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Acronyms

ADA	Antideficiency Act
CIFA	Counterintelligence Field Activity
CSC	Client Support Center
DMDC	Defense Manpower Data Center
DOI	Department of the Interior
ESC	Electronic Systems Center
FTS	Federal Technology Service
FMR	Financial Management Regulation
GAO	Government Accountability Office
GSA	General Services Administration
IG	Inspector General
IT	Information Technology
JDIMS	Joint Detainee Information Management System
JPRA	Joint Personnel Recovery Agency
MIPR	Military Interdepartmental Purchase Request
NASA	National Aeronautics and Space Administration
OIG	Office of Inspector General
OUSD(C)/CFO	Office of the Under Secretary of Defense (Comptroller)/Chief Financial Officer
O&M	Operations and Maintenance
RDT&E	Research, Development, Testing, and Evaluation
USD(C)/CFO	Under Secretary of Defense (Comptroller)/Chief Financial Officer
USSOCOM	U.S. Special Operations Command



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January 2, 2007

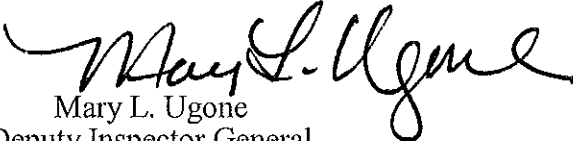
MEMORANDUM FOR UNDER SECRETARY OF DEFENSE
(COMPTROLLER)/CHIEF FINANCIAL OFFICER

SUBJECT: Report on Potential Antideficiency Act Violations on DoD Purchases Made
Through Non-DoD Agencies (Report No. D-2007-042)

We are providing this report for information and use. We considered management comments on a draft of this report in preparing the final report.

Comments on the draft of this report conformed to the requirements of DoD Directive 7650.3 and left no unresolved issues. The final report states that internal controls were not adequate; however, the actions taken in response to the draft report resolve the internal control issues. Therefore, no additional comments are required.

We appreciate the courtesies extended to the staff. Questions should be directed to Terry L. McKinney at (703) 604-9288 (DSN 664-9288) or Mr. Timothy E. Moore at (703) 604-9282 (DSN 664-9282). The team members are listed inside the back cover. See Appendix E for the report distribution.


Mary L. Ugone
Deputy Inspector General
for Auditing

cc: Inspector General, General Services Administration
Inspector General, Department of the Interior
Inspector General, National Aeronautics and Space Administration
Inspector General, Department of the Treasury

Department of Defense Office of Inspector General

Report No. D-2007-042

January 2, 2007

(Project No. D2005-D000CF-0222.001)

Potential Antideficiency Act Violations on DoD Purchases Made Through Non-DoD Agencies

Executive Summary

Who Should Read This Report and Why? DoD contracting officials, program managers, and financial managers should read this report because it discusses widely misunderstood DoD guidance on funding purchases made through non-DoD agencies and DoD Financial Management Regulation requirements regarding reviewing and investigating potential Antideficiency Act violations.

Background. Public Law 108-375, the “Ronald W. Reagan National Defense Authorization Act for Fiscal Year 2005,” October 28, 2004, section 802, “Internal Controls for Department of Defense Procurements Through GSA [General Services Administration] Client Support Centers,” directs the Inspectors General for DoD and GSA to jointly assess whether the policies, procedures, and internal controls of each GSA client support center were in place and administered so that they complied with Defense procurement requirements and then to report the findings to Congress. The DoD Office of Inspector General issued its first report, D-2005-096, “DoD Purchases Made Through the General Services Administration,” on July 29, 2005. That report concluded that most of the client support centers* were not compliant with DoD procurement and funding requirements. The report disclosed significant financial issues and identified 38 potential violations of the Antideficiency Act.

Public Law 109-163, the National Defense Authorization Act for Fiscal Year 2006, section 811, directs the Inspectors General for DoD, the Department of the Interior, the National Aeronautics and Space Administration, and the Department of the Treasury to jointly assess policies, procedures, and internal controls of each non-Defense agency to ensure that they were in place, compliant with Defense procurement requirements, and properly administered.

This report addresses actions taken on the 38 potential Antideficiency Act violations identified in DoD IG Report No. D-2005-096 and identifies another 69 potential Antideficiency Act violations disclosed this year. Other reports will address whether the policies, procedures, and internal controls of each activity selected for review were in place, compliant, and properly administered.

Results. DoD has taken many actions to improve controls over assisted DoD purchases through non-DoD contracts. However, DoD organizations did not initiate and complete preliminary reviews of potential Antideficiency Act violations in a timely manner or fully

*We reported to the Senate Armed Services Committee that 11 of the 12 client support centers were not compliant with DoD procurement requirements but were making significant progress towards becoming compliant. The European client support center was compliant.

recoup expired funds. Consequently, DoD organizations have not finalized the 38 potential Antideficiency Act violations valued at \$301 million that were identified last year and potentially incurred an additional 69 Antideficiency Act violations valued at \$130.6 million while using non-DoD contracts in FY 2005. The Under Secretary of Defense (Comptroller)/Chief Financial Officer needs to establish financial policies for DoD to use non-DoD revolving funds, such as the GSA Information Technology Fund and franchise funds, and to issue clarifying guidance on the bona fide needs rule, awarding of contracts after the fiscal year end with previous year funds, and partial funding of purchases using non-DoD agencies. The Office of the General Counsel needs to independently review 12 potential Antideficiency Act violations reported in DoD IG Report No. D-2005-096 and determine whether formal investigations by DoD organizations are necessary even though the organizations did not consider them necessary. Lastly, the Under Secretary of Defense (Comptroller)/Chief Financial Officer needs to direct the DoD organizations to initiate preliminary reviews to determine whether the use of Government funds for the 69 purchases listed in Appendix D was improper and resulted in Antideficiency Act violations or other funding violations in accordance with DoD Regulation 7000.14-R, "Financial Management Regulation." We identified a material internal control weakness in policy on Non-Economy Act Orders. See the Finding section of the report for the detailed recommendations.

Management Comments and Audit Response. The Office of the Under Secretary of Defense (Comptroller)/Chief Financial Officer concurred with our recommendation to independently assess whether formal investigations should occur for the potential Antideficiency Act violations reported in DoD IG Report No. D-2005-096. The Office of the Under Secretary of Defense (Comptroller)/Chief Financial Officer issued policy on Non-Economy Act Orders. In addition, the Deputy Chief Financial Officer concurred with our recommendation and will work with the Defense Finance and Accounting Services to identify reimbursements for purchases to non-DoD agencies. Finally, the Deputy Chief Financial Officer directed the DoD Components to initiate preliminary reviews of the 69 potential Antideficiency Act violations. No additional comments are required. A discussion of management comments is in the Finding section of the report and the complete text is in the Management Comments section.

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Background

This audit was performed in accordance with section 802, Public Law 108-375, “Ronald W. Reagan National Defense Authorization Act for Fiscal Year 2005,” October 28, 2004. Section 802 states:

(a) INITIAL INSPECTOR GENERAL REVIEW AND DETERMINATION.—

(1) Not later than March 15, 2005, the Inspector General of the Department of Defense and the Inspector General of the General Services Administration shall jointly—

(A) review—

(i) the policies, procedures, and internal controls of each GSA Client Support Center; and

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

(B) for each such Center, determine in writing whether—

(i) the Center is compliant with defense procurement requirements;

(ii) the Center is not compliant with defense procurement requirements, but the Center made significant progress during 2004 toward becoming compliant with defense procurement requirements; or

(iii) neither of the conclusions stated in clauses (i) and (ii) is correct.

(2) If the Inspectors General determine under paragraph (1) that the conclusion stated in clause (ii) or (iii) of subparagraph (B) of such paragraph is correct in the case of a GSA Client Support Center, those Inspectors General shall, not later than March 15, 2006, jointly—

(A) conduct a second review regarding that GSA Client Support Center as described in paragraph (1)(A); and

(B) determine in writing whether that GSA Client Support Center is or is not compliant with defense procurement requirements.

In addition, section 811, Public Law 109-163, “National Defense Authorization Act for Fiscal Year 2006,” January 6, 2006, 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 Interior, the National Aeronautics and Space Administration (NASA), and the Department of the Treasury.

The DoD Office of Inspector General (OIG) issued audit report, “DoD Purchases Made Through the General Services Administration [GSA],” on July 29, 2005 (DoD IG Report No. D-2005-096). That report concluded that most of the client support centers (CSC)¹ were not compliant with DoD procurement requirements but were making significant progress towards becoming compliant. The report disclosed significant financial issues and identified 38 potential violations of the Antideficiency Act (ADA).

To comply with Public Law 108-375, the DoD OIG will issue two reports in addition to DoD IG Report No. D-2005-096. This report addresses actions taken on the 38 potential ADA violations identified in DoD IG Report No. D-2005-096 and identifies another 69 potential ADA violations disclosed in FY 2005. The 69 potential ADA violations were identified during audits at the four activities being reviewed this year: GSA, the Department of the Interior, NASA, and the Department of the Treasury. The second report, DoD IG Report No. D-2007-007,

¹We reported to the Senate Armed Service Committee that 11 of the 12 CSCs were not compliant with DoD procurement requirements but were making progress towards becoming compliant and that 1 CSC was compliant. The European CSC was compliant.

“FY 2005 DoD Purchases Made Through the General Services Administration,” October 30, 2006, addressed whether the policies, procedures, and internal controls of each GSA CSC were in place and administered so that the CSCs were compliant with Defense procurement requirements for purchases awarded by GSA primarily in FY 2005.

To comply with Public Law 109-163, the DoD OIG will issue an additional three reports on DoD purchases made through the Department of the Interior, NASA, and the Department of the Treasury.

At GSA, the Department of the Interior, NASA, and the Department of the Treasury, we reviewed the procedures for funding purchases made by DoD. This required following the funds from the time the funds left DoD until the funds were paid to the contractors by the non-DoD activity and ultimately reimbursed to the activities’ working capital fund.

Funding DoD Purchases. DoD uses DoD Form 448, Military Interdepartmental Purchase Request (MIPR), to transfer funds within the Services and to other Federal agencies. A MIPR is a request for materiel, supplies, or services and can be sent as either a direct citation of funds or through reimbursement of funds by DoD. Most of the MIPRs reviewed during our audit were reimbursable MIPRs to procure services and supplies. MIPRs are usually used to transfer funds to other Federal agencies under the authority of the Economy Act and in compliance with the DoD Financial Management Regulation (FMR), volume 11A, chapter 3, “Economy Act Orders.” The Economy Act applies when more specific statutory authority does not exist. Each Economy Act order must be supported by a Determination and Finding and funds must be deobligated before the end of the period of availability of the appropriation if the ordering agency has not provided the goods or services or entered into a contract to provide the goods or services. However, MIPRs sending funds to the GSA Information Technology (IT)² Fund, the Department of the Treasury Franchise Fund, and the Department of the Interior Franchise Fund are reimbursable orders and non-Economy Act Orders. MIPRs sent to the Department of the Interior National Business Center, Southwest Acquisition Branch are Economy Act Orders. Purchases made through NASA contracts were completed by DoD contracting officials and fund management was retained in DoD.

GSA. The GSA Federal Technology Service (FTS) assists Federal agencies in identifying, acquiring, and managing technical solutions. GSA FTS provides the Federal IT community a comprehensive range of IT products and assisted services

²Information Technology is equipment or an interconnected system or subsystem of equipment that is used in the automatic acquisition, storage, manipulation, management, movement, control, display, switching, interchange, transmission, or reception of data or information. Information Technology includes computers, ancillary equipment, software, firmware, and similar procedures, services (including support services), and related resources.

on a fully cost-reimbursable basis. Twelve CSCs³ perform the acquisition duties. To fund the acquisition of IT equipment and services, GSA FTS uses its IT Fund. This revolving fund is reimbursed by funds from Federal agencies for whom the equipment and services are being acquired. DoD sends funds to GSA using DoD Form 448, MIPR; these funds are non-Economy Act orders and are accepted as reimbursable.

IT Fund. Section 322, title 40, United States Code (40 U.S.C. 322) establishes the GSA IT Fund. The IT Fund allows GSA to efficiently provide IT resources to Federal agencies. As a revolving fund, the IT Fund provides a financial mechanism for GSA to pay vendors for IT and telecommunication costs, bill the Federal agency that received the IT goods and services, and then receive reimbursement for the costs billed. Once a requesting agency enters into a binding reimbursable agreement with FTS, the requesting agency may record an obligation in its accounting system. The agreement must be specific, definite, and certain at the time it is made, and must then reflect a bona fide need of the DoD. Acceptance of DoD funds into the IT Fund does not permit DoD to place new orders for goods or services after the DoD appropriation has expired.

In FY 2004, DoD sent approximately 24,000 MIPRs to GSA, representing more than 85 percent of the business contracted by the CSCs. The GSA FTS received approximately \$8.5 billion for the Network Service Program, the CSCs, and other miscellaneous programs to purchase IT equipment and services. In the fourth quarter of FY 2004, DoD sent more than \$1.0 billion. For DoD IG Report No. D-2005-096, we reviewed 75 purchases funded by 144 MIPRs valued at about \$406 million, which occurred primarily in the fourth quarter of FY 2004. In FY 2005, DoD sent approximately 20,505 MIPRs to GSA valued at approximately \$3.0 billion. In FY 2005, we reviewed 56 purchases funded by 223 MIPRs valued at approximately \$179 million.

The Department of the Interior. The Department of the Interior uses GovWorks, a Federal Acquisition Center, to provide contracting support for Federal agencies. GovWorks delivers value to Federal (both civilian and military) agencies throughout the acquisition process by using best practices, responsive customer service, and regulation compliance. The organization is a Federal service-for-fee acquisition center operating under the authority of the U.S. Department of the Interior Franchise Fund. This fund operates on a reimbursable basis, much like the GSA IT Fund. The Department of the Interior typically charges four percent of the contract award amount for work performed. In addition, the Department of the Interior has another contracting center, the National Business Center, Southwest Acquisition Branch, at Fort Huachuca, Arizona. The National Business Center, Southwest Acquisition Branch, is a working capital fund and operates under the Economy Act. The National Business Center, Southwest Acquisition Branch also typically charges between .5 and 2.5 percent of the contract award amount for work performed.

³The 12 CSCs include the following numbered regions: (1) New England, (2) Northeast and Caribbean, (3) Mid-Atlantic, (4) Southeast Sunbelt, (5) Great Lakes, (6) Heartland, (7) Greater Southwest, (8) Rocky Mountain, (9) Pacific Rim, (10) Northwest/Arctic, (11) the National Capital Region, and (12) the European Region. For large, complex Federal IT projects, GSA has the Federal Systems Integration and Management Center (FEDSIM).

Franchise Fund. Section 403 of the Government Management Reform Act of 1994 authorizes the establishment of the Department of the Interior GovWorks Franchise Fund. The National Business Center, Southwest Acquisition Branch at Fort Huachuca, Arizona, was authorized by 43 U.S.C. 1467. GovWorks and the Southwest Acquisition Branch contracting officials awarded approximately \$2.5 billion in contracts, with DoD representing about 64 percent of the work. We reviewed 49 task orders, valued at approximately \$277.1 million, awarded by GovWorks and the Southwest Acquisition Branch.

The Department of the Treasury. The Department of the Treasury FedSource is an entrepreneurial Governmental enterprise established to provide common administrative support services to other components within Treasury and outside agencies on a competitive and fully cost-reimbursable basis. The franchise fund operates in a businesslike manner by creating and maintaining a business relationship and environment that promotes customer participation and satisfaction through delivery of quality performance, teamwork, and continuous improvement,⁴ both in service delivery and economic benefit. FedSource has seven centers⁴ in large cities throughout the U.S. to perform the acquisition duties. FedSource does not have a set fee; however, five or six percent is usually charged, though the fee can be as low as two percent, depending on the service.

Franchise Fund. The Government Management Reform Act of 1994 authorized the establishment of the Department of the Treasury Franchise Fund Pilot Program. FedSource has its own independent authority under Public Law 104-208, the Treasury Department Appropriation Act of 1997, as amended by the Treasury Department Appropriation Act of 2001, Public Laws 106-554 and 108-7. In FY 2005, DoD sent 9,199 MIPRs to the Department of the Treasury, valued at approximately \$406 million. We reviewed 61 task orders valued at about \$37.8 million. These task orders were awarded by the Baltimore, Los Angeles, and St. Louis centers.

NASA. NASA established the Scientific and Engineering Workstation Procurement contracts for Federal agencies to use. The NASA Government-Wide Acquisition Contract provides the latest in IT products for all Federal agencies. DoD contracting officers were responsible for all DoD awards made by using the NASA Scientific and Engineering Workstation Procurement contracts. First, DoD organizations identified the requirement and provided the clearly defined requirement and funding to the DoD contracting office. Next, DoD contracting officials then chose the contractor for award, typically based on low price, and used the NASA Scientific and Engineering Workstation Procurement Web site to award the contract. NASA charges a fee for orders over \$2,500. The fee, 0.65 percent of the total dollar amount of the items procured, cannot exceed \$10,000. As part of the fee charged, NASA reviews orders over \$100,000 to determine whether the requested products are within the scope of the vendor's contract. NASA then approves the order. Finally, NASA forwards the order to the contractor, who is responsible for supplying the products. NASA is not

⁴The seven centers include Baltimore, Chicago, Cincinnati, Los Angeles, San Antonio, Seattle, and St. Louis.

involved in the funding of the orders and did not receive or track funds, other than the fee. DoD is solely responsible for contractor payment. The Information Technology Management Reform Act of 1996 (Clinger-Cohen Act) designation of NASA as an executive agent by the Office of Management and Budget allows all agencies of the Federal Government to use the Scientific and Engineering Workstation Procurement contracts. In FY 2005, DoD contracting offices awarded 6,569 orders, valued at \$343.2 million, against NASA contracts. We reviewed 111 orders, valued at approximately \$85.9 million.

Objectives

Our overall audit objective was to review financial procedures for DoD use of non-DoD contracts. Specifically, we determined whether actions were taken in a timely manner to resolve potential ADA violations identified during our audit last year. We also examined whether financial procedures for purchases at GSA, the Department of the Interior, NASA, and the Department of the Treasury were followed. 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

We identified material internal control weaknesses as defined by DoD Instruction 5010.40, "Managers' Internal Control (MIC) Program Procedures," January 4, 2006. The Under Secretary of Defense (Comptroller)/Chief Financial Officer (USD[C]/CFO) did not issue clear financial policy on Non-Economy Act Orders. The sites we visited encountered problems as identified in the report finding, "DoD Potential Antideficiency Act Violations," while implementing and executing existing policy. DoD organizations must incorporate the regulations and statutes associated with appropriation laws. Financial and accounting officials should have the necessary training and knowledge to properly execute the orders. Implementing the recommendations in this report should improve financial procedures for using non-DoD contracts and should correct the material funding weaknesses identified in this report. A copy of this report will be provided to the senior official responsible for internal controls in the Office of the Under Secretary of Defense (Comptroller)/Chief Financial Officer (OUSD[C]/CFO).

DoD Potential Antideficiency Act Violations

DoD has taken actions to improve controls over assisted DoD purchases made through non-DoD contracts. However, DoD organizations did not initiate and complete preliminary reviews of potential ADA violations in a timely manner or recoup expired funds. Contributing to this was the fact that the USD(C)/CFO was slow to issue authoritative financial guidance on the bona fide needs rule and the availability of funds for contracts crossing fiscal years. In addition, DoD organizations were reluctant to review and recoup funds that could not be used for other purchases. Consequently, DoD organizations have not finalized the 38 potential ADA violations valued at \$301 million that were identified in DoD IG Report No. D-2005-096. Also, DoD organizations potentially incurred an additional 69 ADA violations valued at \$130.6 million, using non-DoD contracts.

Criteria

The Antideficiency Act. The ADA is codified in a number of sections of title 31 of the United States Code (such as 31 U.S.C. 1341(a), 1342, 1349-1351, 1511(a), and 1512-1519). The purpose of these statutory provisions, known collectively as the ADA, is enforcing the constitutional powers of the purse residing in Congress with respect to the purpose, time, and amount of expenditures made by the Federal Government. Violations of other laws may create violations of the ADA provisions (for example, the “bona fide needs rule,” 31 U.S.C. 1502[a]).

