Contract Problems Identified (cont'd)

Order Number	Inadequate or No Justification	Fair Opportunity Not Provided	Inadequate Award Documentation
Defense Information Technology Contracting Office National Capital Region (cont'd)			
HC1047-05-F-4538	•		
HC1047-05-F-4552	•	•	
Defense Information Technology Contracting Office, Scott Air Force Base			
HC1013-05-F-2037	Not Applicable	•	
HC1013-05-F-2043	Not Applicable	•	
HC1013-05-F-2167	•		
HC1013-05-F-2802	•		
HC1013-05-F-2810	•		
HC1013-05-F-2884	•		
HC1013-05-F-2897	•		
HC1013-05-F-2922	•	•	
HC1013-05-F-2999	•	•	
HC1013-05-F-2967	•	•	
HC1013-05-F-3006	•	•	•
HC1013-05-F-3017	•	•	

Appendix E. Single-Award Contract Problems Identified

Order Number	Inadequate or No Justification	Fair Opportunity Not Provided	Inadequate Award Documentation	No Evidence of Discounts
Space and Naval Warfare Systems Center Charleston				
N65236-05-F-4206	•	Not Applicable		
Space and Naval Warfare Systems Center San Diego				
N66001-05-F-E012	Not Applicable	Not Applicable		•
N66001-05-F-E152	Not Applicable	Not Applicable		•
N66001-05-F-M034	Not Applicable	Not Applicable		
N66001-05-F-N049	•	Not Applicable		
N66001-05-F-Q044	Not Applicable	Not Applicable		
N66001-05-F-Q056	Not Applicable	•		
N66001-05-F-Y128	Not Applicable			
N66001-05-F-Z025	Not Applicable	Not Applicable		
Defense Information Technology Contracting Office National Capital Region				
HC1047-05-F-4561	•		•	
Defense Information Technology Contracting Office, Scott Air Force Base				
HC1013-05-F-2248	•	Not Applicable		•
HC1013-05-F-2848	•	Not Applicable		
HC1013-05-F-2927	•	Not Applicable		
HC1013-05-F-2929	•	•		

Appendix F. Potential Antideficiency Act Violations

We identified 14 potential Antideficiency Act violations. Recommendations for the Under Secretary of Defense (Comptroller)/Chief Financial Officer to initiate preliminary reviews regarding those potential violations are in the audit report, "Potential Antideficiency Act Violations on DoD Purchases Made Through Non-DoD Agencies," due out in FY 2007.

Navy

1. **Order N66001-05-F-Q174.** A potential bona fide needs rule violation occurred when a DoD contracting officer awarded order N66001-05-F-Q174 for various computer hardware, such as workgroup switches. The value of this order was \$64,271. The order was funded with FY 2005 Navy operations and maintenance (O&M) funds. The contracting officer awarded the order on September 19, 2005, and scheduled delivery for October 7, 2005. The goods were received from October 26 through December 27, 2005. Therefore, the goods did not represent a bona fide need in FY 2005. The receipt of goods after the DoD appropriation expired could not be justified by production lead-time or unforeseen delays. Use of FY 2005 O&M funds to satisfy FY 2006 requirements does not meet the intent of the bona fide needs rule. This order was funded by the Office of Naval Intelligence and the Joint Systems Integration Command.

Air Force

2. **Order HC1047-05-F-4552.** Potential bona fide needs rule and purpose statute violations occurred when a DoD contracting officer awarded order HC1047-05-F-4552 for information technology hardware and software. The value of the order was \$983,878. The order was awarded using FY 2005 Air Force O&M funds. Because the order exceeded \$250,000, the order should have been considered an investment rather than an expense, and procurement funds should have been used. The contracting officer awarded the order on September 28, 2005, and scheduled delivery for October 28, 2005. The goods were received on November 4, 2005. Therefore, the goods did not represent a bona fide need in FY 2005. The receipt of goods after the DoD appropriation expired could not be justified by production lead-time or unforeseen delays. Use of FY 2005 O&M funds to satisfy FY 2006 requirements does not meet the intent of the bona fide needs rule. This order was funded by the Assistant Secretary of the Air Force (Financial Management and Comptroller), Budget Management and Execution, Special Programs Office.

United States Central Command

- 3. Order FA4814-05-F-A731.** Potential bona fide needs rule and purpose statute violations occurred when a DoD contracting officer awarded order FA4814-05-F-A731 for Host Base Intrusion Detection System Components. The value of the order was \$507,271. This order was funded with FY 2005 Air Force O&M funds. Because the order was more than \$250,000, it should have been considered an investment rather than an expense, and procurement funds should have been used. The contracting officer awarded the order on September 9, 2005, and scheduled delivery for October 11, 2005. Some of the goods were not delivered until October 17, 2005. Therefore, the goods did not represent a bona fide need in FY 2005. The receipt of goods after the DoD appropriation expired could not be justified by production lead-time or unforeseen delays. Use of FY 2005 O&M funds to satisfy FY 2006 requirements does not meet the intent of the bona fide needs rule. This order was funded by United States Central Command.
- 4. Order FA4814-05-F-A814.** Potential bona fide needs rule and purpose statute violations occurred when a DoD contracting officer awarded order FA4814-05-F-A814 for \$758,442. The order purchased computer equipment, such as the Gateway E6300 personal computer. This order was funded with FY 2005 Air Force O&M funds. Because the order was more than \$250,000, it should have been considered an investment rather than an expense, and procurement funds should have been used. The contracting officer awarded the order on September 19, 2005, and scheduled delivery for October 19, 2005. The goods were delivered November 3, 2005. Therefore, the goods did not represent a bona fide need in FY 2005. The receipt of goods after the DoD appropriation expired could not be justified by production lead-time or unforeseen delays. Use of FY 2005 O&M funds to satisfy FY 2006 requirements does not meet the intent of the bona fide needs rule. This order was funded by United States Central Command.
- 5. Order FA4814-05-F-A863.** A potential bona fide needs rule violation occurred when a DoD contracting officer awarded order FA4814-05-F-A863 for various computer equipment. The value of the order was \$46,854. The order was funded with FY 2005 Air Force O&M funds. The contracting officer awarded the order on September 22, 2005, and scheduled delivery for November 4, 2005. The goods were delivered on December 13, 2005. Therefore, the goods did not represent a bona fide need in FY 2005. The receipt of goods after the DoD appropriation expired could not be justified by production lead-time or unforeseen delays. Use of FY 2005 O&M funds to satisfy FY 2006 requirements does not meet the intent of the bona fide needs rule. This order was funded by United States Central Command.

United States Special Operations Command

- 6. Order FA4814-05-F-A154.** A potential purpose statute violation occurred when a DoD contracting officer awarded order FA4814-05-F-A154 for a file

storage and server system. The value of the order was \$738,383. This order was funded with FY 2005 Defense-wide O&M funds. Because the order was more than \$250,000, it should have been considered an investment rather than an expense, and procurement funds should have been used. This order was funded by United States Special Operations Command.

7. **Order FA4814-05-F-A717.** A potential bona fide needs rule violation occurred when a DoD contracting officer awarded order FA4814-05-F-A717 for software. The value of the order was \$159,501. The order was funded with FY 2005 Defense-wide O&M funds. The contracting officer awarded the order on September 8, 2005, and scheduled delivery for October 8, 2005. The goods were delivered on October 7, 2005. Therefore, the goods did not represent a bona fide need in FY 2005. The receipt of goods after the DoD appropriation expired could not be justified by production lead-time or unforeseen delays. Use of FY 2005 O&M funds to satisfy FY 2006 requirements does not meet the intent of the bona fide needs rule. This order was funded by the National Geospatial Intelligence Agency through United States Special Operations Command.
8. **Order FA4814-05-F-A860.** A potential bona fide needs rule violation occurred when a DoD contracting officer awarded order FA4814-05-F-A860 for a server. The value of the order was \$105,997. The order was funded with FY 2005 Defense-wide O&M funds. The contracting officer awarded the order on September 20, 2005, and scheduled delivery for October 20, 2005. The goods were delivered on October 4, 2005. Therefore, the goods did not represent a bona fide need in FY 2005. The receipt of goods after the DoD appropriation expired could not be justified by production lead-time or unforeseen delays. Use of FY 2005 O&M funds to satisfy FY 2006 requirements does not meet the intent of the bona fide needs rule. This order was funded by United States Special Operations Command.
9. **Order FA4814-05-F-A895.** A potential bona fide needs rule violation occurred when a DoD contracting officer awarded order FA4814-05-F-A895 for computer hardware, software, and licenses. The value of the order was \$479,630. This order was funded with FY 2005 Defense-wide O&M funds. Although the \$479,630 order amount is greater than the \$250,000 threshold for O&M funds, the goods were not part of an overall system. Therefore, the threshold applies on a per item basis. Because no individual item had a cost greater than \$250,000, the order does not violate the purpose statute. The contracting officer awarded the order on September 22, 2005, and scheduled delivery for October 22, 2005. The goods were delivered through November 8, 2005. Therefore, the goods did not represent a bona fide need in FY 2005. The receipt of goods after the DoD appropriation expired could not be justified by production lead-time or unforeseen delays. Use of FY 2005 O&M funds to satisfy FY 2006 requirements does not meet the intent of the bona fide needs rule. This order was funded by United States Special Operations Command.
10. **Order FA4814-05-F-A917.** A potential bona fide needs rule violation occurred when a DoD contracting officer awarded order FA4814-05-F-A917 for graphic hardware. The value of the order was \$31,810. The order was