The potential ADA violations in DoD IG Report No. D-2005-096 specifically refer to 31 U.S.C. 1341(a)(1), which states an officer or employee of the United States Government may not (A) make or authorize an expenditure or obligation exceeding an amount available in an appropriation or fund for the expenditure or obligation or (B) involve the Government in a contract or obligation for the payment of money before an appropriation is made unless authorized by law.

Section 1350, title 31, United States Code states that an officer or employee of the U.S. Government knowingly and willfully violating 31 U.S.C. 1341(a) or 1342 shall be fined up to \$5,000, imprisoned for up to 2 years, or both. Section 1351, title 31, United States Code states that if an officer or employee of an executive agency violates 31 U.S.C. 1341(a) or 1342, the head of the agency shall report immediately to the President and Congress all relevant facts and a statement of actions taken.

Bona Fide Needs Rule. To use appropriated funds, there must be a bona fide need for the requirement in the year the appropriations are available for obligation. Section 1502(a), title 31, United States Code states,

The balance of an appropriation or fund limited for obligation to a definite period is available only for payment of expenses properly incurred during the period of availability or to complete contracts properly made within that period of availability and obligated consistent with section 1501 of this title. However, the appropriation or fund is not available for expenditure for a period beyond the period otherwise authorized by law.

Section 2410a, title 10, United States Code states that the Secretary of Defense may enter into a contract for procurement of severable services for a period that begins in one fiscal year and ends in the next fiscal year. This section applies to annual appropriations, such as operations and maintenance (O&M) funds. To meet bona fide needs rule requirements and 10 U.S.C. 2410a considerations, the OUSD(C)/CFO has specified that funds for severable services⁵ must be obligated in the year of the appropriation funding the services, and the contract period of the services cannot exceed 1 year. Also, ordered goods must be received in the year of the appropriation unless there is a known production or delivery lead-time or unforeseen delays in delivery.

Government Accountability Office Red Book. The Government Accountability Office (GAO) Red Book, GAO-04-261SP, “Principles of Federal Appropriations Law, Third Edition, Volume I,” January 2004, states

An order or contract for the replacement of stock is viewed as meeting a bona fide need of the year in which the contract is made as long as it is intended to replace stock used in that year, even though the replacement items will not be used until the following year.

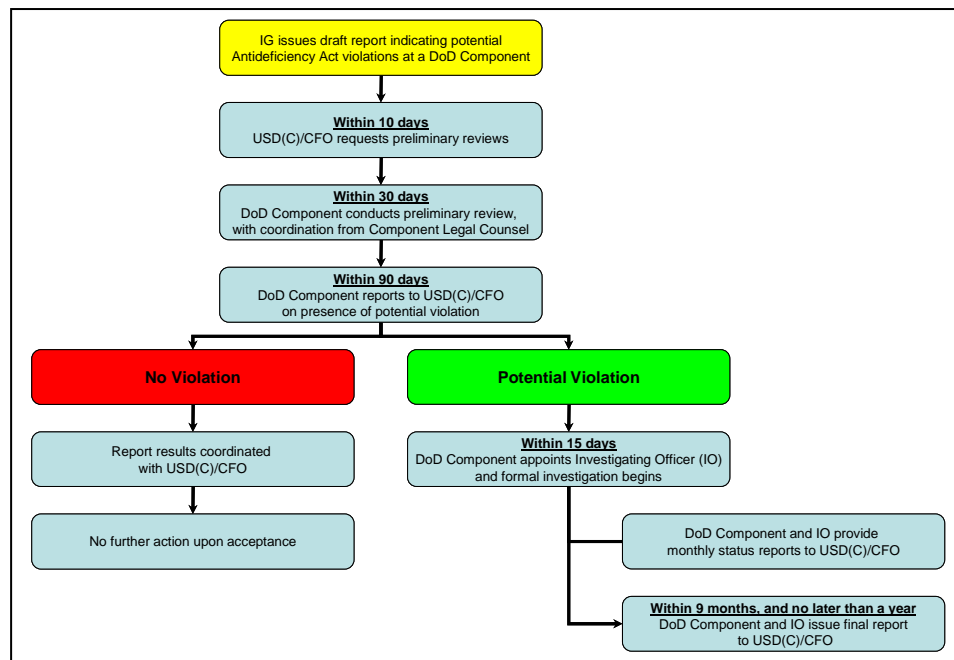
DoD Financial Management Regulation. The DoD FMR provides all DoD organizations with the policy, regulation, and procedures within the area of responsibility of the USD(C)/CFO. The regulation consists of 15 volumes. It governs financial management by establishing and enforcing requirements, principles, standards, systems, procedures, and practices necessary to comply with financial management statutory and regulatory requirements applicable to DoD. It directs financial management requirements, systems, and functions for all appropriated, working capital, revolving, and trust fund activities.

DoD FMR, volume 14, chapter 3, “Preliminary Reviews of Potential Violations,” April 2003, states that the purpose of a preliminary review is to gather basic facts and determine whether a violation may have occurred. When a DoD Component has some evidence that a violation may have occurred, preliminary checks of the applicable business transaction and accounting records shall be made to determine whether a potential violation exists. This should be done in a timely manner (usually within 90 days). A report on the preliminary review shall be provided for approval to the cognizant Assistant Secretary of a Military Department for Financial Management, unified combatant commands, or Defense agency. The report shall be coordinated with legal counsel. If a potential violation occurred,

⁵Most service contracts are severable. A non-severable contract would have a primary deliverable such as a prototype system or a completed report at the end of the performance period.

then a formal investigation shall be initiated within 15 business days of the approval of the report of preliminary reviews.

DoD FMR, volume 14, chapter 4, “Beginning an Investigation,” October 2002, states that “whenever a preliminary review determines a potential violation has occurred, a formal investigation is required.” Individuals with no vested interest in the outcome, and who are capable of conducting a complete, impartial, unbiased investigation, will conduct the investigation. A commander of a major command, a superior to a commander of a major command, or equivalent will appoint an investigation officer. DoD FMR, volume 14, chapter 5, “Conducting Investigations,” October 2002, states investigations of potential ADA violations will be completed within 9 months. The total process for investigating, including preparation of transmittal letters to the President, the Director of the Office of Management and Budget, and the leaders of both Houses of Congress will take no more than 1 year. See the figure for the timeline for reviews of ADA violations.



Timeline for reviewing potential ADA violations

The DoD Deputy Chief Financial Officer issued a July 6, 2005, memorandum, “Administering Discipline in Antideficiency Act (ADA) Violation Cases” (DoD Deputy Chief Financial Officer July 6, 2005, Memorandum) to improve the disciplinary process and meet the intent of the ADA. The Military Departments and the Defense agencies will acknowledge that ADA violations are a misuse of DoD funds, even though the misuse may not have been knowing or willful and the Military Department Offices of Financial Management and Comptroller and the Defense agencies will verify the independence of disciplinary officers.

DoD Policy Memorandums. The Acting Under Secretary of Defense for Acquisition, Technology, and Logistics issued an October 29, 2004, memorandum, “Proper Use of Non-DoD Contracts” (the DoD October 29, 2004, Memorandum) directing the Military Departments and Defense agencies to establish procedures for reviewing and approving the use of non-DoD contract vehicles by January 1, 2005. The program manager or requirements official has primary responsibility to ensure compliance with the policy. The procedures must include:

- evaluating whether using a non-DoD contract is in the best interest of DoD;
- determining whether the tasks are within the scope of the contract to be used;
- reviewing funding to ensure that it is used in accordance with appropriation limitations; and
- providing unique terms, conditions, and requirements to the assisting agency for incorporation into the order or contract to comply with all applicable DoD-unique requirements.

Within a short period of time, both the Navy and the Air Force issued memorandums, “Proper Use of Non-DoD Contracts.” Both memorandums implement guidance and policy for the Acting Under Secretary for Acquisition, Technology, and Logistics. The Air Force and Navy memorandums were dated December 6, and December 20, 2004, respectively. The Army issued a memorandum, “Proper Use of Non-Department of Defense (Non-DoD) Contracts,” on July 12, 2005, to implement the guidance.

The DoD Deputy Chief Financial Officer issued a March 24, 2005, memorandum, “Proper Use of Interagency Agreements for Non-Department of Defense Contracts Under Authorities Other Than the Economy Act” (the DoD March 24, 2005, Memorandum). This memorandum, in conjunction with the DoD October 29, 2004, Memorandum, establishes DoD policy on assisted acquisitions such as those completed by GSA FTS and ensures that interagency agreements (under other than the Economy Act) for non-DoD contracts are used in accordance with existing laws and DoD policy. To save Government resources, the DoD March 24, 2005, Memorandum directs the following actions.

- For services ordered through an interagency agreement, the DoD organization must review funds provided to the servicing agency that have expired and recoup those expired funds, unless the request for services was made during the period of availability of the funds; the order was specific, definite, and certain, with specificity similar to contractual orders; and severable services were ordered with a period of performance that does not exceed 1 year.
- For goods ordered through an interagency agreement, DoD organizations must recoup expired funds unless the request for goods was made during the period of availability of the funds and was for

goods that, solely because of delivery, production lead-time, or unforeseen delays, could not be delivered within the period of availability of those funds.

The USD(C)/CFO issued a March 27, 2006, memorandum, "Proper Use of Interagency Agreements with Non-Department of Defense Entities Under Authorities Other Than the Economy Act" (the DoD March 27, 2006, Memorandum). This memorandum states that under no circumstances should any existing order for severable services using O&M funds extend beyond 1 year from the date the funds were accepted by the servicing agency. This guidance requires DoD organizations to state on funding documents that cite annual appropriations, "These funds are available for services for a period not to exceed one year from the date of obligation and acceptance of this order. All unobligated funds shall be returned to the ordering activity no later than one year after the acceptance of the order or upon completion of the order, which ever is earlier."

Resolution of Prior Potential ADA Violations

DoD organizations did not initiate and complete preliminary reviews of potential ADA violations in a timely manner or recoup expired funds. DoD IG Report No. D-2005-096 identified 38 potential ADA violations. Appendix C lists the 38 potential ADA violations included in DoD IG Report No. D-2005-096. DoD organizations funded the 38 purchases with \$301 million. DoD FMR defines specific guidance for preliminary reviews of potential ADA violations. However, DoD organizations did not follow the guidance. The Army, Air Force, U.S. Southern Command, and the Defense Manpower Data Center (DMDC) did not initiate and complete preliminary reviews of potential ADA violations in a timely manner or recoup expired funds.

Guidance. On May 31, 2005, the OUSD(C)/CFO issued memorandums to the Deputy Under Secretary of Defense for Personnel and Readiness (Program Integration); the Assistant Secretary of the Army (Financial Management and Comptroller); the Assistant Secretary of the Navy (Financial Management and Comptroller); the Assistant Secretary of the Air Force (Financial Management and Comptroller); and the Commander, U.S. Southern Command to initiate, within the next 30 days, preliminary reviews of the circumstances surrounding the potential ADA violations identified. On October 25, 2005, the OUSD(C)/CFO issued a request for status of ongoing preliminary investigations into potential ADA violations. The OUSD(C)/CFO requested that status be provided no later than December 1, 2005.

Status. According to the DoD FMR, volume 14, chapter 3, preliminary reviews should be completed within a reasonable amount of time, usually 90 days. See the figure for the timelines for reviews of ADA violations. The OUSD(C)/CFO requested the commands start the reviews within 30 days. Therefore, most preliminary reviews should have been completed by September 30, 2005. However, of the 38 potential ADA violations identified, only the Navy completed 8 preliminary reviews within a timely manner. The Army completed 9 of

12 preliminary reviews in April 2006 and did not complete preliminary reviews for 3 purchases. For those three purchases, the Army decided to replace the funds without preliminary reviews. The Air Force completed 11 preliminary ADA reviews in April 2006 and did not complete a preliminary review for 1 purchase. The U.S. Southern Command completed two preliminary reviews in November 2005 and DMDC completed four reviews in November 2005. See Table 1 for a summary of the reviews.

	<u>DoD Activities Determinations</u>				<u>DoD OIG Determinations</u>	
	Number of Potential ADA Violations	Formal Investigation Required	Corrective Actions Taken	No ADA Violation	Preliminary Review Completed in Timely Manner	Require OUSD(C)/CFO Review
Army	12	3	5	4		3
Navy	8		1	7	8	5
Air Force	12	8	1	3		2
Southern Command	2			2		1
DMDC	4		3	1		1
Total	38	11	10	17	8	12

Army. The Army had 12 potential ADA violations to review. Of the 12 violations, 3 occurred at the Army Materiel Command; 5 occurred at the Army Accession Command; 3 occurred at Army Reserve Command; and 1 occurred at the Program Manager, Defense Communications and Army Transmission Systems.

Initially, the Office of the Assistant Secretary of the Army for Financial Management and Comptroller was waiting for additional OUSD(C)/CFO guidance on the bona fide need issue before beginning preliminary reviews. However, following the USD(C)/CFO October 25, 2005, Memorandum requesting status of potential ADA violations, the Army began the preliminary reviews. The Office of the Assistant Secretary of the Army for Financial Management and Comptroller directed the Army Materiel Command, the Army Training and Doctrine Command, and the Army Reserve to conduct preliminary ADA violation reviews on November 7, 2005. Of the 12 potential ADA violations identified, the Army recommended three formal investigations. Preliminary reviews showed that the Army replaced FY 2004 funding for two purchases and without preliminary reviews, decided to replace funding for three additional purchases. The commands reported that no ADA violations

occurred on three purchases reviewed. Finally, for one purchase, the Army partially took corrective action and partially determined that no ADA violation occurred.

Army Materiel Command. The Army Materiel Command initiated a formal investigation on the AMC [Army Materiel Command] Headquarters Relocation Project. The Army Materiel Command did not complete preliminary reviews for the Relocation/IT Support purchase, Relocation/Cell Phones purchase, or the Management Consulting Services purchase. The Army Materiel Command is replacing funding on the three purchases and determined that the violations would not be reportable.

Army Accessions Command. The Army Training and Doctrine Command, March 23, 2006, preliminary review on its subordinate command, the Army Accessions Command, determined that no ADA violations occurred for two purchases, took corrective action for two purchases, and partially took corrective action and partially determined that no ADA violation occurred on the fulfilled purchase.

The Army Accession Command preliminary review determined that the Partners for Youth Success Program-Marketing purchase was a severable service contract with a 12-month period of performance. As such, the purchase was covered under 10 U.S.C. 2410a. The contract period of performance was May 1, 2004, through April 30, 2005. The Army Accession Command sent a MIPR to GSA on September 14, 2004, to add additional FY 2004 O&M funds for the period of performance occurring from January 1, 2005, through April 30, 2005, which is an FY 2005 need. This does not comply with the intent of 10 U.S.C. 2410a, which states funds made available for a fiscal year may be obligated for the total amount of a contract entered into. The partial funds were added to the order in FY 2004, but the period of performance for the funds occurred in FY 2005. FY 2005 O&M funds should be used for that time period. Therefore, we recommend that the OUSD(C)/CFO decide whether a formal investigation should be conducted to determine if there was a bona fide need in FY 2004 for the Partners for Youth Success Program-Marketing purchase.

The Army Accessions Command Preliminary review states that the circumstances for the Partners for Youth Success IT Purchase are nearly identical to the Partners for Youth Success Program-Marketing. The contract period of performance is May 1, 2004, through April 30, 2005. Additional FY 2004 O&M funds were sent to GSA in September 2004. However the MIPR provided the additional funding for the period of performance occurring from January 1, 2005, through April 30, 2005, FY 2005, and therefore, needed FY 2005 O&M funds. We recommend that the OUSD(C)/CFO decide whether a formal investigation should be conducted to determine whether there was a bona fide need in FY 2004 for the Partners for Youth Success IT purchase.

Army Reserve Command. The Army Reserve, March 2, 2006, preliminary review recommended that two formal investigations be conducted and determined that no ADA violation occurred for one purchase. The Army Reserve Command initiated formal investigations on the Individual Training

Requirements System purchase and the Army-Wide Training Tracking System/Army Training and Information Management System Development purchase. The Army Reserve Command determined no ADA violation occurred on the Steam Cleaners purchase. However, the Army Reserve Command used GSA to purchase a commercially available product for the Steam Cleaners purchase. The equipment was not delivered in the year the funds were available for use and there was no evidence that a long lead-time was necessary to obtain this commercial product. Accordingly, we recommend that the OUSD(C)/CFO decide whether a formal investigation should be conducted to determine if there was a bona fide need in FY 2004 for the Steam Cleaners purchase.

Navy. The Navy had eight potential ADA violations. Of the eight violations, four occurred at the Naval Education and Training Command; one at the Navy Reserve Forces; two at the Space and Naval Warfare Systems Command; and one at the Space and Naval Warfare Systems Center, New Orleans. The Navy did not recommend or complete any formal ADA investigations. Preliminary reviews show that the Navy replaced FY 2004 funding for one purchase and that the commands reported that no ADA violations occurred on the other seven purchases reviewed.

Naval Education and Training Command. The Naval Education and Training Command, August 8, 2005, preliminary review determined that no ADA violations occurred. For the Navy EXCEL [Excellence through Commitment to Education and Learning] purchase, the Naval Education and Training Command preliminary review stated that they were unable to determine whether research, development, training, and evaluation (RDT&E) funds or O&M funds were the correct appropriation to fund the task. Therefore, we recommend that the OUSD(C)/CFO decide whether a formal investigation should be conducted to determine if the incorrect appropriation was used.

For the Chief Information Officer Integration purchase, the preliminary review stated, "The order for contracting was not accomplished until late September due to review/approval processes ... and unforeseen delays ... Funding was available and obligated in the financial system by the end of September. Therefore, a bona fide need did exist." However, no specific interagency agreement obligating the funds existed and GSA did not award the contract in FY 2004. Therefore, we recommend that the OUSD(C)/CFO decide whether a formal investigation should be conducted to determine if there was a bona fide need in FY 2004 for the Chief Information Officer Integration purchase.

Navy Reserve Forces. The Navy Reserve Forces, June 30, 2005, preliminary review determined that no ADA violation occurred. For the Defense Message System purchase, the preliminary review states the computers were purchased to provide connectivity to an existing external system and none of the computers were connected directly to one another. The computers did not constitute a system. However, in an interview on November 18, 2004, Navy Reserve Forces personnel stated that purchasing of computers and training was the first part of the Defense Message System upgrade. The Navy Reserve Forces personnel considered the computers as part of the upgrade to the Defense Message System. Therefore, we recommend that the OUSD(C)/CFO decide

whether a formal investigation should occur to determine if correct funds were used for this purchase.

Space and Naval Warfare Systems Command. The Space and Naval Warfare Systems Command, August 17, 2005, preliminary review determined that no ADA violations occurred. For the Video Teleconference Upgrades purchase, the preliminary review stated “SPAWAR [Space and Naval Warfare Systems Command] identified the security threat requiring an upgrade in the middle of FY 2004. The requirement was included in a FY 2004 unfunded list, providing further evidence of an established FY 2004 need. Delivery was expected within 14-60 days, with partial deliveries expected earlier. Therefore, a bona fide need did exist in FY 04.” The MIPR, using O&M funds, was sent September 29, 2004. However, the delivery of the severable services portion of this contract in FY 2005 violated the bona fide needs rule. Therefore, we recommend that the OUSD(C)/CFO decide whether a formal investigation should be conducted.

Space and Naval Warfare Systems Center, New Orleans. The Space and Naval Warfare Systems Center, New Orleans, August 17, 2005, preliminary review determined that no ADA violations occurred. For the Work Force Learning Project, the preliminary review states that the Program Executive Office Information Technology issued a MIPR with RDT&E funds to the Space and Naval Warfare Systems Center, New Orleans. The correct source appropriation was used to fund the Work Force Learning project. Because an RDT&E fund is a 2-year appropriation, the money was still available for obligation at the date of the contract award. However, the MIPR sent to GSA by the Space and Naval Warfare Systems Center, New Orleans cited O&M funds. Therefore, we recommend that the OUSD(C)/CFO decide whether a formal investigation should be conducted.

Air Force. The Air Force had 12 potential ADA violations. Of the 12 violations, 2 occurred at the Air Combat Command; 3 occurred at the Electronic Systems Center Force Protection Command and Control System Program Office (ESC); 2 occurred at the Air Force Medical Support Agency; and 5 occurred at the Air National Guard. Of the 12 potential ADA violations identified, the Air Force recommended 8 formal ADA investigations and determined that that no ADA violations occurred on 3 purchases reviewed. No preliminary review was completed for one purchase. No Air Force preliminary reviews had the required approval and coordinated with the Secretary of the Air Force General Counsel as of May 1, 2006.