funded with FY 2005 Air Force O&M funds. The contracting officer awarded the order on September 26, 2005, and scheduled delivery for October 24, 2005. The goods were received on December 7, 2005. Therefore, the goods did not represent a bona fide need in FY 2005. The receipt of goods after the DoD appropriation expired could not be justified by production lead-time or unforeseen delays. Use of FY 2005 O&M funds to satisfy FY 2006 requirements does not meet the intent of the bona fide needs rule. This order was funded by United States Special Operations Command.

Defense Information Systems Agency

- 11. Order HC1013-05-F-2810.** Potential bona fide needs rule and purpose statute violations occurred when a DoD contracting officer awarded order HC1013-05-F-2810 for Standardized Tactical Entry Point Information Assurance Tools, which included assorted hardware and software. The value of the order was \$4,149,461. The order was funded with FY 2005 Defense-wide O&M funds. Because the order was more than \$250,000, it should have been considered an investment rather than an expense, and procurement funds should have been used. The contracting officer awarded the order on August 25, 2005, with a scheduled delivery for 21 days from award, September 15, 2005. However, the goods were received on November 15, 2005. As a result, the goods did not represent a bona fide need in FY 2005. The receipt of goods after the DoD appropriation expired could not be justified because standard commercial off-the-shelf items are readily available from other sources. The order was competed among all 8 NASA SEWP vendors in class 12. Use of FY 2005 O&M funds to satisfy FY 2006 requirements does not meet the intent of the bona fide needs rule. This order was funded by the Defense Information Systems Agency.
- 12. Order HC1047-05-F-4561.** A potential bona fide needs rule violation occurred when a DoD contracting officer awarded order HC1047-05-F-4561 for a Sun database server. The value of the order was \$115,829. The order was funded with FY 2005 Defense-wide O&M funds. The contracting officer awarded the order on September 30, 2005, and scheduled delivery for November 1, 2005. The server was delivered on October 27, 2005. Therefore, the server did not represent a bona fide need in FY 2005. The receipt of goods after the DoD appropriation expired could not be justified by production lead-time or unforeseen delays. Use of FY 2005 O&M funds to satisfy FY 2006 requirements does not meet the intent of the bona fide needs rule. This order was funded by the Defense Information Systems Agency.

Defense Security Service

- 13. Order HC1013-05-F-2848.** A potential purpose statute violation occurred when a DoD contracting officer awarded order HC1013-05-F-2848 for a 3-year lease of Sun equipment and other miscellaneous equipment. The value of the order was \$10,918,072. This order was funded with FY 2005 Defense-

wide O&M funds. Because the order was more than \$250,000, it should have been considered an investment rather than an expense, and procurement funds should have been used. This order was funded by the Defense Security Service.

Counterintelligence Field Activity

14. Order HC1013-05-F-3006. A potential bona fide needs rule violation occurred when a DoD contracting officer awarded order HC1013-05-F-3006 for licenses, maintenance, and technical support services. The value of the order was \$500,000. The order was funded with FY 2005 O&M funds. Although the \$500,000 order amount is greater than the \$250,000 threshold for O&M funds, according to Counterintelligence Field Activity personnel, Congress designated these O&M funds for use on this project. The contracting officer awarded the order on September 21, 2005, and did not schedule a delivery date. The goods were delivered on January 6, 2006, more than 3 months after the end of FY 2005. Therefore, the goods did not represent a bona fide need in FY 2005. The receipt of goods after the DoD appropriation expired could not be justified because of production lead-time or unforeseen delays. This order also included severable services that commenced December 13, 2005. Thus, the services also did not represent a bona fide need in FY 2005. Use of FY 2005 O&M funds to satisfy FY 2006 requirements does not meet the intent of the bona fide needs rule. The Counterintelligence Field Activity funded this order.

Appendix G. Report Distribution

Office of the Secretary of Defense

Under Secretary of Defense for Acquisition, Technology, and Logistics
 Director, Acquisition Resources and Analysis
 Director, Defense Procurement and Acquisition Policy
Under Secretary of Defense (Comptroller)/Chief Financial Officer
 Deputy Chief Financial Officer
 Deputy Comptroller (Program/Budget)
Director, Program Analysis and Evaluation

Department of the Army

Assistant Secretary of the Army (Financial Management and Comptroller)
Army Inspector General
Auditor General, Department of the Army

Department of the Navy

Assistant Secretary of the Navy (Manpower and Reserve Affairs)
Naval Inspector General
Auditor General, Department of the Navy
Commander, Space and Naval Warfare Systems Command
Commander, Space and Naval Warfare Systems Center San Diego
Commander, Space and Naval Warfare Systems Center Charleston

Department of the Air Force

Assistant Secretary of the Air Force (Financial Management and Comptroller)
Auditor General, Department of the Air Force
Commander, Electronics System Center Headquarters

Combatant Commands

Inspector General, U.S. Joint Forces Command

Other Defense Organizations

Director, Defense Information Systems Agency Headquarters
 Director, Component Acquisition Executive Office
 Director, Defense Information Technology Contracting Office National Capital
 Region
 Director, Defense Information Technology Contracting Office, Scott Air Force
 Base

Non-Defense Federal Organization

Office of Management and Budget
Inspector General, National Aeronautics and Space Administration

Congressional Committees and Subcommittees, Chairman and Ranking Minority Member

Senate Committee on Appropriations
Senate Subcommittee on Defense, Committee on Appropriations
Senate Committee on Armed Services
Senate Committee on Homeland Security and Governmental Affairs
House Committee on Appropriations
House Subcommittee on Defense, Committee on Appropriations
House Committee on Armed Services
House Committee on Government Reform
House Subcommittee on Government Management, Finance, and Accountability,
Committee on Government Reform
House Subcommittee on National Security, Emerging Threats, and International
Relations, Committee on Government Reform

Office of the Under Secretary of Defense for Acquisition, Technology, and Logistics Comments



ACQUISITION,
TECHNOLOGY
AND LOGISTICS

OFFICE OF THE UNDER SECRETARY OF DEFENSE

3000 DEFENSE PENTAGON
WASHINGTON, DC 20301-3000

OCT 16 2006

MEMORANDUM FOR DEPUTY DIRECTOR, CONTRACT MANAGEMENT
DIRECTORATE, DODIG

THROUGH: DIRECTOR, ACQUISITION RESOURCES AND ANALYSIS

SUBJECT: Response to DoDIG Draft Audit Report on FY 2005 DoD Purchases Made
Through the National Aeronautics and Space Administration (NASA)
(Project No. D2005-D000CF-0273.000)

As requested, I am providing responses to the recommendations directed to the Under Secretary of Defense for Acquisition, Technology, and Logistics, contained in the subject report.

General Content:

The Department wishes to thank you for this report and to advise you of our plan of action with regard to addressing the report findings and other areas of shared concern with regard to the Department's use of NASA's Space Administration Scientific and Engineering Workstation Procurement (SEWP) contract. I concur with your general comments that better acquisition planning, discipline and oversight are required in the area of interagency acquisition.

Recommendations:

DoDIG Recommendation 1: We recommend that the Acquisition Executives for the Navy, Air Force, and Defense Information Systems Agency:

- b. Develop a training course that instructs contracting and other program office personnel on proper acquisition planning and contract administration for assisted acquisitions. The course should also emphasize the bona fide needs rule and appropriations law.

DoD response: Concur. Although this recommendation was directed to the Acquisition Executives of the Navy, Air Force and the Defense Information Systems Agency, the Department is currently reviewing its curriculum in all courses to ensure that the subject topics included in the recommendation are covered properly. Under the leadership of the



Defense Acquisition University, where necessary, we will develop appropriate course materials in these subject areas.

DoDIG Recommendation 2. We recommend that Under Secretary of Defense for Acquisition, Technology, and Logistics:

a. Disseminate a memorandum to all DoD contracting offices to reemphasize the following:

(1) That contracting officials are responsible for knowing and adhering to the regulations for different contract types, including single-award contracts, multiple-award contracts, and Federal supply schedules.

DoD Response: Concur. The Department will issue a policy memo emphasizing competition requirements when utilizing non-DoD contracts to meet Department needs. The expected date for the policy memorandum is November 15, 2006.