Air Combat Command. The Air Combat Command, November 22, 2005, preliminary review recommended one formal investigation on the Battle Management Project purchase and determined that no ADA violation occurred on one purchase.

ESC. The ESC, December 30, 2005, preliminary review recommended two formal investigations, one for the Security System Assessment purchase and one for the Joint Conflicts and Tactical Simulation System

Assessment purchase, and determined that no ADA violation occurred on one purchase.

On November 9, 2004, the DoD Inspector General (IG) sent the Program Director, ESC a memorandum requesting ESC stop proceeding with contracts related to the \$171 million sent to GSA for the “smart gates” until the funding and contracting problems were corrected. The DoD IG stated that if the acquisition continued as planned, an ADA violation may occur. However, ESC disregarded the DoD IG memorandum. The Air Force has not recouped approximately \$130 million in FY 2003 O&M funds in accordance with the DoD March 24, 2005, Memorandum. In addition, work appears to be continuing on the vehicle barriers purchase, a part of the smart gate project.

Although reported last year as a potential ADA violation, ESC did not conduct a preliminary review on the smart gate purchase. The Department of the Air Force General Counsel for Fiscal and Administrative Law rendered an opinion on February 23, 2005, that determined no ADA violation occurred. The Air Force General Counsel opinion appears to contradict OUSD(C)/CFO guidance in the DoD March 24, 2005, Memorandum. Once the Deputy Chief Financial Officer issued the March 24, 2005, Memorandum, the Air Force should have followed the guidance issued and recouped the unobligated funds for the smart gate purchase. To assist future purchases, the General Counsel of the Office of the Secretary of Defense must issue a legal opinion regarding DoD funds sent into revolving funds, such as the GSA IT fund. The OUSD(C)/CFO and the Military Departments must comply with the legal opinion. Regardless, we believe the Air Force, using USD(C)/CFO guidance, needs to conduct a preliminary ADA review of the vehicle barriers purchase and recoup the FY 2003 O&M funds used for that purchase.

Air Force Medical Support Agency. The Air Force Medical Support Agency, November 29, 2005, preliminary review recommended one formal investigation on the Web Management Design purchase and determined that no ADA violation occurred on one purchase. The Air Force Medical Supply Agency preliminary review stated that GSA was procuring equipment for the End User Devices purchase. GSA did not award the contract for the equipment until July 2005, which is part of FY 2005. The FY 2004 O&M funds sent to GSA expired on September 30, 2004. We recommend that the OUSD(C)/CFO decide whether a formal investigation should be conducted to determine if there was a bona fide need in FY 2004 for the End User Devices purchase.

National Guard Bureau. The National Guard Bureau, November 30, 2005, preliminary review recommended two formal investigations on the Sensor Evaluation purchase and the Web Site Development purchase. In addition, two purchases, the Active Directory Support purchase and Combat Banners purchase, will have formal investigations. No ADA violation occurred on one purchase. The National Guard Bureau took corrective action on one purchase and deobligated the funds on the Weapons of Mass Destruction First Response Equipment Buy purchase.

U.S. Southern Command. The U.S. Southern Command had two potential ADA violations. The U.S. Southern Command, November 10,

2005, preliminary review determined that no ADA violations occurred. For the Joint Detainee Information Management System (JDIMS) purchase, the U.S. Southern Command preliminary review stated that JDIMS is not a system, but data storage and retrieval capability that can be accessed by authorized personnel from any Secret Internet Protocol Router Network terminal in DoD. The number of Secret Internet Protocol Router Network terminals needed to be increased to provide authorized personnel access to input on detainee activities. However, the JDIMS Information Paper provided by the U.S. Southern Command refers to JDIMS as a system. Therefore, we recommend that the OUSD(C)/CFO decide whether a formal investigation should occur to determine if correct funds were used for this purchase.

Defense Manpower Data Center. DMDC had four potential ADA violations. On November 28, 2005, the Office of the Under Secretary of Defense for Personnel and Readiness sent a memorandum to the USD(C)/CFO updating the status of the DMDC potential ADA violations. DMDC took corrective actions on three purchases. DMDC deobligated funding on the Universally Accepted Credentials purchase, Defense Biometric Identification System purchase, and the CAC Vulnerability purchase.

DMDC determined that no ADA violation occurred on the Beneficiary Services and Ancillary Support purchase. The funds were for a bona fide need of FY 2003 and placed on existing contract to fund the contractor's continued performance during the initial 1-year contract period that began on February 1, 2003. GSA placed the funds on contract on October 17, 2003. Because the FY 2003 O&M funds were placed on contract in FY 2004, there appears to be a bona fide need issue. Therefore, we recommend that the OUSD(C)/CFO decide whether a formal investigation should occur to determine if correct funds were used for this purchase.

Actions Taken. DoD organizations performed preliminary reviews for the 38 potential ADA violations identified in DoD IG Report No. D-2005-096. Of the 38 preliminary reviews, 21 purchases have formal actions being taken by DoD organizations by initiating formal investigations or performing corrective actions. To correct purchases, the DoD organizations replaced the expired annual funds used for each purchase with annual funds that were current at the time of the purchase. For 17 purchases, DoD organizations determined that no ADA violation occurred. However, the OUSD(C)/CFO should determine whether formal investigations should be completed for 12 of the 17 purchases where DoD organizations determined no ADA violations occurred.

Additional Potential ADA Violations

The USD(C)/CFO was slow to issue comprehensive, clarifying financial guidance on the bona fide needs rule and the availability of funds that cross fiscal years. The lack of formal investigations into potential ADA violations left many financial issues unresolved. Without clear guidance from the USD(C)/CFO, DoD organizations were reluctant to review and recoup expired funds. In the absence

of clear, definitive funding guidance, DoD organizations continued “business as usual” and may have committed an additional 69 potential ADA violations that were funded with approximately \$130.6 million.

Guidance for Contracts for Periods Crossing Fiscal Years and the Bona Fide Needs Rule. Section 2410a, title 10, United States Code permits the period of performance of a severable service contract to begin in 1 fiscal year and end in the next fiscal year, as long as the period of performance does not exceed 12 months. However, the USD(C)/CFO did not issue guidance until March 27, 2006, on severable services that cross fiscal years and use an annual appropriation, such as O&M funds. The guidance states that O&M funds are available for 1 year after acceptance by the non-DoD agency to fund severable services. The USD(C)/CFO has not issued clarifying guidance on the awarding of contracts after fiscal year end and the partial funding of contracts when assisted acquisitions are being made by non-DoD agencies.

Confusing Guidance. The USD(C)/CFO has not issued clarifying guidance on the bona fide needs rule for purchases being made by non-DoD agencies. The DoD March 24, 2005, Memorandum states that, for services, expired funds should be deobligated and returned from non-DoD agencies unless the order was made during the period of availability; the order was specific, definite, and certain, with specificity similar to contracts; and for severable services, the period of performance does not exceed 1 year. As stated previously, the DoD March 27, 2006, Memorandum says that O&M funds are available for 1 year after acceptance from non-DoD agencies. Although the memorandums may appear to contradict each other, both provide accurate guidance. However, DoD organizations continue to use expired funds for purchases through non-DoD agencies. For example, on December 12, 2002, the Naval Sea Logistics Center, Mechanicsburg, Pennsylvania, sent funds to GovWorks to purchase 40 desert camouflage Lightweight Assault Vest body armor systems. On April 19, 2005, a GovWorks contracting officer awarded contract 42912 to purchase the body armor systems for Naval Sea Systems Command. The Navy FY 2003 O&M funds expired on September 30, 2003. The funds were sent to GovWorks well within the period of availability; however, the funds were not placed on contract for 28 months, and had been expired for 18 months. The Naval Sea Systems Command should conduct a preliminary review to determine whether an ADA violation occurred. The USD(C)/CFO should issue clarifying guidance on the bona fide needs rule. DoD needs to have a single source with clear guidance on funding purchases through non-DoD agencies. In addition, DoD program managers and non-DoD contracting officers need to be clear on the precise date an annual appropriation is no longer available for use and when a DoD organization should recoup funds that cannot be used within the guidance.

Partial Funding of Contracts. Though no clear guidance exists, DoD organizations partially fund purchases made by non-DoD agencies. Partial funding can be an indication of a lack of acquisition planning or of DoD organizations trying to spend expiring funds at non-DoD agencies. For example, GSA initially awarded a contract for DMDC on January 14, 2003, to purchase Beneficiary Services and Ancillary Support. At the time of the award, \$1 million was placed on the contract with a period of performance from February 1, 2003, through January 31, 2004. DMDC sent MIPR XK3H5A33F273MP with an

additional \$6.0 million to fund the purchase to GSA on September 26, 2003, using FY 2003 O&M funds. Obviously, DMDC was attempting to use expiring funds for services that would not occur during the period of availability of the appropriation. GSA did not issue a modification and place the funds on contract until October 17, 2003. As discussed previously, DMDC concluded that no ADA violation occurred. However, the OUSD(C)/CFO should decide whether a formal investigation should occur. In addition, the USD(C)/CFO should issue clarifying guidance on partial funding of contracts and contracts actions that occur after the fiscal year end using non-DoD agencies.

Review of Purchase Payments. The Defense Finance and Accounting Services provide responsive, professional finance and accounting services for DoD. Part of these services includes accounting for DoD appropriations. The most common DoD appropriations include RDT&E, O&M, Procurement, Defense Working Capital Fund, and Military Construction. An appropriation expires when it is no longer available for new obligations; however, most appropriations are available for another 5 years for adjustment to, or payment of, existing obligations. At the end of that 5-year period, the appropriation is considered closed. However, DoD organizations used expired funds to reimburse non-DoD agencies for purchased goods and services, and could potentially attempt to use closed funds. When the Defense Finance and Accounting Services reimburses non-Defense agencies for purchases made on behalf of DoD, it should review the appropriations used for reimbursement to non-DoD agencies to ensure expired and closed appropriations are not used inappropriately. If the appropriation or year of appropriation is improper, the Defense Finance and Accounting Service should reject the payment and require the proper funds.

Potential ADA Violations. DoD organizations may have an additional 69 potential ADA violations that occurred primarily in FY 2005. In addition to GSA, DoD organizations use other agencies to contract for the purchase of goods and services. The Department of the Interior, GovWorks and the Southwest Acquisition Branch, and the Department of the Treasury, FedSource have revolving funds similar to the GSA IT Fund. DoD organizations also use Government-wide acquisition contracts, such as the Scientific Engineering and Workstation Procurement contract at NASA. Reviews of DoD organizations' use of GSA; the Department of the Interior, GovWorks and the Southwest Acquisition Branch; NASA; and the Department of the Treasury, FedSource disclosed an additional 69 potential ADA violations that occurred primarily in FY 2005. See Table 2 for the potential ADA violations by non-DoD agencies (some purchases both extended the availability of funds and used the wrong appropriation). If the USD(C)/CFO had issued clear guidance and DoD organizations had completed the preliminary reviews of potential ADA violations in a timely manner, DoD organizations would now have examples that could be used to avoid improper use of funds and ADA violations. Appendix D lists the 69 purchases reviewed this year that we believe improperly used Government funds. OUSD(C)/CFO should direct Components to initiate preliminary reviews for the purchases in Appendix D to determine whether ADA violations occurred. See Table 3 for the total number of types of funding issues of potential ADA violations by DoD activity.

Table 2. Potential ADA Violations by Non-DoD Agencies*

	<u>Bona Fide Need</u>	<u>Wrong Appropriation</u>
GSA	11	1
Department of the Interior	21	2
NASA	12	6
Department of the Treasury	<u>16</u>	<u>9</u>
Total	60	18

*Some purchases have both bona fide need and wrong appropriation.

Table 3. Potential ADA Violations by Activity¹

	<u>Bona Fide Need</u>	<u>Wrong Appropriation</u>
OSD	1	
Army	12	5
Navy	18	1
Air Force	8	2
Combatant Commands²	15	8
Defense Agencies³	<u>6</u>	<u>2</u>
Total	60	18

¹ Some purchases have both bona fide need and wrong appropriation.

² Combatant Commands include the U.S. Central Command, U.S. Special Operations Command, Joint Information Operations Center, and the Joint Personnel Recovery Agency.

³ Defense agencies include the Defense Information Systems Agency, Washington Headquarters Services, Defense Security Service, DoD OIG, and the Counterintelligence Field Activity.

Bona Fide Need. For 60 purchases of the 69 identified as potential ADA violations, DoD funding authorities violated the bona fide needs rule. DoD organizations used annual O&M appropriations to fund purchases of severable services that met a bona fide need of the following fiscal year instead of the year the funds were available. Also, DoD organizations purchased goods that were received after the availability of the funds could not be justified because of delivery time, production lead-time, unforeseen delays, or stock replacement.

GSA Purchases. DoD organizations may have potential ADA violations for 11 purchases made through GSA relating to the bona fide needs rule. For example, the Joint Information and Operations Center sent \$875,000 to GSA on September 25, 2003; sent approximately \$1.0 million to GSA on September 8, 2004; and sent \$6,148 to GSA on September 14, 2004, for a total of approximately \$1.9 million in FY 2004 O&M funds. The Joint Information Operations Center also sent approximately \$1.0 million to GSA on October 13, 2005 using FY 2006 O&M funds. The Joint Information Operations Center used

the funds to purchase severable services supporting the command's network. The funds were used to cover a base contract period from September 15, 2003, through September 30, 2004, for \$849,000; option year 1, from October 1, 2004, through September 30, 2005, for \$891,000; and option year 2, from October 1, 2005, through September 30, 2006, for \$891,000. Since no FY 2005 funds were sent to support option year 1, in FY 2005, it appears the services received in FY 2005 were funded with FY 2004 O&M funds. The Joint Information and Operations Center should conduct a preliminary review to determine whether an ADA violation occurred.

In addition, the Defense Security Service sent \$310,000 to GSA on September 17, 2004, using FY 2004 O&M funds. The Defense Security Service purchased the testing of automated certification and accreditation tools, program management support, and independent verification and validation of automated tools. On August 25, 2005, GSA awarded the contract for the severable services, using FY 2004 O&M funds. FY 2004 O&M funds expired on September 30, 2004. The Defense Security Service should conduct a preliminary review to determine whether an ADA violation occurred.

Department of the Interior Purchases. DoD organizations may have potential ADA violations for 21 purchases made through the Department of the Interior relating to the bona fide needs rule. For example, the Office of the Administrative Assistant to the Secretary of the Army sent \$1.8 million, using FY 2004 O&M funds, to the Department of the Interior, GovWorks to purchase computer servers for the Pentagon Telecommunications Service Center. The funds expired on September 30, 2004. A GovWorks contracting officer awarded contract action 40966 for \$521,679 on November 30, 2004. The computer servers were commercial items and there was no evidence that a long lead-time was required to purchase these items, or that the items were needed to replenish the inventory, or that there was an unforeseen delay in purchasing these items. The Office of the Administrative Assistant to the Secretary of the Army should conduct a preliminary review to determine whether an ADA violation occurred.

In addition, on May 5, 2005, a GovWorks contracting officer issued modification 0002 under contract action 41801 for \$920,970, to add funding to a purchase of services related to the U.S. Air Force Horned Owl Program for the U.S. Army Program Management Office Airborne Reconnaissance Low. The Department of the Interior contracting officials used a portion of the funds from two existing DoD MIPRs to fund modification 0002. One MIPR, for \$120,000, was issued on January 10, 2004, using Army FY 2004 O&M funds, which expired on September 30, 2004. The U.S. Army Intelligence and Security Command, the command that issued the MIPR, should conduct a preliminary review to determine whether an ADA violation occurred.

Department of the Treasury Purchases. DoD organizations may have potential ADA violations for 16 purchases made through the Department of the Treasury relating to the bona fide needs rule. For example, the Air Force Deputy Chief of Staff, Manpower and Personnel sent \$500,000, using FY 2004 O&M funds to the Department of the Treasury, FedSource to pay national affiliation fees for Boys and Girls Club of America for all participating Air Force youth

centers for 2005 and for the annual national conference. The funds were used to prepay FY 2005 fees for the annual conference that occurred in 2005. There was no interagency agreement made during the period of availability of the funds other than the MIPR that funded the purchase, which was not specific, definite, and certain with specificity similar to that found in contract orders. The Air Force Deputy Chief of Staff, Manpower and Personnel should conduct a preliminary review to determine whether an ADA violation occurred.

In addition, the Naval Base Ventura County Public Works, now the Naval Engineering Facilities Command, Southwest, purchased services through FedSource to repair underground vaults in the parking apron. The Naval Base Ventura County Public Works issued a MIPR for \$177,000, on September 28, 2004, using FY 2004 O&M funds. The task order was not awarded until November 18, 2004. The Naval Engineering Facilities Command, Southwest should conduct a preliminary review to determine whether an ADA violation occurred.

NASA Purchases. DoD organizations may have 12 potential ADA violations relating to the bona fide needs rule for purchases made using the NASA Scientific and Engineering Workstation Procurement contracts. For example, a DoD contracting officer used the NASA Scientific and Engineering Workstation Procurement contracts to purchase licenses, maintenance, and technical support services valued at \$500,000 using FY 2005 O&M funds for the Counterintelligence Field Activity (CIFA). 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. 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. CIFA should conduct a preliminary review to determine whether an ADA violation occurred.

Another DoD contracting officer used the NASA Scientific and Engineering Workstation Procurement contracts to purchase various computer equipment. The U.S. Central Command primarily purchased the Gateway E6300 personal computer. The value of the order was \$758,442, and used FY 2005 Air Force O&M funds, which expired on September 30, 2005. The order was awarded on September 19, 2005, and scheduled delivery was October 19, 2005. The equipment was not delivered until November 3, 2005. The receipt of goods after the DoD appropriation expired could not be justified by production lead-time or unforeseen delays. The Commander, U.S. Central Command should conduct a preliminary review to determine whether an ADA violation occurred.

Wrong Appropriation. For 18 of the 69 purchases identified as potential ADA violations, DoD organizations used the wrong appropriation to fund the requirement. For example, the Directorate of Support Services at Fort McCoy sent seven MIPRs, valued at \$987,935, using FY 2003 Army Reserve O&M funds to the Department of the Treasury, FedSource to construct a canopy and vehicle inspection building. The Directorate of Support Services at Fort McCoy decided to build a new access road approximately 10 miles from the main gate because railroad tracks crossed before the main gate. The Director stated that the new gate was temporary. However, FedSource was used to “Construct Main Gate

Inspection Building” and “Construct Main Gate Canopy.” The statement of work says to “Construct a steel structured Canopy with a 18 foot clearance to a steel roof to be located at the access control point at the main gate.” Regardless, whether the new gate was temporary or not, the wrong appropriation was used.

At the time the canopy was scheduled for construction, 10 U.S.C. 2801(a), defined military construction as “... any construction, development, conversion, or extension of any kind carried out with respect to a military installation.” DoD FMR, volume 2A, chapter 1 defines construction as “the erection, installation, or assembly of a new facility; the addition, expansion, extension, alteration, conversion, or replacement of an existing facility; the acquisition of a facility or the relocation of a facility from one installation to another.” Further, construction includes real property equipment installed and made an integral part of such facilities, related site preparation, and other land improvements. New buildings existed because of this purchase through the Department of the Treasury, FedSource. The contract exceeds the limits for using O&M funds for minor construction. Therefore, this is a construction project requiring the Directorate of Support Services at Fort McCoy to request Military Construction Funds from Congress for this purchase.

Conclusion

Because the OUSD(C)/CFO delayed issuing comprehensive, clear guidance and program officials did not complete formal investigations into potential ADA violations, DoD organizations continued to inappropriately fund purchases through non-DoD agencies. If ADA investigations had been completed in accordance with the FMR and the DoD Deputy Chief Financial Officer July 6, 2005, Memorandum, DoD organizations would now have clear examples of correct policy. In addition, DoD organizations may have avoided the 69 new potential ADA violations identified this year. Further, DoD organizations did not recoup expired funds. We reported in DoD IG Report No. D-2005-096 that GSA estimated between \$1.0 billion and \$2.0 billion of expired or unavailable funds remained at GSA. The OUSD(C)/CFO reported that at least \$183 million in expired funds were returned to the Department of the Treasury. Other amounts may have been deobligated and returned to the Department of the Treasury. However, those funds were not reported to the OUSD(C)/CFO. As a result, DoD funds remain unaccounted for and are otherwise unavailable for use. The fact that any expired funds remain at GSA make them potentially available for improper use.