(2) Although the prices obtained on the National Aeronautics and Space Administration Scientific and Engineering Workstation Procurement contracts are considered fair and reasonable, contract holders are permitted to charge less than the list price. Therefore, contracting officers should seek discounts when awarding orders on the single-award contracts.

DoD Response: Concur. The Department, in coordination with NASA, will include language to be placed on the NASA SEWP contract website that encourages DoD contracting officers to properly seek discounts when utilizing the NASA SEWP contract.

(3) Contracting Officers are required to follow Federal Acquisition Regulation 16.505 when placing orders on multiple-award contracts. Contracting officers must provide a fair opportunity to all contractors in a multiple-award contract.

DoD Response: Concur: The Department will issue a policy memo emphasizing competition requirements, including fair opportunity, when utilizing non-DoD contracts to meet Department needs. The expected date for the policy memorandum is November 15, 2006.

(4) Federal Acquisition Regulation Subpart 8.4 applies only to the General Services Administration Federal Supply Schedule and certain Department of Veterans Affairs supply schedules, to which General Services Administration delegated authority for Department of Veterans Affairs to procure medical supplies.

DoD Response: Concur. The Department will issue a policy memo emphasizing that FAR Subpart 8.4 does not apply to direct DoD acquisitions placed under the NASA SEWP contract. The expected date for the policy memorandum is November 15, 2006.

(5) Federal Acquisition Regulation 4.8 and 16.505 require the contract files to contain award selection documents that explain the basis for the award.

DoD Response: Concur. The Department will issue a policy memo emphasizing the requirement to document the contract file, including the basis for contract award, when utilizing non-DoD contracts to meet Department needs. The expected date for the policy memorandum is November 15, 2006.

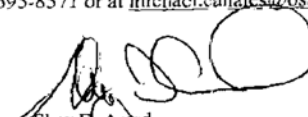
(b) Require Departments and agencies that use the National Aeronautics and Space Administration Scientific and Engineering Workstation Procurement contracts to take free training provided by the National Aeronautics and Space Administration.

DoD Response: Partially concur. The Department will encourage DoD users of NASA SEWP to take full advantage of any and all training provided by NASA on the use of their contract vehicles. Department language endorsing NASA training will be added to the NASA SEWP website. The expected date for incorporating this language on the website is October 25, 2006.

(c) Require contracting officers to use the National Aeronautics and Space Administration Scientific and Engineering Workstation Procurement (NASA SEWP) on-line tool when requesting quotes because the tool aids contracting officers in providing fair opportunity, and instruct contracting officers that they should not deselect contractors that the on-line tool automatically chooses unless one of the exceptions to fair opportunity is documented.

DoD Response: Partially concur. In language to be added to the NASA SEWP website, the Department will encourage DoD contracting officers to fully utilize NASA SEWP on-line capabilities, including the on-line quote tool.

If you have any questions regarding this memorandum, please contact my point of contact Mr. Michael Canales, at 703-695-8571 or at michael.canales@osd.mil.


Shay D. Assad
Director, Defense Procurement
and Acquisition Policy

Department of the Navy Comments



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

SEP - 1 2006

MEMORANDUM FOR DEPARTMENT OF DEFENSE INSPECTOR GENERAL, DEPUTY
INSPECTOR GENERAL FOR AUDITING

Subj: REPORT ON FY2005 DOD PURCHASES MADE THROUGH THE NATIONAL
AERONAUTICS AND SPACE ADMINISTRATION (PROJECT NO. D2005-
D000CF-0273.000)

Ref: (a) Assistant Inspector General, Acquisition and Contract
Management memorandum of August 1, 2006

Encl: (1) Department of the Navy comments on DoDIG Draft Report
on Purchases Made Through the National Aeronautics and
Space Administration (Project No. D2005-D000CF-
0273.000)

(2) ASN(FM&C)/ASN(RDA) memorandum "Proper Use of Non-DoD
Contracts" dated December 20, 2004

The Department of the Navy response to the subject report
is provided in enclosure (1). DoN guidance on Proper Use of
Non-DoD Contracts is provided in enclosure (2).

A handwritten signature in black ink, appearing to read "M. P. Hugard".

M. P. Hugard
Chief of Staff/Policy to the
Deputy Assistant Secretary of the
Navy for Acquisition Management

Copy to:
NIG

**Department of the Navy comments on DoDIG Draft Report on
Purchases Made Through the National Aeronautics and Space
Administration (Project No. D2005-DOOOCF-0273.000)**

Draft Report Recommendation:

1. We recommend that the Acquisition Executives for the Navy, Air Force, and Defense Information Systems Agency:
 - a. Require contracting officers conducting directed acquisitions for amounts greater than the simplified acquisition threshold to determine whether the use of non-DoD contracts is in the best interest of the Government and verify that the required goods, supplies, or services cannot be obtained as conveniently or economically by using a DOD contract. The contracting officer or another official designated by the agency head should document those conclusions in a written determination and findings.