Management Comments on the Finding and Audit Response

U.S. Special Operations Command. Although not required to comment, the Comptroller, U.S. Special Operations nonconcurred with four potential Antideficiency Act violations. The U.S. Special Operations Command cited “GAO’s Principles of Appropriations Law,” 3rd Edition, Volume I, which states

that the bona fide needs rule is not violated for materials if the time between the contracting and delivery is not excessive and the procurement is not for standard commercial items readily available from other sources. Therefore, the U.S. Special Operations Command stated that the four orders were not potential ADA violations.

Audit Response. The U.S. Special Operations Command ordered from the NASA Scientific and Engineering Workstation Procurement multiple-award contracts. The 26 NASA Scientific and Engineering Workstation Procurement contracts are for IT commercial off-the-shelf products and services that are readily available. Therefore, potential ADA violations preliminary reviews are necessary.

Joint Information Operations Center. Although not required to provide comments, the Associate Director of the Joint Information Operations Center nonconcurred with the report. For the Information Technology and Operations Support (J2) purchase, the Headquarters, European Command, not the Joint Information Operations Center, as stated in the draft report, sent MIPR MIPR4JGSAJ2043 to GSA for contracted support at the Joint Information Operations Center. For the Network Systems Support and Administration purchase, the Joint Information Operations Center stated that GSA incorrectly stated the end of the period of performance at September 30, 2005, instead of September 21, 2005. The Joint Information Operations Center and GSA developed a remediation plan to correct the period of performances for the contract and option years. For the Personal Video Systems and the Joint Multi-Disciplinary Vulnerability Assessment purchases, the Joint Information Operations Center stated that GSA awarded the contract late due to unforeseen delays.

Audit Response. For the Information Technology and Operations Support (J2) purchase, the report was changed to reflect that the Headquarters, European Command sent MIPR MIPR4JGSAJ2043 to GSA. For the Network Systems Support and Administration purchase, the Joint Information Operations Center comments state that GSA made an administrative mistake and the period of performance should have ended September 21, 2005. The Joint Information Operations Center is changing the dates of the base year and option years to match the years of the funds sent to GSA. Manipulation of the dates may result in a large administrative effort because invoices have been paid. The year of the appropriation of funds already expended on contract efforts cannot be changed. Therefore, a preliminary review needs to be conducted to determine whether payments made were in violation of the bona fide needs rule. For the Personal Video Systems and Joint Multi-Disciplinary Vulnerability Assessment purchases, the Joint Information Operations Center provided no evidence on the unforeseen delays. Therefore, a preliminary review should occur.

Recommendations and Management Comments

1. We recommend that the Under Secretary of Defense (Comptroller)/Chief Financial Officer:

a. Perform an independent assessment and determine whether formal investigations should occur for potential Antideficiency Act violations on the Partners for Youth Success Information Technology purchase; the Partners for Youth Success Program-Marketing purchase; the Steam Cleaners purchase; the Navy Excellence Through Commitment to Education and Learning purchase; the Chief Information Officer Integration purchase; the Defense Message System purchase; the Video Teleconference Upgrades purchase; the Work Force Learning Project purchase; the Smart Gate purchase; the End User Devices purchase; the Joint Detainee Information Management System purchase; and the Beneficiary Services and Ancillary Support purchase.

Management Comments. The Deputy Chief Financial Officer, responding for the Under Secretary of Defense (Comptroller)/Chief Financial Officer, concurred and will work with the Office of General Counsel to determine whether formal investigations should occur for the potential Antideficiency Act violations. The expected completion date is February 2007.

b. Work with the General Counsel of the Office of the Secretary of Defense to establish a legal opinion and policy regarding the use of funds and periods of availability of funds that are sent to other agencies that operate revolving funds, such as the General Services Administration Information Technology Fund and the Franchise Funds.

Management Comments. The Deputy Chief Financial Officer concurred and issued policy on October 16, 2006, "Non-Economy Act Orders."

c. Issue clarifying guidance that is specific and definite on the bona fide needs rule, awarding contracts after the fiscal year ends with previous year funding, and partial funding of purchases through non-DoD agencies.

Management Comments. The Deputy Chief Financial Officer concurred and issued policy on October 16, 2006, "Non-Economy Act Orders."

d. Require the Defense Finance and Accounting Services to review and identify reimbursements for purchases to non-DoD agencies that cite funds that are either expired or closed and no longer available for use.

Management Comments. The Deputy Chief Financial Officer concurred and will work with the Defense Finance and Accounting Services in facilitating the review. The estimated completion date is February 2007.

e. Direct the DoD Components to initiate preliminary reviews to determine whether the improper use of Government funds for the

69 purchases listed in Appendix D resulted in Antideficiency Act violations or other funding violations in accordance with DoD 7000.14-R, “Financial Management Regulation.” Also, monitor the results of the preliminary reviews to ensure they are being properly initiated.

Management Comments. The Deputy Chief Financial Officer concurred and requested DoD Components to initiate preliminary reviews for the 69 purchases. The action was completed in October 2006.

Appendix A. Scope and Methodology

We performed this audit in accordance with Public Law 108-375, the “Ronald W. Reagan National Defense Authorization Act for Fiscal Year 2005.” The audit is a followup to determine the results of recommendations made last year in DoD IG Report No. D-2005-096, “DoD Purchases Made Through the General Services Administration,” July 29, 2005. We reviewed those actions taken last year as a direct result of DoD IG Report No. D-2005-096, including actions taken by the OUSD(C)/CFO and DoD organizations that had reported potential ADA violations. In addition, we visited DoD organizations and determined whether additional ADA violations occurred.

We consulted with the General Counsels of the Office of the Secretary of Defense and the DoD IG on the interpretation and intent of the United States Code regarding the Antideficiency Act and bona fide needs rule. We reviewed DoD FMR and DoD guidance on ADA violations and bona fide needs rule. We also participated in numerous meetings with management personnel to discuss the proper use of funds.

We obtained and reviewed copies of the OUSD(C)/CFO memorandums requesting that DoD organizations conduct preliminary reviews of potential ADA violations. We evaluated the preliminary reviews of the 38 potential ADA violations identified in DoD IG Report No. D-2005-096 to determine whether the reviews were conducted in a timely manner and came to reasonable conclusions given the information available. We evaluated nine Army preliminary reviews from the Army Materiel Command, Army Accession Command, and the Army Reserve Command. We evaluated eight Navy preliminary reviews from the Naval Education and Training Command; Navy Reserve Command; Space and Naval Warfare Systems Command; and the Space and Naval Warfare Systems Center, New Orleans. We evaluated 11 Air Force preliminary reviews from the Air Combat Command, Air Force Electronic Systems Center, Air Force Medical Support Agency, and the National Guard Bureau. We evaluated two U.S. Southern Command preliminary reviews. We evaluated four DMDC preliminary reviews. We determined whether DoD organizations completed the preliminary reviews in a timely manner, in accordance with the DoD FMR.

The DoD IG conducted separate audits in coordination with GSA, the Department of the Interior, NASA, and the Department of the Treasury to evaluate DoD purchases through non-DoD contracts. Four additional reports will be issued, one on each non-DoD agency.

GSA. For DoD IG Report No. D-2005-096, we reviewed 75 purchases funded by 144 MIPRs valued at about \$406 million, which occurred primarily in the fourth quarter of FY 2004. In FY 2005, DoD sent approximately 20,505 MIPRs to GSA, valued at approximately \$3.0 billion. In FY 2005, we reviewed 56 purchases funded by 223 MIPRs valued at about \$179 million. We visited the Army Intelligence Center, Fort Huachuca; the Fleet Numerical Meteorology and

Oceanography Center; the Air Force Accounting and Finance Office; the Defense Security Service; Central Command, Air Force; and the Joint Information Operations Center.

Department of the Interior. We reviewed 49 task orders funded by about \$277.1 million. We visited the Department of the Interior, GovWorks, Herndon, Virginia; and the Department of the Interior, National Business Center, Southwest Branch, Fort Huachuca. Auditors at the Department of the Interior OIG reviewed the potential ADA violations at the DoD OIG.

NASA. In FY 2005, DoD contracting offices awarded 6,569 orders, valued at \$343.2 million, against NASA contracts. We reviewed 111 orders, valued at approximately \$85.9 million. We visited the Space and Naval Warfare Systems Center at Charleston and San Diego; the Electronic Systems Center at Hanscom Air Force Base; the Defense Information Technology Contracting Offices at Scott Air Force Base and the National Capital Region; and the Air Force 6th Contracting Squadron, MacDill Air Force Base.

Department of the Treasury. In FY 2005, DoD sent 9,199 MIPRs to the Department of the Treasury, valued at \$406 million. We reviewed 61 task orders valued at about \$37 million. We visited the Office of the Under Secretary of Defense for Personnel and Readiness; Fort McCoy; the Army Human Resources Command; Walter Reed Army Medical Center; the Naval Base Ventura County; the Naval Engineering and Facilities Command; the Air Force Deputy Chief of Staff, Manpower and Personnel; the Air Force Joint Personnel Recovery Agency; the Air Force 452nd Air Mobility Wing; and the Washington Headquarters Service.

We performed this audit from September 2005 through June 2006 in accordance with generally accepted government auditing standards.

Use of Computer-Processed Data. We did not use computer-processed data to perform this audit.

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

Appendix B. Prior Coverage

During the last 5 years, GAO, the DoD IG, Army, Air Force, and GSA have issued 25 reports discussing interagency procurements and ADA violations. Unrestricted GAO reports can be accessed over the Internet at <http://www.gao.gov>. Unrestricted DoD IG reports can be accessed at <http://www.dodig.mil/audit/reports>. Unrestricted Army reports can be accessed at <http://www.hqda.army.mil>. Unrestricted Air Force reports can be accessed at <http://www.afaa.hq.af.mil>. Unrestricted GSA reports can be accessed at <http://www.gsa.gov>.

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-05-201, “Interagency Contracting: Problems with DOD’s and Interior’s Orders to Support Military Operations,” April 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

DoDIG Report No. D-2007-032, “FY 2005 DoD Purchases Made Through the Department of Treasury,” December 8, 2006

DoDIG Report No. D-2007-023, “FY 2005 DoD Purchases Made Through the National Aeronautics and Space Administration,” November 13, 2006

DoDIG Report No. D-2007-007, “FY 2005 DoD Purchases Made Through the General Services Administration,” October 30, 2006

DoD IG Report No. D-2006-029, "Report of 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

Army

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

GSA IG

GSA Report, "Compendium of Audits of Federal Technology Service Client Support Center Controls," September 29, 2006

GSA Report, "Compendium of Audits of Federal Technology Service Client Support Center Controls," June 14, 2005

GSA Report, "Compendium of Audits of the Federal Technology Service Regional Client Support Centers," December 14, 2004

GSA Report No. A040097/T/7/Z05011, "Audit of Federal Technology Service's Client Support Center, Greater Southwest Region," December 10, 2004

GSA Report No. A030205/T/9/Z05009, "Audit of Federal Technology Service's Client Support Center, Pacific Rim Region," December 9, 2004

GSA Report No. A040191/T/6/Z05007, "Audit of Federal Technology Service's Control and Testing of Those Controls, Heartland Region," December 9, 2004

GSA Report No. A040102/T/W/Z05004, "Audit of Federal Technology Service's Client Support Center, National Capital Region," December 9, 2004

GSA Report No. A020144/T/5/Z04002, "Audit of Federal Technology Service's Client Support Centers," January 8, 2004

GSA Report No. A020144/T/5/W03001, "Alert Report on Audit of Federal Technology Service's Client Support Centers," March 6, 2003

Department of the Interior

DOI IG Report No. W-EV-OSS-0075-2004, "Review of 12 Procurements Placed Under General Services Administration Federal Supply Schedules 70 and 871 by the National Business Center," July 16, 2004

Appendix C. DoD IG Report No. D-2005-096 Potential Antideficiency Act Violations

The following list contains the 38 potential ADA violations as they were noted in DoD IG Report No. D-2005-096, "DoD Purchases Made Through the General Services Administration," July 29, 2005.

Army Materiel Command

1. **Relocation/IT Support.** The Army Materiel Command sent MIPR MIPR3M6ADPP02 for approximately \$1.9 million and MIPR MIPR3M6ADPP02 Amendment 1 for \$500,000 to GSA on September 30, 2003, for relocation of IT support using O&M Funds. The relocation support included seat management equipment and services. Although a contract existed, GSA had not amended the contract to reflect the MIPR requirements as of November 2004. Use of FY 2003 O&M funds to satisfy FY 2005 requirements does not meet the intent of the bona fide need rule.
2. **Relocation/Cell Phones.** The Army Materiel Command sent MIPR MIPR4MG6ISW040 for \$420,000 to GSA on September 28, 2004, using O&M Funds. The requirement was for cellular phones, pagers and blackberries. As of November 2004, GSA had not placed the funds on contract to purchase the equipment. The anticipated receipt of goods after the DoD appropriation expired could not be justified because of delivery time, production lead-time, or unforeseen delays. No bona fide need exists because the equipment will not be provided until FY 2005 and the Army Materiel Command used FY 2004 O&M Funds, which expired on September 30, 2004.
3. **Management Consulting Services.** The Army Materiel Command sent MIPR MIPR4LG1SERV21 for \$324,000 to GSA on August 11, 2004, using FY 2004 O&M funds. GSA accepted the funds on the same day. The requirement funded the Army Materiel Command management consulting project. GSA obligated the funds against contract number GS-10F-0439P, task order 5TPS210R00030F on January 27, 2005, with a period of performance of February 1, 2005, to January 31, 2006. The procurement was for severable services. No FY 2004 bona fide need existed because the order for supplies and services met a FY 2005 requirement that lasted until FY 2006.

Army Accession Command

4. **Communications and Electronics Helpdesk.** The Army Accession Command sent MIPR MIPR04A04000021 amendment 7 for \$24,995 of FY 2004 O&M funds to GSA on September 30, 2004, to exercise option

year 3 of a task order providing Information Technology Communications and Electronic Help Desk support services from October 1, 2004 through September 30, 2005. Exercise of an option year is clearly a procurement of severable services that are not a FY 2004 requirement. GSA modified the contract with an effective date of October 20, 2005. FY 2004 O&M Funds expired on September 30, 2004, and the period of service was for FY 2005. The procurement was for a continuation of severable services that will be received in FY 2005. Therefore, no FY 2004 bona fide need existed for this procurement.

5. **Cell Phone and Telecommunications Project.** The Army Accession Command sent MIPR MIPR4K04000137 amendment 1 for \$60,000 to GSA on September 23, 2004, using FY 2004 O&M Funds. It also sent MIPR MIPR4K04000147 amendments 1 and 5 for approximately \$5.4 million and \$1,400 to GSA on September 23 and September 30, respectively, using FY 2004 O&M funds. The Army Accession Command procured cell phones for all Army Recruiters and selected Headquarters staff to maintain contact with the recruiter' applicants and staff. The task order indicates the period of performance was for option year 4 of the contract starting October 1, 2004, through September 30, 2005. Exercise of an option year is clearly a procurement of severable services that are not a FY 2004 requirement. The receipt of goods after the DoD appropriation expired could not be justified because of delivery time, production lead-time, or unforeseen delays. In addition, the services were severable and met a FY 2005 requirement. Therefore, no bona fide need existed in FY 2004.
6. **Partners for Youth Success Program-Marketing.** The Army Accession Command sent MIPR MIPR4G04000102 amendment 2 for \$214,127 to GSA on September 14, 2004, using FY 2004 O&M Funds. The Army Accession Command required Marketing for the Army's Recruiting Program. The Army Accession Command used FY 2004 O&M funds, which expired on September 30, 2004. The period of performance occurred from January 1, 2005, through April 30, 2005. Therefore, no FY 2004 bona fide need existed for services that were clearly an FY 2005 requirement.
7. **Partners for Youth Success Information Technology.** The Army Accession Command sent MIPR MIPR4G04000104 amendment 2 for approximately \$167,000 to GSA on September 14, 2004, using O&M funds. FY 2004 O&M funds expire on September 30, 2004. The Army Accession Command procured IT support to develop and maintain a web-based marketing tool for recruiting. The MIPR period of performance for service is January 1, 2005, through April 30, 2005. Therefore, no FY 2004 bona fide need existed for services that were clearly a FY 2005 requirement.
8. **Joint Recruiting Management System.** The Army Accession Command sent MIPR MIPR4A04000026 amendment 6 for \$300,000 to GSA on September 24, 2004, using FY 2004 O&M funds. The Army Accession Command exercised option year 3 of a task order to continue services in support of the development of a database to maintain the information/leads on potential applicants for military service. Exercise of an option year is clearly

a procurement of severable services that are not a requirement of FY 2004. The period of performance for services occurred from October 1, 2004, through September 30, 2005. The procurement for services was severable and met a FY 2005 requirement. Therefore, no bona fide need existed for FY 2004.

Army Reserve Command

9. **Individual Training Requirements System.** The Army Reserve Command sent MIPR MIPR04ITRS3092 for \$1,700,244 to GSA on July 27, 2004, using O&M funds, which expire on September 30, 2004. The Army Reserve Command exercised option year 3 to continue support services for the Individual Training Requirements System project. There was no bona fide need in FY 2004 because option year 2 covered that fiscal year. Therefore, the bona fide need did not rise until FY 2005. Exercise of an option year is clearly a procurement of severable services that were not a FY 2004 requirement. GSA obligated the funds against contract number GS-35F-4797H, task order 4TEG21023601. The MIPR identified FY 2005 as the period funded. No FY 2004 bona fide need existed because the MIPR funded a FY 2005 requirement.
10. **Steam Cleaners.** The Army Reserve Command sent MIPR MIPR04STEAM169, for approximately \$49,000 to GSA on September 24, 2004, using O&M Funds, to purchase a heavy equipment steam cleaner mounted on a flat bed trailer. The acquiring official stated that he ordered the equipment through GSA rather than lose the funding. As of February 22, 2005, the steam cleaners had not been received but Army Reserve Command officials believed the steam cleaners were on contract. The receipt of goods after the DoD appropriation expired could not be justified because of delivery time, production lead-time, or unforeseen delays. Therefore, no bona fide need existed for this requirement.
11. **Army Wide Training Tracking System/Army Training and Information Management System Development.** The Army Reserve Command sent MIPR MIPR04WWODT120 for approximately \$662,000 to GSA on September 24, 2004, using FY 2004 O&M Funds, to support and maintain an internet based management and tracking system to accommodate all Army units and soldiers conducting training events. GSA accepted the funds on September 25, 2004, but had not awarded a contract as of November 23, 2004. The procurement was for severable services described in a statement of work dated November 2, 2004. Therefore, no bona fide need existed for this procurement in FY 2004.

National Guard Bureau

12. **Sensor Evaluation.** The National Guard Bureau sent MIPR NMIPR04860345 to GSA for \$208,333 on September 23, 2004, using FY 2004 O&M funds. GSA accepted the funds on September 27, 2004. GSA awarded Order number GST0405DE0025, Contract GS04T02BFD003 on

November 17, 2004. The National Guard Bureau required sensors and a procurement plan for equipping the C-130 RORO pallet with operational sensors in support of the Counter drug Technology Consortium Project. The statement of work identified the project as developmental. The statement of work also identified developmental type tasks, that is, systems design, prototypes and the work is performed at a Research Institute. RDT&E Funds are used to develop major system upgrades, to purchase test articles, and to conduct developmental testing and initial operational testing and evaluation prior to system acceptance and subsequent production. Based on this information, RDT&E funds should have been used instead of O&M funds. Therefore, the National Guard Bureau used an incorrect appropriation. In addition, GSA awarded the task order on November 17, 2004, in FY 2005. The period of performance for the requirement is for 18 months, from November 17, 2004, through May 16, 2006. GSA awarded the contract action in FY 2005 and the period of performance was in FY 2005 and FY 2006. FY 2004 O&M funds cannot be used to fund severable services on this contract action for more than 12 months. In addition, the receipt of goods after the DoD appropriation expired could not be justified because of delivery time, production lead-time, or unforeseen delays. Therefore, there was no bona fide need for this purchase in the fiscal year of the appropriation used and a potential Antideficiency Act violation has occurred.

13. **Web Site Development.** The National Guard Bureau sent MIPR NMIPR04860338 for \$200,000 to GSA on September 17, 2004, using FY 2004 O&M funds. GSA accepted the funds on September 28, 2004. GSA awarded the contract November 22, 2004. The National Guard Bureau required support for development of the Counterdrug internal Web sites. The statement of work identifies the work as developmental. It states that “the intent of NGB-CD [National Guard Bureau–Counterdrug] that this “NGB-CD Internal Web Management System Development” work follow a spiral developmental model.” The statement of work also identifies developmental type tasks, that is, systems design, prototypes. The work is performed at a Research Institute. RDT&E Funds are used to develop major system upgrades, to purchase test articles, and to conduct developmental testing and initial operational testing and evaluation prior to system acceptance and subsequent production. Based on this information, RDT&E funds should have been used instead of O&M funds. Therefore, the National Guard Bureau used an incorrect appropriation. In addition, GSA awarded the contract November 22, 2004, in FY 2005. The period of performance for this GSA contract action is from November 22, 2004, through May 21, 2006. FY 2004 O&M funds cannot be used to fund severable services on this contract more than 12 months. Therefore, a potential Antideficiency Act violation has occurred.

14. **Weapons of Mass Destruction First Response Equipment Buy.** The National Guard Bureau sent MIPR NMIPR04860337 for \$7 million to GSA on September 16, 2004, using FY 2004 O&M funds. GSA had not awarded a contract as of January 31, 2005. Accordingly, the bona need rule was not met. The National Guard Bureau required program management, training information systems delivery, equipment logistics support, and procurement

support for the Weapons of Mass Destruction 1st Response Equipment Buy. This purchase consists of support services and equipment. The acquisition and deployment of a system, the aggregate cost of all components such as equipment, integration, engineering support, and software, with a cost of \$250,000 or more is an investment and should be funded with Other Procurement Funds. Based on the statement of work task description, the National Guard Bureau should have used Other Procurements Funds instead of O&M funds. Therefore, the National Guard Bureau also used an incorrect appropriation. Since no contract was awarded, the National Guard Bureau should deobligate the funds currently at GSA for this purchase and start over with the correct appropriation. Once those actions are complete, there will not be a potential Antideficiency Act violation in connection with this purchase.

15. **Active Directory Support.** The National Guard Bureau sent Miscellaneous Obligation/ Reimbursement Document OGMORD0486046 for \$10.1 million to GSA on August 20, 2004, using O&M funds. The National Guard Bureau required strategic planning, requirements analysis, systems integration, facilities management, office automation and networks; software management, data management, information systems engineering, training maintenance, and tools in support of the Active Director Support Project. The acquisition and deployment of a complete system, the aggregate cost of all components such as equipment, integration, engineering support, and software, with a cost of \$250,000 or more is an investment and should be funded with Other Procurement Funds. Based on the above description of the task, Other Procurement Funds should have been used instead of O&M funds. Therefore, the National Guard Bureau used an incorrect appropriation.
16. **Combat Banners.** The Project Office for Combat Banners is at the Air Combat Command. The Air National Guard sent MIPR NMIPR04860278 for \$327,000 to GSA on August 19, 2004, using FY 2004 O&M Funds. The Air National Guard requirement included a wide variety of airborne simulation capabilities utilizing Lear 35/36 Type (or similar) aircraft towing the TDU-32A/B providing target presentations to train Air Force Fighter pilots and weapon systems operators on the employment of the M61 20mm gun. GSA obligated funds against contract number GS03T02DSD0011, task order GST0304DS2026 on September 13, 2004, for supplies to be delivered in December 2005, and task order GST0305DS2237 on February 1, 2005, for missions to be accomplished in February and June 2005. The receipt of supplies after the DoD appropriation expired could not be justified because of delivery time, production lead-time, or unforeseen delays. The procurement for services is severable and meets FY 2005 requirements. Therefore, a bona fide need does not exist for FY 2004.

Army Program Manager, Defense Communications and Army Transmission Systems

17. **AMC Headquarters Relocation Project.** The PM/DCATS sent 18 MIPRs for approximately \$44 million to GSA, using FY 2002, FY 2003, and FY 2004 O&M Funds, for the relocation of the Army Material Command Headquarters. GSA contractors built 2 modular buildings that did not

previously exist, to lease to PM/DCATS. Military Construction includes the work to produce a complete and usable facility. PM/DCATS should have requested Military Construction Funds from Congress for the project. Therefore, PM/DCATS used the incorrect appropriation.

Naval Education and Training Command

18. **Computer Purchase.** The Naval Education and Training Command sent MIPR N6804504MPAC202 for \$8 million to GSA on August 24, 2004, using O&M Funds, which expire on September 30, 2004. The Naval Education and Training Command requested GSA procure 5,000 computers. GSA obligated the funds against contract number GS-35F-0215J, task order 4TNG17042010 on September 7, 2004. Because the Naval Education and Training Command is upgrading its computers, and the cost is above the threshold of \$250,000 for use of O&M Funds, Other Procurement Funds should have been used. Other Procurement Funds are used for upgrades, including new hardware, with a cost of \$250,000 or more. Therefore, the Naval Education and Training Command used the incorrect appropriation.
19. **Learning Management System Support.** The Naval Education and Training Command sent MIPR N6804504MPEL265 for approximately \$3.5 million to GSA on September 28, 2004, using FY 2004 O&M Funds. The Naval Education and Training Command used GSA to procure the Learning Management System Support Integrated Learning Environment. The purpose is to provide those products and services necessary to provide functionality in support of the Navy's Integrated Learning Environment. The period of performance is from October 2004 through September 2005, fulfilling a FY 2005 requirement. FY 2005 funds should have been used. The receipt of goods after the DoD appropriation expired could not be justified because of delivery time, production lead-time, or unforeseen delays. Therefore, there was no bona fide need in FY 2004 for this procurement.
20. **Chief Information Officer Integration.** The Naval Education and Training Command sent MIPR N6804504MPFQ446 for approximately \$546,000 to GSA on September 30, 2004, using FY 2004 O&M Funds. The Naval Education and Training Command purchased support study services for the Navy Marine Corps Intranet project. As of December 16, 2004, GSA had not awarded a contract for this requirement. Accordingly, the bona fide need rule was not met.
21. **Navy EXCEL.** The Naval Education and Training Command sent MIPR N6804504MPX5104 for approximately \$2.5 million to GSA on July 21, 2004; MIPR N6804504MPX5104 amendment 1 for approximately \$5.7 million to GSA on September 13, 2004; and MIPR N6804504MPX5104 amendment 2 for \$2.4 million to GSA on September 25, 2004, using O&M Funds. The Naval Education and Training Command used GSA to procure the Navy Knowledge Online Task Force EXCEL (Excellence through Commitment to Education and Learning) to transform training to incorporate changes in technologies, systems, and platforms being developed for

tomorrow's Fleet. GSA obligated the funds against contract number GS-35F-4381G on June 9, 2004, and modified the order on July 28, 2004. It appears that GSA awarded the task and work started prior to GSA receiving funds from DoD. The deliverables in the statement of work include items such as "software test plan" and Government Acceptance Testing. Also, the initial capabilities task occurs at the very end of the project. RDT&E Funds are used to develop major system upgrades, to purchase test articles, and to conduct developmental testing and initial operational testing and evaluation prior to system acceptance and subsequent production. Therefore, the Naval Education and Training Command used the incorrect appropriation.

Naval Reserve Forces

22. **Defense Message System.** The Naval Reserve Forces sent MIPR N000720MP34275, for approximately \$706,000 to GSA on September 13, 2004 and MIPR N000720MP34275 amendment 1, for \$566,500 to GSA on September 29, 2004, using O&M Funds that expired on September 30, 2004. The Naval Reserve Forces upgraded the Defense Message System servers and messaging. GSA obligated the funds against contract number GS-35F-4076D, task order BJB174733T2 for computers on September 27, 2004, and contract number GS-35F-4390G, task order FJB174739T2 for training on November 1, 2004. The modification of a system with a cost of \$250,000 or more is an investment and should be funded with Other Procurement Funds. Therefore, the Naval Reserve Forces used the incorrect appropriation.

Space and Naval Warfare Systems Command

23. **Toner Printer Supplies.** The Space and Naval Warfare Systems Command sent MIPR N0003904IPFG003 for approximately \$212,000 to GSA on September 22, 2004, for toner supplies, using FY 2004 O&M Funds. The Space and Naval Warfare Systems Command purchased toner for FY 2005, using FY 2004 funds. The receipt of goods after the DoD appropriation expired could not be justified because of delivery time, production lead-time, or unforeseen delays. Therefore, no bona fide need existed.
24. **Video Teleconference Upgrades.** The Space and Naval Warfare Systems Command sent MIPR N0003904IPFG004 for approximately \$416,000 using O&M Funds and MIPR N0003904IPFDB97 for \$460,000 to GSA on September 29, 2004, using Other Procurement Funds, to purchase video teleconference upgrades and equipment. GSA obligated the funds against contract number GST0905DF0040 in October 2004. The Space and Naval Warfare Systems Command obtained upgrades (using MIPR N0003904IPFG004) above the O&M funds threshold of \$250,000. The modification of a system with a cost of \$250,000 or more is an investment and should be funded with Other Procurement Funds. Therefore, the Space and Naval Warfare Systems Command used the incorrect appropriation. The FY 2004 O&M Funds expired on September 30, 2004, and GSA did not sign the contract for services until October 2004. The procurement for upgrade

services portion of this order was severable and met a FY 2005 requirement. Therefore, no FY 2004 bona fide need existed.

Space and Naval Warfare Systems Center New Orleans

25. **Work Force Learning Project.** The Space and Naval Warfare Systems Center New Orleans sent MIPR N6925004MPGR001 for approximately \$3.2 million to GSA on September 28, 2004, using O&M Funds. The Space and Naval Warfare Systems Center New Orleans used GSA to explore distance learning capabilities as an efficient and effective training vehicle for the DoD. This project is to further investigate and maximize use of distance learning techniques to support the civilian community learning requirements. GSA did not award a contract as of November 23, 2004. RDT&E funds are used to develop major system upgrades, to purchase test articles, and to conduct developmental testing and initial operational testing and evaluation prior to system acceptance and subsequent production. The Space and Naval Warfare Systems Center New Orleans should have used RDT&E funds because the type of work to be performed is research, definition, prototyping, and validation of processes, methods and tools related to civilian workforce development. Therefore, the Space and Naval Warfare Systems Center New Orleans used the incorrect appropriation. In addition, FY 2004 O&M Funds expired on September 30, 2004. GSA did not award a contract as of November 23, 2004. The procurement for services is severable and meets a FY 2005 requirement. No FY 2004 bona fide need exists.

Air Combat Command

26. **Battle Management Project.** The Air Combat Command sent MIPR DD48809N401296 for \$1 million to GSA on September 9, 2004, using FY 2004 O&M Funds. The Air Combat Command purchased professional services for maintenance and repair of ground-base radar equipment and to Manage Air Combat Aerospace Operations Planning and Training Programs for the Battle Management Operations. GSA obligated the funds against contract number GS07T00BGD0021 exercising option year 3 of the services contract. The period of performance on the statement of work is October 1, 2004, through September 30, 2005, which is FY 2005. Option year 2 of the contract, covering the same services, ended on September 30, 2004. The procurement for services is severable and meets a FY 2005 requirement. FY 2005 O&M Funds should be used. Therefore, a bona fide need did not exist for FY 2004.
27. **Modernization of Weapon Systems.** The Air Combat Command sent MIPR DD44809N401215 for approximately \$1.1 million to GSA on August 19, 2004, using FY 2004 O&M Funds to be obligated against contract number GS-00F-0034L, task order T0002AJ0213. The Air Combat Command tasks included technical evaluations and requirements development planning through automated acquisition and management of relevant data and technical assistance to support development of all integrated Air Force

modernization and sustainment planning activities. Other Procurement Funds should have been used because of the cost of the upgrade, which includes technical assistance, is counted towards the investment threshold of \$250,000 or more. Therefore, the Air Combat Command used the incorrect appropriation.

Air Force Electronic Systems Center

28. **Smart Gate.** ESC/FD sent MIPR NFDXXX03681387 for approximately \$159 million to GSA on August 22, 2003; MIPR NFDXXX03681387 Amendment 1 for approximately \$15 million to GSA on September 9, 2003; and MIPR NFDXXX03681387 Amendment 2 to pull back approximately \$3 million from GSA on September 30, 2003, for security upgrades using FY 2003 O&M Funds, which expired on September 30, 2003. These upgrades included the smart gates, vehicle barriers, explosive detection equipment, and thermal imagers. Overall, five contracts awards are planned. GSA awarded contracts on April 30, 2004, and December 12, 2003, for vehicle barriers and thermal imager equipment, respectively. GSA used the General Supply Fund to award the two contracts that were funded for approximately \$41 million. Additionally, GSA seeks to award three additional contracts for handheld and desktops explosive detection equipment and smart gates for approximately \$130 million. The GSA initial review of the 3 proposals has indicated that it too has some concerns. The receipt of goods after the DoD appropriation expired could not be justified because of delivery time, production lead-time, or unforeseen delays. No bona fide need exists because the funds expired on September 30, 2003, and the work would not be performed until FY 2005 or later. Military Construction includes the cost of all military construction work to produce a complete and usable facility or a complete and usable improvement to an existing facility. Because the vehicle barriers are construction, ESC/FD should have used Military Construction Funds. Therefore, ESC/FD used the incorrect appropriation.
29. **Security System Assessment.** ESC/FD sent MIPR NFDXXX03681571 for \$2.9 million to GSA on September 25, 2003, using O&M funds for completion of site visits as the first part of the Security Assessment of 100 Air Force Bases. GSA awarded the contract in October 2003. The procurement for services is severable and met a FY 2004 requirement. Therefore, no FY 2003 bona fide need existed for this purchase.
30. **Joint Conflicts and Tactical Simulation System Assessment.** ESC/FD sent MIPR NFDXXX03681595 for approximately \$1.24 million to GSA on September 30, 2003, utilizing O&M funds. GSA awarded the contract in October 2003. The ESC/FD procured support services to conduct a simulation vulnerability study of 100 Air Force Bases worldwide. The procurement for services is severable and met a FY 2004 requirement. Therefore, no FY 2003 bona fide need existed for the purchase.

Air Force Medical Support Agency

31. **End User Devices.** The Air Force Medical Support Agency sent MIPR NMIPR045204141 for approximately \$2.8 million and MIPR NMIPR045204112 for approximately \$8.2 million to GSA on September 14, 2004, and September 1, 2004, respectively, using O&M funds. The Air Force Medical Support Agency required End User Devices in support of the worldwide deployment of Composite Health Care Systems to Air Force Medical Facilities. FY 2004 O&M funds expired on September 30, 2004. As of January 4, 2005, GSA has not awarded a contract action for the requirements for MIPR NMIPRO4524141. The receipt of goods after the DoD appropriation expired could not be justified because of delivery time, production lead-time, or unforeseen delays. Therefore, no bona fide need existed.
32. **Web Management Design.** The Air Force Medical Support Agency sent MIPR NMIPR405203590 for approximately \$1.7 million and MIPR NMIPR045204164 for \$288,000 to GSA on October 16, 2003, and September 28, 2004, respectively, using FY 2004 O&M funds. The Air Force Medical Support Agency required Web Management, Design, and Contract Support. GSA awarded a contract with funds from MIPR NMIPR405203590 on January 28, 2004. However, the Air Force Medical Support Agency personnel could not determine whether GSA awarded a contract for MIPR NMIPR045204164 as of January 5, 2005. Contracts for severable services must be formed in the fiscal year of the funds being used. Services under such contracts must meet the bona fide needs rule. Accordingly, we believe the Air Force Medical Support Agency did not have a bona fide need for the FY 2004 O&M funds used on MIPR NMIPR045204164. Furthermore, the Air Force Medical Support Agency used O&M funds for the purchase of developmental type equipment, which should have been funded with RDT&E funds. RDT&E Funds are used to develop major system upgrades, to purchase test articles, and to conduct developmental testing and initial operational testing and evaluation prior to system acceptance and subsequent production. The Air Force Medical Support Agency used the incorrect appropriation for this purchase. Also, the Air Force Medical Support Agency funded the FY 2005 option year with a combination of FY 2002 and 2003 O&M funds. See section on Improper Use of Funds, page 13 for further details.

U.S. Southern Command

33. **Debit Card Pilot Program.** The Southern Command sent MIPR MIPR3L21F60012 for \$637,294 to GSA on August 13, 2003 and MIPR MIPR3L21F60012 Amendment 1 for \$150,000 to GSA on September 25, 2003, using O&M funds. GSA awarded the contract on August 20, 2003. The requirement is for testing the U.S. Debit Card for the U.S. Treasury Department and developing an interface with DoD financial systems. RDT&E Funds are used to develop major system upgrades, to

purchase test articles, and to conduct developmental testing and initial operational testing and evaluation prior to system acceptance and subsequent production. Because the Southern Command is requiring contractors to perform testing and developmental efforts, RDT&E Funds should have been used instead of O&M Funds. Therefore, the Southern Command used the incorrect appropriation.

34. **Joint Detainee Information Management System.** The Southern Command sent MIPR MIPR4K47G6U199 for approximately \$573,000 to GSA on July 26, 2004, using O&M funds. The Southern Command required various hardware and software for the Joint Detainee Information Management System. The modification of a system with a cost of \$250,000 or more is an investment and should be funded with Other Procurement Funds. Therefore, the Southern Command used the incorrect appropriation.

Defense Manpower Data Center

35. **Universally Accepted Credentials.** The Defense Manpower Data Center sent MIPR X14H5A44F136MP, Amendment 1 for \$360,000 to GSA on September 28, 2004, using O&M funds. The Defense Manpower Data Center required commercial off the shelf hardware and software, technical support services, and hardware maintenance. GSA had not placed the funds on the contract as of December 15, 2004. The procurement for services was severable and met a FY 2005 requirement. In addition, the receipt of goods after the DoD appropriation expired could not be justified because of delivery time, production lead-time, or unforeseen delays. Therefore, no bona fide need existed.
36. **Beneficiary Services and Ancillary Support.** The Defense Manpower Data Center sent MIPR XK3H5A33F273MP for \$6 million to GSA on September 26, 2003, using O&M funds. The Defense Manpower Data Center required highly qualified on-site technical support contractor personnel to provide local area network/wide area network engineering and administration, Unix system administration support, Oracle database support, technical writing, and project planning and management as Defense Management Data Center Systems Integration and Technical Support Division staff. GSA awarded the contract in October 2004. The procurement for services was severable and met a FY 2005 requirement. Therefore, no bona fide need existed in the year of the appropriation.
37. **Defense Biometric Identification System.** The Defense Manpower Data Center sent MIPR XK4H5A44F288MP Amendment 1 for \$1.25 million to GSA on September 28, 2004, using O&M funds. The Defense Manpower Data Center required highly qualified personnel for both ongoing and ad hoc Common Access Card failure analysis, durability analysis, and Common Access Card Program Support for the Enterprise Defense Biometric Identification System and Defense Cross-Certification Identification System. The Defense Manpower Data Center sent the MIPR using FY 2004 funds, however; as of December 16, 2004, GSA had not placed the funds on the

contract. FY 2005 funds should have been used for this severable services contract.

38. **CAC Vulnerability.** The Defense Manpower Data Center sent MIPR XX4H5A44F222MP Amendment 1 for \$350,000 to GSA on August 12, 2004, using O&M funds. The requirement is for the continued testing of the Common Access Card vulnerability testing to ensure Common Access Card security. As of December 16, 2004, GSA had not obligated the MIPR funds on a contract. Accordingly, the bona fide need rule had not been met. FY 2004 O&M funds expired on September 30, 2004. Therefore, FY 2005 funds should have been used for this purchase.

Appendix D. Potential Antideficiency Act Violations That Occurred Primarily in FY 2005

Appendix D identifies 69 potential FY 2005 ADA violations identified at GSA, the Department of the Interior, NASA, and the Department of the Treasury. Additional details regarding each potential ADA violation may be available in our reports addressing contracts and funding problems at GSA, the Department of the Interior, NASA, and the Department of the Treasury. See Appendix C for potential ADA violations from DoD IG Report No. D-2005-096, "DoD Purchases Made Through the General Services Administration," July 29, 2005.