DoN Response:

1. Point of clarification: DOD policy defines a "direct acquisition" as "orders placed by DOD...on behalf of DOD, using DOD funds." "Directed acquisition" is not the correct term.

2. Recommendation 1.a. first sentence: Partially concur. Department of the Navy Guidance on "Proper Use of Non-DoD Contracts" requires the contracting officer for a direct acquisition to document for the record that "the action is in the best interests of the DoD in terms of satisfying customer requirements, cost effectiveness, delivery schedule availability/non-availability of suitable contracts within DoD, contract administration and any other applicable considerations." Research is limited to command-available contracts and other contracts that the contracting officer has knowledge on. There is no existing "DoD-Wide Contract Search Tool" to satisfy a comprehensive search of all DOD contracts available.

Recommendation 1.a. second sentence: Concur in principle. The conclusions should be documented in the contract file. However, the requirement for a separate D&F is unnecessary.

Revised

Revised
Page 22

b. Develop a training course that instructs contracting and other program office personnel on the proper acquisition planning and contract administration for directed acquisitions. The course should also emphasize the bona fide needs rule and appropriations law.

Recommendation 1.b: Partially Concur. It would be counter-productive for the Acquisition Executives of the Navy, Air Force and Defense Information Systems Agency to develop component-centric training. DoN is participating on an OSD sponsored inter-component working group to provide comprehensive guidance on proper use of interagency acquisition. One objective of this working group is to make recommendations for training on interagency acquisition that will be available across DOD.

Appendix F: Potential Antideficiency Act Violations

Order N66001-05-F-Q174: We question whether this action represents a potential Bona Fide needs rule violation. The need was identified in May 2005 and submitted for procurement in August 2005. Procurement lead time resulted in award on September 19, 2005, with a delivery date of October 7, 2005. Both procurement lead time and delivery lead time are reasonable. Delivery delays, not anticipated when the order was placed, do not effect the bona fide need of the acquisition.

Department of the Air Force Comments



DEPARTMENT OF THE AIR FORCE
WASHINGTON DC
Office of the Assistant Secretary

MEMORANDUM FOR DEPUTY INSPECTOR FOR AUDITING
ATTN: ASSISTANT INSPECTOR GENERAL

FROM: SAF/AQ

SUBJECT: Air Force Response to DoDIG Draft Audit Report, FY 2005 Purchases Made Through the National Aeronautics and Space Administration, (Project No. D2005CF-0273)

This is in reply to your memorandum requesting the Assistant Secretary of the Air Force (Acquisition) to provide comments on subject report. The Air Force appreciates the opportunity to offer comments and recognizes the efforts of the DoD IG in its analysis and report preparation. Our responses to the draft recommendations are as follows:

B.1. We recommend that Acquisition Executives for the Navy, Air Force, and Defense Information Systems Agency:

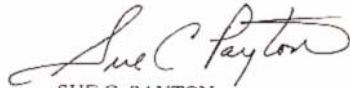
a. Require contracting officers conducting directed acquisitions for amounts greater than the simplified acquisition threshold to determine whether the use of non-DoD contracts is in the best interest of the government and verify that the required goods, supplies or services cannot be obtained as conveniently or economically by using a DoD contract. The contracting officer or another official designated by the agency head should document those conclusions in a written determination and finding.

Concur: For a direct acquisition to a non-DoD contract current Air Force policy requires that "the requirements originator, in coordination with the contracting office, will certify and document that the use of a non-DoD contract is in the best interest of the Air Force. This documentation must consider the factors of satisfying customer requirements, cost effectiveness and price, delivery schedule, non-availability of a suitable contract within DoD, contract administration, small business opportunities and any other factors as applicable." Air Force Contracting along with Air Force Finance have formed a working group to address this and other issues with interagency contracts to find ways to ensure better compliance with current policies. The working group will recommend that the current certification be reemphasized as a determination and finding signed by the requirements official. For acquisitions of services, the Services Designated Official will sign the D&F. Estimated date of completion for this working group is December 2006.

b. Develop a training course that instructs contracting and other program officer personnel on the proper acquisition planning and contract administration for directed acquisitions. The course should also emphasize bona fide needs rule and appropriations law.