GENERAL SERVICES ADMINISTRATION

U.S. Army Intelligence Center and Fort Huachuca

1. **Interactive Multimedia.** The U.S. Army Intelligence Center and Fort Huachuca sent MIPRs MIPR5FGSA5W054, MIPR5FGSA5W055, MIPR5FGSA5W056, and MIPR5FGSA5W057 (totaling approximately \$2.61 million) to GSA on March 25, 2005, to obtain multimedia courseware development using a special FY 2004 O&M fund that lasts 2 years. The fund used expired on September 30, 2005. As of December 1, 2005, GSA had not awarded a contract. Use of FY 2004 2-year O&M funds to satisfy FY 2006 requirements does not meet the intent of the bona fide needs rule.

Fleet Numerical Meteorology and Oceanography Center

2. **NetCentric FastTrack Services.** The Fleet Numerical Meteorology and Oceanography Center sent funding document N63134-04-WR-00004 for \$386,000 to GSA on September 9, 2003, and GSA accepted the funding document on September 24, 2003; N63134-04-WR-00004, amendment 1 for negative \$386,000 to GSA on September 29, 2003; N63134-04-WR-00004, amendment 2 for \$350,000 to GSA on September 29, 2003; funding document N63134-04-WR-00004, amendment 3 for negative \$105,038 to GSA on July 14, 2004; and funding document N63134-04-WR-0004, amendment 4 for \$156,000 (citing FY 2004 O&M funds) to GSA on October 28, 2004. The total of the FY 2004 funding documents was \$400,962, using O&M Funds. The center was procuring severable services consisting of contractor subject matter expertise in exploring methods to exploit Web-based information systems. The services being procured were severable and the period of performance was from May 26,

2005, through May 25, 2006, a period that crosses from FY 2005 to FY 2006. Use of FY 2004 O&M funds to satisfy FY 2005 requirements does not meet the intent of the bona fide needs rule.

3. **Trusted Service Engine.** The Fleet Numerical Meteorology and Oceanography Center sent funding document N63134-04-WR-00059 for \$850,000 to GSA on September 16, 2004, and funding document N63134-04-WR-00059, amendment 1 for a negative \$10,035 to GSA on May 26, 2005, for a total of \$839,965 in FY 2004 O&M funds. The contract was for services to demonstrate that computer users will be limited to viewing information at their security classification level or lower when working on multiple networks with information of varying security classification levels. The period of performance for the severable services being procured was May 25, 2005, through January 31, 2006, a period that crosses from FY 2005 to FY 2006. Use of FY 2004 O&M funds to satisfy FY 2005 requirements does not meet the intent of the bona fide needs rule.
4. **Come and Get It Product Services.** The Fleet Numerical Meteorology and Oceanography Center sent funding documents N63134-04-WR-00037 for \$240,000 to GSA on July 20, 2004; amendment 1 for \$1,256,690 to GSA on September 8, 2004; amendment 2 for \$595,000 to GSA on September 10, 2004; amendment 3 for negative \$20,000 to GSA on September 16, 2004; amendment 4 for \$134,501 to GSA on September 29, 2004; and amendment 5 for negative \$195,574 to GSA on October 28, 2004. They also sent funding document N63134-04-WR00028 for \$60,000 to GSA on May 17, 2004, and amendment 1 for \$10,000 to GSA on September 8, 2004. In FY 2005, the Fleet Numerical Meteorology and Oceanography Center sent funding document N6313405WR00701 for \$33,036 to GSA on November 22, 2004; amendment 1 for \$166,963 to GSA on December 1, 2004; amendment 2 for negative \$33,036 to GSA on September 22, 2005; and amendment 3 for negative \$13,318 to GSA on September 28, 2005. This purchase was funded for \$2,080,617 in FY 2004 O&M funds and \$153,645 in FY 2005 O&M funds. This procurement was an upgrade to the Primary Oceanographic Prediction system. The Fleet Numerical Meteorology and Oceanography Center should have used Other Procurement funds for this purchase, not O&M funds. Therefore, the Fleet Numerical Meteorology and Oceanography Center used the incorrect appropriation. GSA awarded the contract January 4, 2005.
5. **Information Assurance.** The Fleet Numerical Meteorology and Oceanography Center sent funding document N6313404WR00056 for \$600,000 to GSA on September 15, 2004; funding document N6313404WR00064 for \$300,000 to GSA on September 29, 2004; and funding document N6313404WR00064, amendment 1 for negative \$136,336 to GSA on October 28, 2004. The funding totaled \$763,664 in FY 2004 O&M funds, which expired on September 30, 2004. The services being obtained were support services for information assurance projects dealing with weather forecasts that are being transmitted to the warfighter. The period of performance for the severable services being

procured was January 4, 2005, through January 3, 2006, a period that crosses from FY 2005 to FY 2006. Use of FY 2004 O&M funds to satisfy FY 2005 requirements does not meet the intent of the bona fide needs rule.

Air Force Accounting and Finance Office

6. **Kiosks.** The Air Force Finance and Accounting Office sent MIPR F1AF2B5265G001 for \$1,400,000 to GSA on September 22, 2005, using FY 2005 O&M funds. The funds were to purchase automated kiosks that allow Air Force personnel to make inquiries about and changes to their pay and personnel records. The contract for the kiosks, which are considered commercial items, was awarded October 25, 2005. The Air Force Finance and Accounting Office purchased commercial items that will be delivered in FY 2006 using FY 2005 O&M funds. The receipt of goods after the DoD appropriation expired could not be justified because of delivery time, 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.

U.S. Central Command, Air Force

7. **Network Operation Security Center.** The U.S. Central Command, Air Force sent MIPR F3UTA65168GC01 for \$16,999,993 to GSA on June 20, 2005; amendment 1 for \$1,748,238 on August 30, 2005; and amendment 2 for negative \$245,046 on September 23, 2005, using a 2-year FY 2004 O&M fund that expired on September 30, 2005. The funds were to purchase severable services supporting the Network Operations Security Center including networking, systems modeling, performance management, information assurance, routing, and switching. A bridge contract was first awarded with a period of performance from August 1, 2005, through September 30, 2005. The 2-year FY 2004 funds were also used to fund a FY 2006 contract with a period of performance from October 1, 2005, through September 30, 2006. Use of FY 2004 2-year O&M funds to satisfy FY 2006 requirements does not meet the intent of the bona fide needs rule.

Joint Information Operations Center

8. **IT and Operations Support (J2).** For contracted support at the Joint Information Operations Center, the Headquarters, U.S. European Command sent MIPR MIPR4JGSAJ2043 for \$311,709 to GSA on June 1, 2004, using FY 2004 O&M funds to partially fund a purchase for IT and operational expertise supporting the U.S. European Command, which includes integration of current IT, identifying information operations applicable databases, and technical expertise. GSA awarded the contract November 4, 2004. Use of FY 2004 O&M funds to satisfy FY 2005 requirements does not meet the intent of the bona fide needs rule.

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9. **Network System Support and Administration.** The Joint Information Operations Center sent MIPR NMIPR04250037 for \$875,000 to GSA on September 25, 2003; MIPR NMIPR04250550 for \$418,788 to GSA on September 8, 2004; MIPR NMIPR04250551 for \$586,212 to GSA on September 8, 2004; and MIPR NMIPR04250558 for \$6,148 to GSA on September 14, 2004, for a total of \$1,886,148 in FY 2004 O&M funds. The Joint Information Operations Center also sent MIPR F2MTKV5244G002 for \$1,031,557 to GSA on October 13, 2005, using FY 2006 O&M funds. The funds were to purchase severable services supporting the command's network. The funds were used to cover a base contract period from September 15, 2003, through September 30, 2004, for \$849,000; option year 1, from October 1, 2004, through September 30, 2005, for \$891,000; and option year 2, from October 1, 2005, through September 30, 2006, for \$891,000. Since no FY 2005 funds were sent to support option year 1, in FY 2005, it appears the services received that year were funded with FY 2004 funds. Use of FY 2004 O&M funds to satisfy FY 2005 requirements does not meet the intent of the bona fide needs rule.
10. **Personal Video Systems.** The Joint Information Operations Center sent MIPR F2MTKV5262G001 for \$73,912 to GSA on September 19, 2005, using FY 2005 O&M funds to purchase various Tandberg equipment, including 12 personal video systems. As of January 2006, no contract had been awarded for the equipment; therefore, the equipment will be delivered in FY 2006 or later. The receipt of goods after the DoD appropriation expired cannot be justified because of delivery time, 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.
11. **Joint Multi-Disciplinary Vulnerability Assessment.** The Joint Information Operations Center sent MIPR F2MTKV5258G001 for \$392,494 to GSA on September 20, 2005, using FY 2005 O&M funds. The funds were to purchase equipment in support of the Joint Multi-Disciplinary Vulnerability Assessment. As of January 2006, no contract had been awarded for the equipment; therefore, the equipment will be delivered in FY 2006 or later. The receipt of goods after the DoD appropriation expired cannot be justified because of delivery time, 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.

Defense Security Service

12. **National Industrial Security Program Certification and Accreditation Tools.** The Defense Security Service sent MIPR NMIPR04970376 for \$310,000 to GSA on September 17, 2004, using FY 2004 O&M funds. The funds were to purchase the testing of automated certification and

accreditation tools, program management support, and independent verification and validation of automated tools. The contract for these severable services was awarded on August 25, 2005, for a period of performance of August 26, 2005, through August 25, 2006, a period that crosses from FY 2005 to FY 2006. Use of FY 2004 O&M funds to satisfy FY 2005 requirements does not meet the intent of the bona fide needs rule.

DEPARTMENT OF THE INTERIOR

Department of Defense, Office of Inspector General

13. **DOI [Department of the Interior] Contract NBCHD020037.** Potential bona fide needs rule violations may have occurred for four orders issued by Southwest Acquisition Branch contracting officials under contract NBCHD020037. The DoD OIG ordered various types of computer equipment. The National Business Center, Southwest Acquisition Branch contracting officials awarded the five orders, for a total of \$396,724, between September 25 and September 29, 2005. For three of the orders, the DoD OIG did not receive the equipment until FY 2006. Therefore, three separate potential ADA violations may have occurred. In addition, one potential ADA violation may have occurred for one other order because the order was awarded at the end of FY 2005 and the delivery date could not be determined. There was no evidence that a long lead-time was required to purchase these items, that the items were needed to replenish the inventory, or that there was an unforeseen delay in purchasing these items. Use of FY 2005 O&M funds to satisfy FY 2006 requirements does not meet the intent of the bona fide needs rule.

Office of the Administrative Assistant to the Secretary of the Army

14. **DOI Contract 41181.** A GovWorks contracting officer awarded contract action 41181 to purchase decision agent network equipment for the Pentagon Telecommunications Service Center for \$108,196. DOI contract action 41181, awarded on December 21, 2004, was partially funded for \$72,033, using FY 2001 Army O&M funds that expired on September 30, 2001. The three MIPRs include MIPR1MINTPR070 for \$6,831; MIPR1JDIT0N046 for \$26,399; and MIPR1KINTWS058 for \$38,803. MIPR MIPR4MINTMM125 for \$36,162, using FY 2004 O&M funds was also used to fund the purchase. The equipment consisted of commercial items and there was no evidence that a long lead-time was required to purchase these items, or that the items were needed to replenish the inventory, or that there was an unforeseen delay in purchasing these items. Use of FY 2001 O&M funds to satisfy FY 2005 requirement does not meet the intent of the bona fide needs rule.

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15. **DOI Contract 41181, Modification 0001.** A GovWorks contracting officer issued modification 0001 to contract action 41181 on January 18, 2005. Under modification 0001, the contracting officer removed \$26,399 from one of the original Army FY 2001 O&M MIPRs used to fund contract action 41181 and replaced it with funds from four other expired Army O&M MIPRs. The four MIPRs include MIPR MIPR0MGSAIT092 for \$160, using FY 2000 O&M funds; MIPR MIPR1MITST0074 for \$3,176, using FY 2001 O&M funds; and MIPRs MIPR4LINTMM111 for \$11,393 and MIPR4MINTMM130 for \$11,669, using FY 2004 O&M funds. Use of FYs 2000, 2001, and 2004 O&M funds to satisfy FY 2005 requirements does not meet the intent of the bona fide needs rule.
16. **DOI Contract 40966.** A GovWorks contracting officer awarded contract action 40966 for \$521,679 to purchase 71 computer servers for the Pentagon Telecommunications Service Center. GovWorks awarded contract action 40966 on November 30, 2004, funded with MIPR MIPR4MINIMM125, using FY 2004 Army O&M funds that expired on September 30, 2004. The computer servers were commercial items and there was no evidence that a long lead-time was required to purchase these items, or that the items were needed to replenish the inventory, or there was an unforeseen delay in purchasing these items. Use of FY 2004 O&M funds to satisfy FY 2005 requirement does not meet the intent of the bona fide needs rule.
17. **DOI Contract 41063.** On November 24, 2004, a GovWorks contracting officer awarded contract action 41063 for \$3,840 to purchase an IBM Server Warranty for the Pentagon Telecommunications Center. Contract action 41063 was partially funded with O&M funds that had expired. MIPR MIPR2MINTMM081 for \$158 and MIPR MIPR2MINTMM077 for \$1,429 used FY 2002 O&M funds that expired on September 30, 2002. MIPR MIPR4BINTMM012 for \$1,382 used FY 2004 Army O&M funds that expired on September 30, 2004. In addition, MIPR MIPR2LINTMM075 for \$870 used FY 2002 Army other procurement funds that expired on September 30, 2004. Use of FY 2002 and FY 2004 O&M funds and FY 2002 other procurement funds to satisfy a FY 2005 requirement does not meet the intent of the bona fide needs rule.
18. **DOI Contract 41432.** On February 8, 2005, a GovWorks contracting officer awarded contract action 41432 for \$7,476 to purchase three 42-inch high-definition plasma televisions for the Pentagon Telecommunications Center. Contract action 41432 was funded with MIPR MIPR4MINTMM130, using FY 2004 Army O&M funds that expired on September 30, 2004. The equipment consisted of commercial items and there was no evidence that a long lead-time was required to purchase these items, or that the items were needed to replenish the inventory, or that there was an unforeseen delay in purchasing these items. Use of FY 2004 O&M funds to satisfy FY 2005 requirements does not meet the intent of the bona fide needs rule.

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19. **DOI Contract 1435-04-02-CT-85531, Order 43387.** The Pentagon Telecommunication Center issued multiple MIPRs to purchase technical and functional support services. Of the 17 MIPRs used, MIPR MIPR3LINTMM101 used \$1,038,376 with FY 2003 O&M funds, which expired on September 30, 2003. The Pentagon Telecommunication Center sent seven MIPRs (MIPR4GINTMM058, MIPR4GINTMM059, MIPR4HINTMM069, MIPR4JINTMM072, MIPR4JINTMM080, MIPR4JINTMM086, and MIPR4JINTMM089), totaling \$313,320, using FY 2004 O&M funds, which expired on September 30, 2004. In addition, six other MIPRs (MIPR4KINTMM093, MIPR4KINTMM095, MIPR4KINTMM096, MIPR4LINTMM115, MIPR4MINTMM123, and MIPR4MINTMM129) totaling \$1,046,834 may be potential ADA violations. GovWorks awarded contract action 43387, a multiple-award order, on June 30, 2005. The value of order 43387 was \$3,908,449 and the period of performance was from July 1, 2005, through December 31, 2005. Use of FY 2003 and FY 2004 O&M funds to satisfy FY 2005 requirements does not meet the intent of the bona fide needs rule.
20. **DOI Contract 1435-04-02-CT-85531, Order 41160.** On December 30, 2004, a GovWorks contracting officer awarded contract action 41160, a multiple-award order for \$555,738 to purchase a transitional enhanced communications gateway system and associated installation and support for the Pentagon Telecommunications Center. The delivery of the system was no later than 120 days from the date of contract action 41160, December 30, 2004. A GovWorks contracting officer used funds from five MIPRs, totaling \$555,738, to fund the contract. The Pentagon Telecommunications Center partially funded the purchase with MIPR MIPR3MINTMM113, for \$120,000, using FY 2003 O&M funds; MIPR MIPR3MINTMM112 for \$120,000, using FY 2003 O&M funds; MIPR MIPR3MINTMM114 for \$200,000, using FY 2003 funds. FY 2003 O&M funds expired on September 30, 2003. Use of FY 2003 O&M funds to satisfy a FY 2005 requirement does not meet the intent of the bona fide needs rule. This purchase was also funded with MIPR MIPR-2-F-DOIIT-045, for \$95,709 using FY 2002 Other Procurement funds. FY 2002 Other Procurement funds expired September 30, 2004. Use of FY 2002 through 2004 funds to satisfy a FY 2005 requirement does not meet the intent of the bona fide needs rule. According to the contract file, \$492,791 of the \$555,739 contract action value was related to equipment; however, the contracting officer only obligated \$115,738 of Other Procurement funds under two MIPRs to fund the equipment portion of the purchase. The remaining \$377,053.20 of equipment was funded with O&M funds that were also used to fund contract action 41160. Therefore, an incorrect appropriation, O&M, was used to partially fund this purchase. Other Procurement funds should have been used.
21. **DOI Contract 44435.** On August 29, 2005, a GovWorks contracting officer awarded contract action 44435 for \$37,643 to purchase 40 laser jet printers for the Pentagon Telecommunications Center. Contract action 44435 was funded with funds from MIPR4GINTMM054, using FY 2004 Army O&M funds that expired on September 30, 2004. The equipment consisted of commercial items and there was no evidence that a

long lead-time was required to purchase these items, or that the items were needed to replenish the inventory, or that there was an unforeseen delay in purchasing these items. The delivery date for these items was 30 days after the date of the order. Use of FY 2004 Army O&M funds to satisfy FY 2005 requirements does not meet the intent of the bona fide needs rule.

22. **DOI Contract 41242.** On December 10, 2004, a GovWorks contracting officer awarded contract action 41242 for \$113,388 to purchase 75 Microsoft Windows Server Enterprise 2003 software licenses for the Pentagon Telecommunications Center. The contracting officer used MIPR4MINTMM125, with FY 2004 Army O&M funds that expired on September 30, 2004. The equipment consisted of commercial items and there was no evidence that a long lead-time was required to purchase these items, or that the items were needed to replenish the inventory, or that there was an unforeseen delay in purchasing these items. Use of FY 2004 O&M funds to satisfy requirements in FY 2005 does not meet the intent of the bona fide needs rule.

Army Training and Doctrine Command

23. **DOI Contract 43852.** A GovWorks contracting officer awarded contract action 43852 for \$94,075 to purchase services for the Army Training Support Center, related to a training ammunition calculator, used to calculate ammunition requirements for training purposes at Army locations. MIPR MIPR4KBELG3066 issued on July 12, 2004, funded contract action 43852. The period of performance of the contract action was from July 31, 2005, until 3 months after receipt of order, or October 31, 2005. Use of FY 2004 Army O&M funds to satisfy a requirement in FY 2005 does not meet the intent of the bona fide needs rule.

U.S. Army Intelligence and Security Command

24. **DOI Blanket Purchase Agreement 40699, Task Order 41801, Modification 0002.** On May 5, 2005, a GovWorks contracting officer issued modification 0002 under contract action 41801 for \$920,970, to add funding to purchase services related to the U.S. Air Force Horned Owl Program for the U.S. Army Program Management Office Airborne Reconnaissance Low. DOI contracting officials used a portion of the funds from two existing DoD MIPRs to fund modification 0002. MIPR MIPR4DINT04166, from the U.S. Army Intelligence and Security Command for \$120,000, was issued on January 10, 2004, using Army FY 2004 O&M funds, which expired on September 30, 2004. Use of FY 2004 O&M funds to satisfy requirements in FY 2005 does not meet the intent of the bona fide needs rule.

Naval Sea Systems Command

25. **DOI Contract 40385.** On October 15, 2004, a GovWorks contracting officer awarded contract action 40385 for \$3,390 to purchase 226 weapon cleaning kits for the Naval Sea Systems Command Fleet Antiterrorism/Force Protection. Contract action 40385 was funded with MIPR N6553804MP00018, using FY 2004 Navy O&M funds, which expired on September 30, 2004. There was no evidence that a long lead-time was required to purchase these items, or that the items were needed to replenish the inventory, or that there was an unforeseen delay in purchasing these items since the items were to be delivered by November 26, 2004. Use of FY 2004 O&M funds to satisfy FY 2005 requirements does not meet the intent of the bona fide needs rule.
26. **DOI Contract 43270.** On May 20, 2005, a GovWorks contracting officer awarded contract action 43270 for \$61,112 to purchase 50 sets of T1 special body armor and 100 gamma plates for Naval Sea Systems Command Fleet Antiterrorism/Force Protection. Contract action 43270 was funded with MIPR N6553804MP00018, using FY 2004 Navy O&M funds that expired on September 30, 2004. There was no evidence that a long lead-time was required to purchase these items or that there was an unforeseen delay in purchasing these items since the items were to be delivered by June 17, 2005. There was evidence, though, that the purpose of contract 43270 was to replenish inventory; however, the evidence was not convincing. Documentation in the contract files stated that the “subject order is to replenish current stock that is distributed to various units.” Use of FY 2004 Navy O&M funds that expired on September 30, 2004, were used to fund this purchase on May 20, 2005, or almost 8 months after the end of FY 2004.
27. **DOI Contract 40387.** On October 17, 2004, a GovWorks contracting officer awarded contract action 40387 for \$10,170 to purchase 226 pairs of gloves and goggles for Naval Sea Systems Command Fleet Antiterrorism/Force Protection. Contract action 40387 was funded from MIPR N6553804MP00018, using FY 2004 Navy O&M funds that expired on September 30, 2004. There was no evidence that the items were needed to replenish the inventory, or a long lead-time was required to purchase these items, or that there was an unforeseen delay in purchasing these items. The items were to be delivered by November 26, 2004. Use of FY 2004 O&M funds to satisfy FY 2005 requirements does not meet the intent of the bona fide needs rule.
28. **DOI Contract 43280.** On May 17, 2005, a GovWorks contracting officer awarded contract action 43280 for \$1,328 to purchase 15 pairs of goggles and 15 balaclavas for Naval Sea Systems Command Fleet Antiterrorism/Force Protection. Contract action 43280 was funded from MIPRN6553804MP00018, using FY 2004 Navy O&M funds that expired on September 30, 2004. There was no evidence that the items were needed to replenish the inventory, or a long lead-time was required to purchase these items, or that there was an unforeseen delay in purchasing

these items. The items were to be delivered by November 26, 2004. Use of FY 2004 O&M funds to satisfy FY 2005 requirements does not meet the intent of the bona fide needs rule.

29. **DOI Contract 41907.** On January 24, 2005, a GovWorks contracting officer awarded contract action 41907 for \$3,168 to purchase 132 radio pouches for Naval Sea Systems Command Fleet Antiterrorism/Force Protection. Contract action 41907 was funded from MIPR N6553804MP00018, citing FY 2004 Navy O&M funds that expired on September 30, 2004. There was no evidence that the items were needed to replenish the inventory, or a long lead-time was required to purchase these items, or that there was an unforeseen delay in purchasing these items. The items were to be delivered by February 11, 2005. Use of FY 2004 O&M funds to satisfy FY 2005 requirements does not meet the intent of the bona fide needs rule.
30. **DOI Contract 42912.** On April 19, 2005, a GovWorks contracting officer awarded contract action 42912 for \$71,137 to purchase 40 desert camouflage body armor systems for Naval Sea Systems Command Mobile Security Force Command. Contract action 42912 was funded from MIPR N6553803MP00013, using Navy FY 2003 O&M funds that expired on September 30, 2003. The funds expired 1 year and 7 months before they were used to fund the contract. Use of FY 2003 O&M funds to satisfy FY 2005 requirements does not meet the intent of the bona fide needs rule.
31. **DOI Contract 43329.** On May 20, 2005, a GovWorks contracting officer awarded contract action 43329 for \$1,158 to purchase 20 pairs of kneepads and 20 pairs of elbow pads for Naval Sea Systems Command Mobile Security Force Command. Contract action 43329 was funded from MIPR N6553804MP00018, using Navy FY 2004 O&M funds that expired on September 30, 2004. There was no evidence that the items were needed to replenish the inventory, or a long lead-time was required to purchase these items, or that there was an unforeseen delay in purchasing these items. The items were to be delivered by June 27, 2005. Use of FY 2004 O&M funds to satisfy FY 2005 requirements does not meet the intent of the bona fide needs rule.
32. **DOI Contract 43349.** On May 24, 2005, a GovWorks contracting officer awarded contract action 43349 for \$1,369 to purchase 12 specialized bags for Naval Sea Systems Command Mobile Security Force Command. Contract action 43349 was funded with MIPR N6553804MP00018, using Navy FY 2004 O&M funds that expired on September 30, 2004. There was no evidence that the items were needed to replenish the inventory, or a long lead-time was required to purchase these items, or that there was an unforeseen delay in purchasing these items. The items were to be delivered by June 27, 2005. Use of FY 2004 O&M funds to satisfy FY 2005 requirements does not meet the intent of the bona fide needs rule.

Naval Facilities Engineering Command Headquarters

33. **DOI Blanket Purchase Agreement 32178, Task Order 73545.** A GovWorks contracting official used FY 2003 O&M funds for task order 73545, which was to purchase technical services related to the development of geospatial representations of Navy installation boundaries for the Naval Facilities Engineering Command. The period of performance for the contract action was October 1, 2003, through September 30, 2004. The funds on NMIPR039209671, totaling \$1,559,085, sent on August 14, 2003, were only available for use for 12 months, ending August 18, 2004. At least some of the funds were used beyond August 18, 2004, since no additional funds were added to the task order until April 6, 2005. Use of FY 2003 O&M funds to satisfy future requirements does not meet the intent of the bona fide needs rule.

Counterintelligence Field Activity

34. **DOI Contract 1435-04-03-RC-73024 and DOI Contract 1435-04-03-RC-70941.** CIFA did not follow the required procedures for obtaining office space in the National Capital Region. Specifically, the 10-year, \$100 million lease was obtained through a Section 8(a) contractor rather than GSA, as required by statute. The lack of authority for CIFA to enter the lease violated many statutes, including the ADA, and circumvented the required congressional review and approval process.

Lack of Authority to Enter the Leases. Section 3307, title 40, United States Code establishes a prospectus threshold authority for leases of \$2.21 million for FY 2003. Only GSA is permitted to enter leases in excess of the threshold. A potential ADA violation may have occurred because the lease agreement required lease payments of at least \$6.575 million per year, which is above the \$2.21 million threshold. Because CIFA did not follow the prescribed procedure for obtaining lease space, CIFA circumvented required Congressional notification and approval process, as prescribed in 10 U.S.C. 2662(a)(2), 40 U.S.C. 3307(a), and Federal Management Regulation section 102-73.65.

Lack of Authority To Make Building Alterations. Section 3307, title 40, United States Code also establishes a prospectus threshold authority for the construction and alteration of leased buildings. The prospectus threshold for lease space alterations in FY 2003 was \$1.1066 million. A potential ADA violation may have occurred because CIFA made leased space alternations of \$14.7 million under contract 1435-04-03-RC-70941 during FY 2003 and did not obtain the required congressional approval. The prospectus threshold for lease space alternations in FY 2004 was \$1.1450 million. A potential ADA violation may have occurred because CIFA made space alterations of at least

\$7.9 million under contract 1435-04-03-RC-3024 during FY 2004 and did not obtain the required congressional approval.

Potential Violations of the Bona Fide Needs Rule. The TKC communications contract has provisions that permitted CIFA to repay the costs for its building alterations incurred during FY 2003 over the life of the lease. The contractor performed the construction during FY 2003, but permitted CIFA to pay for the construction over the duration of the lease. The contract had an amortization schedule showing the interest charges. A potential bona fide need violation may have occurred because CIFA paid the costs of the building alterations over the life of the loan instead of paying for the alterations in the fiscal year in which the alterations occurred. Additionally, the terms of the contract created a liability to the Government before the Congress had appropriated the funds, which violated 31 U.S.C. 1341(a)(1)(A) and the U.S. Constitution, Article 1, Section 9, clause 7. Similarly, the contracting clause for termination of the lease required payment of any remaining balance on the building alteration loan and payment of rent for the next 12 months. This contract provision also violated 31 U.S.C 1341(a)(1)(A) and the U.S. Constitution, Article 1, Section 9, clause 7.

Potential Violation of Purpose Statute. CIFA paid for its building alterations using O&M funds. However, military construction funds should have been used. The failure to use military construction funds potentially violated 31 U.S.C. 1301 and 10 U.S.C 2805. Therefore, CIFA used an incorrect appropriation.

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

Office of Naval Intelligence

35. **Order N66001-05-F-Q174.** A DoD contracting officer awarded purchase order N66001-05-F-Q174 to purchase various computer hardware, such as workgroup switches for the Navy for \$64,271, using FY 2005 Navy O&M funds, which expired on September 30, 2005. Both the Office of Naval Intelligence and Joint Systems Integration Command funded the purchase. The order was awarded on September 19, 2005, but the hardware was not scheduled to be delivered until October 7, 2005. Deliveries of the goods were received from October 26 through December 27, 2005. The receipt of goods after the DoD appropriation expired could not be justified because of 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.

Assistant Secretary of the Air Force (Financial Management and Comptroller)

36. **Order HC1047-05-F-4552.** A DoD contracting officer awarded purchase order HC1047-05-F-4552 for IT hardware and software for \$983,878. The order was awarded using FY 2005 Air Force O&M funds. Because the order exceeded \$250,000, procurement funds should have been used. Therefore, the Air Force used an incorrect appropriation. Also, the order was awarded on September 28, 2005, and scheduled delivery for October 28, 2005. The items were not delivered until November 4, 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 a FY 2006 requirement does not meet the intent of the bona fide needs rule.

U.S. Central Command

37. **Order FA4814-05-F-A814.** A DoD contracting officer awarded purchase order FA4814-05-F-A814 for various computer equipment. The order purchased computer equipment, such as the Gateway E6300 personal computer. The value of the order was \$758,442 and used FY 2005 Air Force O&M funds, which expired on September 30, 2005. Because the value of the order exceeded \$250,000, procurement funds should have been used. Therefore, the U.S. Central Command used incorrect appropriation. Also, the order was awarded on September 19, 2005, and scheduled delivery for October 19, 2005. The equipment was not delivered until November 3, 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 a FY 2006 requirement does not meet the intent of the bona fide needs rule.
38. **Order FA4814-05-F-A731.** A DoD contracting officer awarded purchase order FA4814-05-F-A731 for Host Base Intrusion Detection System Components. The value of the order was \$507,271 and used FY 2005 Air Force O&M funds. Because the value of the order exceeded \$250,000, procurement funds should have been used. Therefore, the U.S. Central Command used an incorrect appropriation. Also, the order was awarded on September 9, 2005, and some of the goods were not delivered until October 17, 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 a FY 2006 requirement does not meet the intent of the bona fide needs rule.
39. **Order FA4814-05-F-A863.** A DoD contracting officer awarded purchase order FA4814-05-F-A863 to purchase various computer equipment for the U.S. Central Command for \$46,854 using FY 2005 Air Force O&M funds. The order was awarded on September 22, 2005, but the equipment was not scheduled to be delivered until November 4, 2005. However, delivery of

the goods was made on December 13, 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.

U.S. Special Operations Command

40. **Order FA4814-05-F-A154.** A DoD contracting officer awarded purchase order FA4814-05-F-A154 for a file storage/server system for \$738,383. The U.S. Special Operations Command (USSOCOM) used FY 2005 Defense-wide O&M funds. Because the value of the order exceeded \$250,000, procurement funds should have been used. Therefore, the USSOCOM used incorrect appropriation.
41. **Order FA4814-05-F-A717.** A DoD contracting officer awarded purchase order FA4814-05-F-A717 for \$159,501, to purchase software using FY 2005 Defense-wide O&M funds for USSOCOM. The order was awarded on September 8, 2005, and the delivery was scheduled for October 8, 2005. The software was delivered on October 7, 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.
42. **Order FA4814-05-F-A860.** A DoD contracting officer awarded purchase order FA4814-05-F-A860 for \$105,997 to purchase a server, using FY 2005 Defense-wide O&M funds for USSOCOM. The order was awarded on September 20, 2005, but the server was not scheduled to be delivered until October 20, 2005. Delivery of the goods was received October 4, 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.
43. **Order FA4814-05-F-A917.** A DoD contracting officer awarded purchase order FA4814-05-F-A917 for \$31,810 to purchase graphic hardware for USSOCOM, using FY 2005 Air Force O&M funds. The order was awarded on September 26, 2005, but the goods were not scheduled to be delivered until October 24, 2005. However, delivery of the goods was received on December 7, 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.
44. **Order FA4814-05-F-A895.** A DoD contracting officer awarded purchase order FA4814-05-F-A895 for computer hardware, software, and licenses for \$479,630. This order was funded with FY 2005 Defense-wide O&M funds. Though the value of the order exceeded \$250,000,

O&M funds were correctly used because the goods were not part of an overall system and no individual item cost over \$250,000. However, the order was awarded on September 22, 2005, and scheduled delivery for October 22, 2005. The goods were delivered through November 8, 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.

Defense Information Systems Agency

45. **Order HC1047-05-F-4561.** A DoD contracting officer awarded purchase order HC1047-05-F-4561 to purchase a Sun database server for \$115,829 for the Defense Information Systems Agency, using 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. 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 an FY 2006 requirement does not meet the intent of the bona fide needs rule.
46. **Order HC1013-05-F-2810.** A DoD contracting officer awarded purchase order HC1013-05-F-2810 to purchase Standardized Tactical Entry Point Information Assurance Tools, which included assorted hardware and software for \$4,149,461, using FY 2005 Defense-wide O&M funds for the Defense Information Systems Agency. Because the value of the order exceeded \$250,000, procurement funds should have been used. DoD contracting officers 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. The receipt of goods after the DoD appropriation expired could not be justified because standard commercial off-the-shelf items are items readily available from other sources. The order was competed among all 8 NASA Scientific and Engineering Workstation Procurement vendors in class 12. Use of FY 2005 funds to satisfy a FY 2006 requirement does not meet the intent of the bona fide needs rule.

Defense Security Service

47. **Order HC1013-05-F-2848.** A DoD contracting officer awarded purchase order HC1013-05-F-2848 for a 3-year lease of Sun equipment and other miscellaneous equipment for \$10,918,072. The Defense Security Service used FY 2005 Defense-wide O&M funds. Because the value of the order exceeded \$250,000, procurement funds should have been used. Therefore, the Defense Security Service used an incorrect appropriation.

Counterintelligence Field Activity

48. **Order HC1013-05-F-3006.** A DoD contracting officer awarded purchase order HC1013-05-F-3006 to purchase licenses, maintenance, and technical support services for \$500,000, using FY 2005 O&M funds for the CIFA. According to CIFA personnel, Congress provided O&M funds specifically for the purchase. 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. 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. Use of FY 2005 funds to satisfy a FY 2006 requirement does not meet the intent of the bona fide needs rule.

DEPARTMENT OF THE TREASURY

Office of the Under Secretary of Defense for Personnel and Readiness

49. **Counseling Services.** The Office of the Under Secretary of Defense for Personnel and Readiness, Quality of Life Office issued MIPR DERM40092A329V for \$19,000,000 on July 28, 2004, using FY 2004 O&M funds for counseling services in support of families as a result of the Global War on Terrorism and Iraqi Freedom. FedSource accepted the MIPR on July 30, 2004. The FedSource, Beaufort office issued task order contract number BEA002178 for \$18,357,487 on August 5, 2004. Task order BEA002178 was cancelled on December 16, 2005, leaving a \$14,990,411 fund balance. Task order BEA002638 for \$14,483,489 was issued on March 29, 2005, to continue the counseling services. The task order contract period of performance was March 14, 2005, through December 31, 2005. The FY 2004 funds were applied to reissue a task order in FY 2005. The FY 2004 funds were put on the reissued task order contract almost 8 months after the funds were accepted by FedSource, Beaufort, and almost 6 months into FY 2006. The contract period of performance extends past 12 months from the MIPR acceptance date. Further, the elapsed 8 months from MIPR fund acceptance to the BEA00238 task order contract award is an unreasonable time; therefore, no bona fide need exists.

Fort McCoy Army Base, Directorate Support Services

50. **Construction of Main Gate Canopy and Inspection Building.** The Directorate of Support Services at Fort McCoy sent FedSource seven MIPRs totaling \$987,846, using FY 2003 Army Reserve O&M funds to construct a canopy and vehicle inspection building at the main gate. The basic contract in the amount of \$896,930 was for the canopy and the inspection building. The canopy and inspection building were initially funded by MIPR3MDTMSNPY for \$268,629 issued on September 30, 2003, and MIPR3VEHNISP01 for \$665,703 issued on September 30, 2003. The amount obligated on the main gate totaled \$987,935 which exceeds the limit of \$750,000 using O&M funds for minor construction; therefore, military construction appropriated funds should have been cited. The Directorate of Support Services used an incorrect appropriation.
51. **Renovation of Building 454 (Barracks).** Fort McCoy Army Base, Directorate of Support Services building renovation exceeded the \$750,000 limit using O&M funds for minor construction. MIPR MIPR4MDFE00107 for \$813,767 was issued September 17, 2004, using FY 2004 Army Reserve O&M funds. The MIPR was for renovation of Building 454 into basic officer quarters, including improvements such as additional bathrooms to include all new components. FedSource issued the basic task order contract number LOS013032 for \$762,883 on September 28, 2004. The building improvements supported categorizing this project as new construction. The total amount obligated for the building, \$820,355, exceeded the \$750,000 limit use of O&M funds for minor construction. In addition, a second building (453) was being renovated with the same requirements and purpose. See purchase number 52 below. As a result, buildings 454 and 453 should have been combined as one project and used military construction funds instead of O&M funds. The combined cost of the work on the two buildings was \$1,498,097. The project was split to avoid the long approval process necessary to obtain military construction funds. Therefore, the Directorate of Support Services at Fort McCoy used incorrect appropriations.
52. **Renovation of Building 453.** Building 453 was being renovated from a barracks into a visitor officer quarters at Fort McCoy. The Building 453 layout was reconfigured and improvements made that supported new construction, including new bathrooms, fixtures, counters, tubs, and closets. Improvements resulted in construction versus repair. The Directorate of Support Services personnel at Fort McCoy exceeded the minor construction \$750,000 dollar threshold by sending MIPR3MDFE00085 for \$784,252 on September 24, 2003, and an amendment for \$2,493 on July 12, 2004, to FedSource. The total cost of \$786,746 used O&M funds. Although the task order contract was awarded by FedSource on October 2, 2003, for \$735,214, the amount did not include the FedSource fee. The planning for both buildings was in 2003 and requests for military construction funds should have occurred

then. Therefore, the Directorate of Support Services at Fort McCoy used an incorrect appropriation.

53. **Construction of Maintenance Buildings.** The Directorate of Support Services at Fort McCoy did not combine task order LOS007993 for \$684,639 and task order LOS007994 for \$684,639 that were both issued by FedSource on September 12, 2003, to construct four new metal prefabricated maintenance buildings. The total contract cost for the two task orders was \$1,369,278. Each of the two task orders was for the construction of two maintenance buildings; however, bid proposal data established the provision for bidding up to four buildings. Therefore, one task order contract should have been issued versus splitting the project. Issuing two separate task orders resulted in keeping the contract award below the \$750,000 military construction threshold. The combined contract for the two task order contracts exceeded the \$750,000 O&M minor military construction threshold. MIPR MIPR3MDFE00078 for \$730,304 was issued September 9, 2003, and amendment 1 for \$8,331 was issued on December 29, 2004, for a total of \$738,635 to fund two maintenance buildings under task order contract LOS007993. Task order LOS007994 for two other buildings was funded with MIPR3MDFE00079 for \$730,304, issued on September 9, 2003. All buildings were built by the same contractor. Splitting of construction projects occurred to circumvent the cost limitation of \$750,000 for minor construction. Therefore, the Directorate of Support Services at Fort McCoy used an incorrect appropriation.

Naval Engineering Facilities Command, Southwest

54. **Transportation Relocation (Task Order LOS013626).** The Naval Base Ventura County Public Works is now the Naval Engineering Facilities Command, Southwest. The Naval Engineering Facilities Command, Southwest acquired professional services through FedSource for the relocation of the heavy-duty truck hoist support. The Naval Engineering Facilities Command, Southwest issued four MIPRs totaling \$248,000 in September 2004, using FY 2004 O&M funds to obtain services and deliverables through the performance of the relocation of heavy-duty truck hoist. The MIPRs, N6923204MPX8220, N6923204MPX8221, N6923204MPX8222, and N6923204MPX8230, were accepted in September 2004. FY 2004 O&M funds partially funded a contract awarded on January 8, 2005, for \$177,155. Use of FY 2004 O&M funds to satisfy FY 2005 requirements does not meet the intent of the bona fide needs rule.
55. **Valve Replacement (Task Order LOS014128).** The Naval Engineering Facilities Command, Southwest acquired professional services through FedSource using MIPR N6923204MPX8141 for \$95,000, issued on May 17, 2004. This was used to purchase water valve replacement support in the housing area at Naval Base Ventura County, Point Mugu, California. FedSource issued task order contract award LOS014128 for

\$81,056 on March 25, 2005. Approximately 10 months lapsed between the MIPR acceptance and contract award. Use of FY 2004 O&M funds to satisfy FY 2005 requirements does not meet the intent of the bona fide needs rule.