Concur: The Air Force Contracting and Financial Management working group for interagency acquisitions will produce a guidebook on how to prepare and execute interagency acquisitions, both direct and assisted, focused toward program and project managers. The guidebook will give step-by-step procedures for interagency acquisitions and highlight bona fide needs rule and Anti-Deficiency Act requirements. Other recommendations of the working group will address compliance with appropriations law for financial managers.

The Point of Contact for the Air Force response is Lt Col Kristen Nelson, SAF/AQCP, (703)588-7030; email: kristen.nelson@pentagon.af.mil.



SUE C. PAYTON
Assistant Secretary of the Air Force
(Acquisition)

United States Special Operations Command Comments



UNITED STATES SPECIAL OPERATIONS COMMAND
7701 TAMPA POINT BLVD.
MACDILL AIR FORCE BASE, FLORIDA 33621-5323

SORR-J8-C

MEMORANDUM FOR ASSISTANT INSPECTOR GENERAL, ACQUISITION AND
CONTRACT MANAGEMENT, DEPARTMENT OF DEFENSE, 400 ARMY NAVY DRIVE,
ARLINGTON, VIRGINIA 22202-4704

SUBJECT: Report on FY05 DoD Purchases Made Through the National Aeronautics and Space
Administration (Project No. D2005-D000CF-0273.0000)

1. At the request of the 6th ARW Comptroller, HQ USSOCOM has reviewed the findings noted
in the *Draft* DoDIG report titled FY 2005 DoD Purchases Made through the National
Aeronautical and Space Administration (Project No. D2005-D000CF-0273.000), dated 1 Aug 06.

2. Appendix F of the *Draft* Report shows five transactions specifically concerning United States
Special Operations Command (pg 33).

a. #6 - Order FA4814-05-F-A154 cited a potential wrongful use of O&M funds for a
procurement requirement. Concur. We are currently reviewing this purchase and will initiate a
preliminary investigation to determine if it was inappropriate use of O&M funds and rectify if
necessary.

b. #7 - Order FA4814-05-F-A717 was cited a potential bona fide need rule violation in that
the item was purchased with FY05 funds but not delivered until 7 Oct 06. Non-concur. We
don't consider the time difference between when the item was contracted for and when it was
delivered to be excessive. The requirement was valid and meets bona fide needs criteria.

The GAO's Principles of Appropriations Law, 3rd Edition, Volume I states:

"There are perfectly legitimate situations in which an obligation may be incurred in one
fiscal year with delivery to occur in a subsequent year. Thus, where materials cannot be obtained
in the same fiscal year in which they are needed and contracted for, provisions for delivery in the
subsequent fiscal year do not violate the *bona fide* needs rule as long as the time intervening
between contracting and delivery is not excessive and the procurement is not for standard
commercial items readily available from other sources. 38 Comp. Gen. at 630."

Additionally, the DODFMR, Volume 11A, Chapter 2, Para. 020508 states:

"...where materials, for example, cannot be obtained in the same fiscal year in which they
are needed and contracted for, a provision for delivery in the subsequent fiscal year does not
violate the bona fide need rule so long as the time intervening between contracting and delivery
is not excessive and the procurement is not for standard commercial items readily available from
other sources."

SORR-J8-C

SUBJECT: Report on FY05 DoD Purchases Made Through the National Aeronautics and Space Administration (Project No. D2005-D000Cf-0273.0000)

c. #8 – Order FA4814-05-FA860 cited a potential bona fide need rule violation in that the item was purchased with FY05 funds but not delivered until 4 Oct 06. Non-concur. The requirement was valid and meets bona fide needs criteria. Reference the same publications as item #b above.

d. #9 – Order FA4814-05-F-A895 cited a potential wrongful use of O&M funds for a procurement requirement and a potential bona fide need rule violation in that the item was purchased with FY05 funds, scheduled for delivery on 22 Oct 06 but not delivered until 8 Nov 06. Non-concur. While the \$479K requirement is summarized as “Network Equipment”, it was really for a variety of parts and smaller items to include *modems, scalers, drives, cable, memory, back up platforms, labor, licensing and lots of software* versus large actual computers/pieces of equipment. The requirement was valid and meets bona fide needs criteria. Reference the same publications as item #b above as justification for meeting the bona fide need requirement.

e. #10 – Order FA4814-05-F-A917 cited a potential bona fide need rule violation in that the item was purchased with FY05 funds, scheduled for delivery on 24 Oct 06 but not delivered until 7 Dec 06. Non-concur. The requirement was valid and meets bona fide needs criteria. Reference the same publications as item #b above.