- 56. Design and Acquisition Support (Task Order LOS013101).** The Naval Engineering Facilities Command, Southwest acquired professional services through FedSource for Design and Acquisition Support. The Naval Engineering Facilities Command, Southwest issued MIPR N6923204MPU8222 for \$227,939 and amendment 1 for \$9,876 on September 17, 2004. The basic MIPR was accepted on September 22, 2004. The MIPRs cited FY 2004 O&M funds, which expired on September 30, 2004. FedSource awarded task order LOS013101 on September 30, 2004, for design, acquisition, engineering, program development, and database management support services. The task order award specified the period of performance to begin on September 30, 2004, and continue through November 30, 2005, 2 months beyond the 12-month contract performance limitation. In addition, FedSource Los Angeles issued modification 1 on November 23, 2005, for a “no increased cost to the Government” extension until February 28, 2006, effective November 30, 2005. The task order exceeded the contract period of 12 months for a severable contract. FY 2004 funds may have been used for the extension. Use of FY 2004 O&M funds to satisfy a FY 2006 requirement does not meet the intent of the bona fide needs rule.
- 57. Repair Underground Vaults in Parking Apron (Task Order LOS013406).** The Naval Engineering Facilities Command, Southwest purchased services through FedSource to repair underground vaults in the parking apron. The Naval Engineering Facilities Command, Southwest issued MIPR MIPRN6923204MPX8223 for \$177,000 on September 28, 2004, using FY 2004 O&M funds. FedSource accepted the MIPR on September 28, 2004. However, the task order was not awarded until November 18, 2004. Use of FY 2004 O&M funds to satisfy FY 2005 requirements does not meet the intent of the bona fide needs rule.
- 58. Utilities, Engineering, and Planning Support (Task Order LOS013139).** The Naval Engineering Facilities Command, Southwest used FedSource to purchase management and engineering support services to satisfy the overall operational objectives of the Naval Engineering Facilities Command, Southwest Utilities and Planning Division. The Naval Engineering Facilities Command, Southwest issued MIPRs N6923204MPX8195 for \$135,000 and N6923204MPX8196 for \$31,000 on September 17, 2004, citing FY 2004 O&M funds. FedSource accepted the MIPRs on September 22 and September 23, 2004. In addition, the Naval Engineering Facilities Command, Southwest issued MIPR N6923204MPX8206 for \$153,000 and MIPR N6923204MP27139 for \$20,000 on September 29, 2004, citing FY 2004 O&M funds. Task order LOS013139 was awarded on October 4, 2004, for \$578,850. Use of FY 2004 O&M funds to satisfy FY 2005 requirements does not meet the intent of the bona fide needs rule.

Headquarters, Air Force Deputy Chief of Staff, Manpower and Personnel

59. **Family Child Care Public Awareness Campaign and Family Child Care Conference (Task Order STL002274).** The Headquarters, Air Force Installation and Logistics Service is now the Headquarters, Deputy Chief of Staff Manpower and Personnel. The Headquarters, Deputy Chief of Staff, Manpower and Personnel issued MIPR NMIPR049209876 for \$1,900,000 on September 13, 2004, using FY 2004 O&M funds, which expired on September 30, 2004. The Headquarters purchased a Comprehensive Public Awareness Campaign to heighten awareness among current and potential customers of the Extended Duty Child Care, Mildly Ill, Missile Care, Air National Guard and Air Force Reserve Home Community Care, Returning Home Care, and Family Child Care Subsidy programs. The funds were also for the 2005 Family Child Care Conference to support families of deployed Air National Guard and Air Force Reserve members, tentatively scheduled for July 25–27, 2005. FedSource awarded the task order on September 22, 2004, for \$1,027,640. Additionally, FedSource issued modification 3 on September 19, 2005, for a “no increased cost to the Government” extension until January 31, 2006, effective September 21, 2005. The contract was extended for a period beyond the 12-month contract period from the task order award date. Use of FY 2004 O&M funds to satisfy FY 2005 requirements does not meet the intent of the bona fide needs rule.
60. **Boys and Girls Club of America (Task Order STL002277).** The Headquarters, Deputy Chief of Staff, Manpower and Personnel issued MIPR NMIPR049209729 for \$500,000 on August 16, 2004, using FY 2004 O&M funds, which expired September 30, 2004. The Headquarters purchased national affiliation fees for Boys and Girls Club of America for all participating Air Force youth centers for 2005 and for the annual national conference. FY 2004 funds were used to prepay FY 2005 fees and conference costs; additionally, the statement of work provided that conference costs would be incurred in 2005. FedSource awarded the task order on September 27, 2004, for \$484,500. Use of FY 2004 O&M funds to satisfy FY 2005 requirements does not meet the intent of the bona fide needs rule.
61. **Youth Fitness Activities and Kits (Task Order STL002276).** The Headquarters, Deputy Chief of Staff, Manpower and Personnel issued MIPR NMIPR049209876 for \$1,900,000 on September 13, 2004, using FY 2004 funds, and allocated \$80,000 to task order STL002276. The MIPR funds expired on September 30, 2004. The MIPR funds were for professional services through FedSource for youth fitness activities and kits. FedSource awarded task order STL002276 for \$82,620 on September 22, 2005, with a period of performance from September 23, 2004 through September 22, 2005. However, the activity packets and sport kits were not received in FY 2004. Receipt of goods after the DoD appropriation expired could not be justified because of delivery time,

production lead-time, or unforeseen delays. Use of FY 2004 O&M funds to satisfy a FY 2005 requirement does not meet the intent of the bona fide needs rule.

62. **Entertainment (Task Order STL002433).** The Headquarters, Deputy Chief of Staff, Manpower and Personnel acquired professional services through FedSource to purchase entertainment services, using MIPRs NMIPR049209768 for \$260,000, issued August 24, 2004, and amendment 1 for \$200,000, issued on September 9, 2004. They used FY 2004 O&M funds, which expired on September 30, 2004. FedSource issued task order contract STL002433 for \$19,959 on September 8, 2004, to obtain quality, live, professional entertainment for the period from September 1, 2004, through September 1, 2005. The period of performance for the first task, Waking Norman, was scheduled to begin on October 21, 2004, and end November 11, 2004. Use of FY 2004 O&M funds to satisfy FY 2005 requirements does not meet the intent of the bona fide needs rule.

Air Force 452nd Air Mobility Wing

63. **Taxiway Repair (Task Order LOS014181).** The March Air Reserve Base, 452nd Civil Engineers issued MIPR NG466443040031 for \$2,997,000 to purchase taxiway widening and a runway repair at the base on September 30, 2004, using FY 2004 O&M funds, which expired on September 30, 2004. FedSource accepted the MIPR on September 30, 2004. FedSource issued task order contract number LOS014181 for \$1,188,042 on April 4, 2005, with a period of performance from December 1, 2004, through November 30, 2005. A contract has not been established for the runway. Use of FY 2004 funds to satisfy FY 2005 requirements does not meet the intent of the bona fide needs rule. In addition, use of O&M funds was improper for funding the runway and taxiway. The Air Force Reserve Command, Chief, Civil Engineering, 452nd Mission Support Group approved funding for the two airfield projects and specifically approved \$2,000,000 for the runway repair and \$997,000 for the taxiway repair. The airfield projects should have been addressed as one project. Funding separately gives appearance of splitting projects to avoid use of military construction appropriated funds. The work contracted for on the task order was major construction and exceeded the \$750,000 threshold for minor military construction; therefore, the military construction appropriations should have been used. The 452nd Civil Engineers used the incorrect appropriation.

Joint Personnel Recovery Agency

64. **Management Assistant (Task Order STL001373).** The Joint Personnel Recovery Agency (JPRA) acquired services from FedSource to obtain a management assistant to support the Joint Experimentation and Interoperability Directorate within the JPRA. Both RDT&E and O&M funds were used to fund the services, under task order STL001373.

FedSource initially issued the task order, STL001373, on June 7, 2004, for \$33,972. The statement of work for the task order specified that a management assistant should be contracted to perform administrative and technical support, provide graphics and illustration support, maintain project plans and assessment schedules, and provide document and conduct file management support. These tasks should be funded with O&M funds. The JPRA issued four MIPRs to FedSource to fund this purchase of which three MIPRs cited RDT&E funds and one cited O&M funds. The first RD&TE MIPR was MIPR F1AF21494G001 for \$192,000 issued on March 11, 2005. The next two RDT&E MIPRs were MIPR NMIPR049208779 and amendment 1, totaling \$392,798, of which \$79,017 in RDT&E funds was allocated to STL001373. The total of \$125,954 allocated from the three MIPRs designated with RDT&E appropriated funds should have used O&M funds, not RDT&E funds. O&M funds should have been used to fund the entire task order contract. Therefore, JPRA used an incorrect appropriation.

65. **Analyst III for Urban Operations Project Support (Task Order STL001916).** JPRA acquired professional services through FedSource for an analyst to conduct RD&TE tasks consisting of assessment operations project support experimentation, concept development, field testing, and research capabilities in the marketplace to fulfill program needs. JPRA issued five MIPRs to fund the purchase: four using RDT&E funds and one using O&M funds. JPRA allocated \$201,040 from four RDT&E MIPRs to partially fund the purchase. FedSource issued the basic task order STL001916 for \$78,568 on October 26, 2004, using RDT&E funds with a period of performance from November 1, 2004, through February 28, 2005. Contract modifications were used to extend the period of performance, but no modification was issued exercising an option period. JPRA issued MIPR F1A215273G0001 for \$178,000 on September 30, 2005, using FY 2005 O&M funds, of which \$48,747 applied to the contract, even though the work was for RDT&E on urban operations project support. This MIPR funded award number 2, modification 2. The analyst worked on the task order the entire period of performance and the work remained the same for the entire task order. Task order STL001916, modification 6, for \$47,863 issued November 1, 2005, was used to fund award number 2, modification 2, for \$48,747, and this contract action extended the period of performance to February 26, 2006. This resulted in use of FY 2005 funds for FY 2006 work. Use of FY 2005 O&M funds to satisfy requirements in FY 2006 does not meet the intent of the bona fide needs rule. Additionally, the task order contract is for RDT&E work and use of O&M funds was inappropriate for the task order. RDT&E funds should have been used to continue work on the project. Therefore, JPRA used an incorrect appropriation.
66. **Analyst for Project Support (Task Order STL001457).** JPRA acquired services for program management support, which required an analyst to provide technical guidance on concept technical demonstrations, develop management plans for projects, maintain financial records, and provide project management functions. The MIPR NMIPR049208724 issued on

May 5, 2004, for \$196,980 did not contain a description or include a reference to a statement of work to provide a description that was specific, definite, and certain. Since no interagency agreement or a MIPR with a description exists to support the requirement, JPRA has a potential bona fide needs violation.

67. **Analyst III (Task Order STL001972).** JPRA used task order contract STL001972 for an analyst to perform RDT&E on the future combat survivor evader locator project. The statement of work provides that an analyst will perform subject matter expertise in development and integration of combat survivor evader locator capabilities to include RDT&E for future combat survivor evader locator capabilities. The project scope of work comprises RDT&E work. However, JPRA funded the project with both RDT&E and O&M funds. The first four of the five MIPRs issued to support task order contract STL001972 used RDT&E funds. The initial task order contract STL001972 for \$51,414 was issued on December 15, 2004, for an analyst assigned to work combat survivor evader locator project support. JPRA sent MIPR F1AF215273G001 for \$178,000 on September 30, 2005, using FY 2005 O&M funds, and allocated \$49,849 to task order STL001972 to extend of the period of performance through February 2006. The analyst scope of work remained the same throughout the task order and should have continued to be funded with RDT&E funds. Therefore, JPRA used an incorrect appropriation. Additionally, FY 2005 funds were used to support work to be performed in FY 2006. Partial funds from MIPR F1AF215273G0001 were allocated to the task order to fund task order modification 2, issued on November 1, 2005. The contract modification was used to increase funds on the contract in the amount of \$48,945 and extend the period of performance to February 28, 2006. Use of FY 2005 O&M funds to satisfy a FY 2006 requirement does not meet the intent of the bona fide needs rule.
68. **Analyst (Task Order STL001374).** JPRA issued MIPR MIPR215273G001 for \$178,000 on September 30, 2005, using FY 2005 O&M funds to purchase analyst services for the Advanced Survivor Technology project support. JPRA also issued MIPR F1AF215068G001 and amendments 1 and 2 to fund \$71,485 on task STL001374 with O&M funds. The statement of work states that project support will focus primarily on the JPRA RDT&E future Advanced Survivor Technology capabilities. The task order contract scope of work is RDT&E. RDT&E funds should have been used instead of O&M funds. Therefore, JPRA used an incorrect appropriation. In addition, FY 2005 funds were used to support work that was clearly to be performed in FY 2006. The basic task order contract was issued on June 7, 2004, for \$64,907, with a period of performance from June 5, 2004, through September 30, 2004. MIPRF1AF215273G001, issued on September 30, 2005, allocated \$73,627 to task order STL001374, funded part of task order contract award number 3, modification 2 for \$34,868 on November 1, 2005. This contract action extended the period of performance through January 31, 2006. Use of FY 2005 O&M funds to satisfy a FY 2006 requirement does not meet the intent of the bona fide needs rule.

Washington Headquarters Services

69. **Applications Consultant (Task Order BAL118884).** The Washington Headquarters Service purchased services through FedSource for an applications consultant. The Washington Headquarters Service issued Interagency Agreement DHIA 40362 for \$13,000, citing FY 2004 funds. FedSource accepted the Interagency Agreement on September 29, 2004, in FY 2004; however, the task order contract was awarded on October 27, 2004, for \$11,944. Use of FY 2004 O&M funds to satisfy FY 2005 requirements does not meet the intent of the bona fide needs rule.

Appendix E. 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)
Under Secretary of Defense for Personnel and Readiness
 Director, Program Analysis and Evaluation

Department of the Army

Commander, Army Training and Doctrine Command
Assistant Secretary of the Army (Financial Management and Comptroller)
Administrative Assistant to the Secretary of the Army
Commander, Army Accessions Command
Commander, Army Reserve Command
Auditor General, Department of the Army
Commander, Army Intelligence Center
Commander, Army Garrison, Fort McCoy

Department of the Navy

Assistant Secretary of the Navy (Manpower and Reserve Affairs)
Commander, Naval Education and Training Command
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Commander, Navy Reserve Command
Commander, Space and Naval Warfare Systems Command
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Department of the Air Force

Assistant Secretary of the Air Force (Financial Management and Comptroller)
Administrative Assistant Secretary of the Air Force
Commander, Electronic Systems Center
Air Force Deputy Chief of Staff, Manpower and Personnel
Commander, 452nd Air Mobility Wing
Auditor General, Department of the Air Force
Commander, Air Force Medical Support Agency

Combatant Commands

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Commander, U.S. Joint Forces Command
 Inspector General, U.S. Joint Forces Command
 Commander, Joint Personnel Recovery Agency
Commander, U.S. Central Command
 Commander, U.S. Central Command Air Forces
Commander, U.S. Special Operations Command
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Non-Defense Federal Organization

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General Services Administration, Inspector General
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National Aeronautics and Space Administration, Inspector General
Department of the Treasury, Inspector General

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 Under Secretary of Defense (Comptroller)/Chief Financial Officer Comments



COMPTROLLER

OFFICE OF THE UNDER SECRETARY OF DEFENSE
1100 DEFENSE PENTAGON
WASHINGTON, DC 20301-1100

NOV 3 2006

MEMORANDUM FOR PROGRAM DIRECTOR, DEFENSE FINANCIAL AUDITING
SERVICE, OFFICE OF INSPECTOR GENERAL,
DEPARTMENT OF DEFENSE

SUBJECT: Draft Audit Report, "Potential Antideficiency Act Violations on DoD
Purchases Made Through Non-DoD Agencies," (Project No. D2005-D000CF-0222.001)

This memo is in response to the subject October 6, 2006, draft report provided to
this office for review and comment. Our response to each of the audit report
recommendations directed to the Under Secretary of Defense (Comptroller)/Chief
Financial Officer is at Attachment 1.

We appreciate the opportunity to respond to your draft audit report and look
forward to resolving the cited issues. My point of contact is Ms. Kathryn Gillis. She can
be contacted by telephone at 703-697-6875 or e-mail at Kathryn.gillis@osd.mil.

A handwritten signature in black ink, appearing to read "Robert McNamara".

Robert McNamara
Acting Deputy Chief Financial Officer

Attachments:
As stated

cc:
ODGC(F)
USD(AT&L)
DFAS

Attachment 1
Response to Draft Audit Report Recommendations

Office of the Inspector General (OIG), Department of Defense (DoD)
“Potential Antideficiency Act Violations on DoD Purchases Made Through
Non-DoD Agencies”
OIG Project No. D2005-D000CF-0222.001

OIG Recommendation 1a. Perform an independent assessment and determine whether formal investigations should occur for potential Antideficiency Act violations on the Partners for Youth Success Program-Marketing purchase; the Steam Cleaners purchase; Navy Excellence through Commitment to Education Learning purchase; the Chief Information Officer Integration purchase; the Defense Message System purchase; the Video Teleconference Updates purchase; the Work Force Learning Project purchase; the Smart Gate purchase; the End User Device purchase; the Joint Detainee Information Management System purchase; and the Beneficiary Services and Ancillary Support purchase.

OSD Response. Concur. We will consult with the Office of General Counsel to independently assess and determine whether formal investigations should occur for the potential Antideficiency Act violations cited in the recommendation. The assessment is expected to be completed by February 2007.

OIG Recommendation 1b. Work with the General Counsel of the Office of the Secretary of Defense to establish a legal opinion and policy regarding the use of funds and periods of availability of funds that are sent to other agencies that operate revolving funds, such as the General Services Administration Information Technology fund and the Franchise Funds.

OSD Response. Concur. We worked with the General Counsel to establish a legal opinion and policy regarding the use of funds and period of availability of funds sent to Non-DoD agencies. This policy was included in the Non-Economy Act order policy (<http://www.acq.osd.mil/dpap/specificpolicy/Non-EconomyActPolicy20061018.pdf>) released on October 16, 2006.

OIG Recommendation 1c. Issue clarifying guidance that is specific and definite on the bona fide needs rule, awarding contracts after the fiscal year ends with previous year funding, and partial funding of purchases through non-DoD agencies.

OSD Response. Concur. The Non-Economy order policy found at <http://www.acq.osd.mil/dpap/specificpolicy/Non-EconomyActPolicy20061018.pdf>

was published October 16, 2006 clarifying the specific and definite descriptive requirements of the bona fide needs rule, awarding of contracts after the fiscal year end with previous year funding, and the partial funding of purchases through Non-DoD agencies.

OIG Recommendation 1d. Require the Defense Finance and Accounting Services to review and identify reimbursements for purchases to non-DoD agencies that cite funds that are either expired or closed and no longer available for use.

OSD Response. Concur. We will work with Defense Finance and Accounting in facilitating the review to identify reimbursements for purchases to Non-DoD agencies citing funds that are either expired or closed and no longer available for use. This review process is expected to be in place by February 2007.

OIG Recommendation 1e. Direct the DoD Components to initiate preliminary reviews to determine whether the improper use of Government funds for the 69 purchases listed in Appendix D resulted in Antideficiency Act violations or other funding violations in accordance with DoD 7000.14-R, "Financial Management Regulation." Also, monitor the results of the preliminary reviews to ensure they are being properly initiated.

OSD Response. Concur. All requests were submitted to the DoD Components to initiate preliminary reviews in determining whether Government funds were improperly used for the 69 purchases cited in the report. This action was completed in October 2006.

Team Members

The Department of Defense Office of the Deputy Inspector General for Auditing, Acquisition and Contract Management prepared this report. Personnel of the Department of Defense Office of Inspector General who contributed to the report are listed below.

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Inspector General Department of Defense