3. We have reviewed all challenges to the bona fide need rule and have reaffirmed that the purchases were made appropriately to satisfy on-going, valid requirements. One of the two items listed as a potential wrongful use of an appropriation was in-fact an authorized use of O&M but the other needs further investigation to adequately verify. If deemed inappropriate, USSOCOM will rectify as necessary.

4. USSOCOM POC is Mr. Rodney M. Pedersen, DSN 299-3439 or Comm. (813) 828-3439.



DONALD L. DAMSTETTER
Comptroller

Defense Information Systems Agency Comments



DEFENSE INFORMATION SYSTEMS AGENCY

P. O. Box 4502
ARLINGTON, VIRGINIA 22204-4502

AUG 18 2006

IN REPLY
REFER TO

Procurement Directorate/Defense Information Technology
Contracting Organization (PLD/DITCO)

MEMORANDUM FOR DEPARTMENT OF DEFENSE INSPECTOR GENERAL
(DoDIG) VIA DISA IG

SUBJECT: DISA's Response to FY2005 DOD Purchases Made Through the
National Aeronautics and Space Administration (NASA), 1 Aug 06

Reference: Project No. 2005-D000CF-0273.000

1. In response to the subject draft audit, the Procurement Directorate (PLD) concurs with the Department of Defense Inspector General's (DoDIG) recommendations.
2. DISA's concurrence, discussions, and plans for corrective actions are contained in the enclosed.
3. If you have any questions, please call Mrs. Doris Mayo, PL21 at 703-681-0925.

1 Enclosure a/s

A handwritten signature in cursive script that reads "Evelyn M. Depalma".

EVELYN M. DEPALMA
Director for Procurement
Chief, Defense Information Technology
Contracting Organization

Copy to:
DISA-IG
CFE
DITCO-NCR, PL6
DITCO-Scott, PL8

Defense Information Systems Agency (DISA)
Concurrence and Responses to Draft Audit Report
Project No. 2005-D000CF-0273.000, 1 Aug 06

DoD IG Recommendation 1. We recommend that Acquisition Executives for the Navy, Air Force, and Defense Information Systems Agency:

DoD IG Recommendation 1.a. "Require contracting officers conducting directed acquisitions for amounts greater than the simplified acquisition threshold to determine whether the use of non-DoD contracts is in the best interest of the Government and verify that the required goods, supplies, and services cannot be obtained as conveniently or economically by using a DoD contract. The contracting officer or another official designated by the agency head should document those conclusions in a written determination and finding."

DISA's Response 1.a. Concur. On 22 July 2005 and on 20 January 2006, DISA's Vice Director issued memoranda titled, Proper Use of Non-DoD Contracts, which required compliance with USD (AT&L) memos of 29 Oct 2004 and 17 June 2005; DFARS Subpart 217.78; and DoD Directive 5000.1. The comprehensive memoranda addressed both "Direct Acquisitions" and "Assisted Acquisitions of Supplies or Services" and incorporated a Requirement Official's Checklist for Use of Non-DoD Contracts. The Checklist is used in lieu of a Determination and Findings (D&F) to validate the use of a non-DoD contract/order and documents that appropriate funding will be used. Presently, this checklist is signed by the Program Manager/Requirements Official. DISA will modify its Checklist to address the following in more detail: (1) the "Bona Fide Needs Rule", (2) the use of proper appropriations, and (3) the requirement for contracting officer's approval/signature along with the present Program Manager/Requirements Official signature on the checklist. Proposed implementation date is first quarter of FY07.

DoDIG Recommendation 1.b. "Develop a training course that instructs contracting and other program office personnel on the proper acquisition planning and contract administration for directed acquisitions. The course should also emphasize the bona fide needs rule and appropriations law."

DISA's Response 1.b. Concur. Several years ago, DISA recognized the need for training regarding the use of non-DoD contracts and provided Economy Act D&F training on 16 March 2004 through its Acquisition Excellence Workshop (AEW).

An AEW is a training tool used by DISA to provide a variety of contracting and procurement topics. AEWs are available to all DISA employees including contracting officers, contract specialists, financial managers, and other non-procurement employees. Contracting officers and contracting specialist are encouraged to attend. The Defense Acquisition Workforce Improvement Act (DAWIA) continuous learning points/credits are given to the appropriate attendees.

DISA will provide additional Economy Act training through an AEW, which will specifically address "Direct Acquisitions", Appropriation Law, and explain the "Bona Fide Needs Rule". Proposed implementation date is first quarter of FY07.

Team Members

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